

# Application

## Directors and Officers Liability Insurance (Non-Profit Entity)

**Submitting Broker, please complete the following to assist us in processing this submission:**

Name of Brokerage: \_\_\_\_\_

Name of Broker Contact: \_\_\_\_\_

Brokerage Address: \_\_\_\_\_ City: \_\_\_\_\_ Postal Code: \_\_\_\_\_

For renewal purposes only: Policy Number: \_\_\_\_\_ ISN (Client's Number): \_\_\_\_\_

**Note: All questions must be completed in their entirety.**

1. (a) Name and Address: \_\_\_\_\_

(b) Place of Incorporation: \_\_\_\_\_ (c) Date of Incorporation: \_\_\_\_\_

(d) Choose **one** of the following categories that best describes your function:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Community Organization        | <input type="checkbox"/> Golf/Country Club    | <input type="checkbox"/> Professional Association       |
| <input type="checkbox"/> Condominium/Housing           | <input type="checkbox"/> Government Agency    | <input type="checkbox"/> Religious Organization         |
| <input type="checkbox"/> Co-operative                  | <input type="checkbox"/> Health Care Provider | <input type="checkbox"/> School/Educational Institution |
| <input type="checkbox"/> Daycare                       | <input type="checkbox"/> Labour Union         | <input type="checkbox"/> Sports/Recreation Club         |
| <input type="checkbox"/> Foundation                    | <input type="checkbox"/> Lobby Group          | <input type="checkbox"/> Trade/Business Group           |
| <input type="checkbox"/> Fraternal/Student Association | <input type="checkbox"/> Museum               | <input type="checkbox"/> Other _____                    |

2. (a) Please provide financial details of the ENTITY in the table below.

	Most Recent Year End	Previous Year End
Assets		
Liabilities		
Revenues		
Net Income (Net Loss)		

(b) Is the ENTITY in arrears in its payments of monies payable to Canada Revenue Agency or the provincial ministries of revenue (including source deductions, GST, HST and PST)? YES ☐ NO ☐

(c) Is the ENTITY currently or has it at any time during the past three years been in breach of any of its debt covenants, loan agreements, contractual obligations, or does it anticipate any such breach occurring within the next 12 months? YES ☐ NO ☐

(d) If the ENTITY holds a charitable status, has the status ever been revoked or been subject to review? YES ☐ NO ☐

3. Number of employees: \_\_\_\_\_ Number of members: \_\_\_\_\_

If the number of employees is greater than 25, please complete the questions in the box below. If not, proceed to question 4.

(a)	What is the annual turnover rate of employees?	_____
(b)	How many employees and officers have been terminated in the past two years?	_____
(c)	Has the turnover rate exceeded historical levels during the past two years?	YES <input type="checkbox"/> NO <input type="checkbox"/>
(d)	Are any layoffs, staff reductions, or branch or office closings anticipated within the next two years?	YES <input type="checkbox"/> NO <input type="checkbox"/>
(e)	Does the ENTITY have:	
	(i) written hiring/interviewing guidelines?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	(ii) a Human Resources department? (If no, please provide details.)	YES <input type="checkbox"/> NO <input type="checkbox"/>
(f)	When an employee is discharged:	
	(i) is officer approval required?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	(ii) are Human Resources personnel directly involved?	YES <input type="checkbox"/> NO <input type="checkbox"/>

4. Is the ENTITY a licensing body for its members? YES ☐ NO ☐
5. Does the ENTITY have activities outside of Canada? YES ☐ NO ☐
6. Does the ENTITY sponsor a pension plan(s)? YES ☐ NO ☐
7. (a) Has any claim been made or is any claim now pending against any director or officer, the ENTITY or any other person(s) proposed for coverage? YES ☐ NO ☐
- (b) Has the ENTITY, within the last three years, been the subject of any inquiries, complaints, notices or hearings by any federal or provincial regulatory authority? YES ☐ NO ☐
- (c) Is the undersigned or any other person(s) proposed for coverage aware of any fact or circumstance involving the ENTITY, its subsidiaries or the directors or officers, or the trustees, employees, volunteers or committee members of the ENTITY or its subsidiaries which he/she has reason to believe might result in any future claim? YES ☐ NO ☐

If yes to any of the above questions, please provide details.

## INSURANCE INFORMATION

8. (a) Current or previous insurance:
- | Insurer(s) | Expiration Date | Limit    | Deductible |
|------------|-----------------|----------|------------|
| _____      | _____           | \$ _____ | \$ _____   |
| _____      | _____           | \$ _____ | \$ _____   |
| _____      | _____           | \$ _____ | \$ _____   |
- (b) Has any similar insurance on behalf of the ENTITY been cancelled or non-renewed? YES ☐ NO ☐

If yes, please provide details.

WITHOUT LIMITATION TO ANY OTHER REMEDY AVAILABLE TO THE INSURERS, THE PROPOSED INSURANCE WILL NOT AFFORD COVERAGE TO ANY CLAIMS OF WHICH ANY PERSON PROPOSED FOR COVERAGE HAS KNOWLEDGE NOR ANY CLAIMS RESULTING FROM ANY FACTS OR CIRCUMSTANCES OF WHICH ANY PERSON PROPOSED FOR COVERAGE HAS KNOWLEDGE.

## APPLICANT'S CONSENT TO THE TRANSMISSION OF THE INFORMATION CONTAINED IN THE APPLICATION FORM

I hereby acknowledge that the information collected in the Application form is acquired by my insurance broker to be transmitted to Victor Insurance Managers Inc. for the sole purpose of obtaining an insurance policy, and will be kept confidential.

Moreover, I authorize Victor Insurance Managers Inc., its insurers or service providers to:

- conduct verification, using outside sources, of the information contained in the Application form, in attached documentation and in subsequently provided documentation;
- in the event of a claim, transmit the submitted and verified information to loss adjusters, lawyers or other similar offices for the purposes of investigating, defending, negotiating or settling any claims, as required.

For more information on Victor's privacy policy, please contact [privacypolicyinquiries@victorinsurance.com](mailto:privacypolicyinquiries@victorinsurance.com).

## DECLARATIONS AND SIGNATURE

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The undersigned declares that:

- (a) he/she is duly authorized to complete this Application and that the statements set forth herein are true and complete;
- (b) reasonable efforts have been made to obtain sufficient information from each person proposed for coverage to facilitate the proper and accurate completion of this Application form;
- (c) the financial information submitted with this Application are representative of the current financial position of the ENTITY.

The undersigned agrees that:

- (a) if the information supplied on this Application changes between the date of this Application and the effective date of the policy, he/she will provide written notice of such changes immediately to Victor and, without limitation to any other remedy, Victor may withdraw or modify any outstanding quotations, and any authorization or agreement to bind coverage;
- (b) should a policy be issued, this Application and its attachments shall form part of the policy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Capacity (President or Executive Director)

\_\_\_\_\_  
Date (dd/mm/yyyy)

\_\_\_\_\_  
ENTITY

To: Members, PSOs, NSOs & Non-Profit Groups

**RE: SEPARATE OR STAND-A-LONE NON-PROFIT DIRECTORS & OFFICERS POLICY  
MARKEL D&O LITE VS. VICTOR NON-PROFIT D&O**

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To whom it may concern,

This formal letter is to provide you the main comparisons between the Markel D&O lite vs. the Victor Non-Profit D&O products.

Markel Point #1:

The main and most important difference is that the Markel D&O lite only provides **compensatory damages coverage**. This means that if the board of directors or officers are sued or legal action is made against the board of directors and money is sought after, the Markel D&O lite policy will respond and defend. Please see the policy wording below for reference.

**COVERAGE E . . ERRORS & OMISSIONS LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "wrongful act", to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B, D and E. We will have the right and duty to defend any "action" seeking those compensatory damages. But:

1) the amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;

2) we may investigate and settle any claim or "action" at our discretion; and

3) our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B, D or E or medical expenses under Coverage C.

b. This insurance applies to "wrongful act" only:

- 1) committed in the "coverage territory" during the policy period; and
- 2) arising out of the conduct of your operation.

### Section III – Limits of Insurance

6. Subject to 2. above, the Errors and Omissions Liability Limit is the most we will pay under Coverage E for compensatory damages because of a "wrongful act".

#### Markel Point #2:

The Markel D&O lite is not meant or intended to be a fully comprehensive D&O coverage. As you will notice on your declaration page, there is no premium being charged. This is an inclusive coverage or "no premium" is being charged coverage.

#### Markel Point #3

The one main benefit is that this coverage provides a "drop-down" in that it provides D&O coverage for compensatory damages to the club level. This is not a benefit that is usually offered among other insurance carriers.

#### Markel Point #4

The purpose of this letter is not to advise you to remove the D&O lite coverage from the Markel policy. It is instead intended to make you aware of more comprehensive coverage that would benefit the directors and officers of your organization. It is an optional coverage which means it is not mandatory. The reason why I recommend this separate D&O policy through Victor is because most of the Sport BC members and PSOs are starting to purchase this themselves. Including the BOD I sit on, we have the same Victor D&O policy.

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## **Victor**

Please see below the formal attached quote from Victor. The main point of this product is that it is more comprehensive and provides more than just the compensatory damages coverage that the Markel D&O Lite provides.

For example, the Victor policy provides coverage for:

#### **Defense Costs**

- The reasonable and necessary legal, accounting, adjusting, investigating, expert or appeal expenses incurred for the defense of claims for which coverage is provided by this policy
- Defense costs does not include salaries, wages, overhead or benefit expenses of any insured person.

#### **Compensatory Damages AND Punitive or exemplary damages**

- If the board is found liable for their decision or wrongful acts, the policy could potentially provide coverage for punitive or exemplary damages (contingent on the laws and courts).

#### Employment Practices Liability

- Wrongful termination of an individual employment contract
- Discrimination or harassment adversely affecting any employee or an applicant for employment with the entity

- Wrongful deprivation of career opportunity or failure to employ or promote
- Wrongful discipline of employees
- Negligent evaluation of employees
- Employment related misrepresentation
- Employment related defamation
- Discrimination or harassment with respect to any past, present or prospective customers or clients of the ENTITY.

Fiduciary Wrongful Acts

- Any actual or alleged act, error or omission arising out of the management or administration of a BENEFIT PLAN

Thank you for taking the time to read this summary and I welcome any questions and/or concerns. You can reach me at [cameron@sbcinsurance.com](mailto:cameron@sbcinsurance.com) or by calling me at 604-737-3451.

Best Regards  
SBC INSURANCE AGENCIES LTD.

A handwritten signature in dark ink, appearing to read 'Cameron Cheung', with a horizontal line extending to the right.

Cameron Cheung, CIP, BA  
General Manager



## MANAGEMENT LIABILITY INSURANCE FOR NON-PROFIT ORGANIZATIONS

### PROTECT YOURSELF AND YOUR ORGANIZATION FROM LIABILITY ARISING OUT OF YOUR OPERATIONS.

Victor has been a leading provider of management liability coverage in Canada—on both a primary and excess basis—for over 35 years. With our Directors & Officers insurance policy for non-profit organizations, insureds can be certain that their personal exposures and those of their business are well protected.

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#### WHY BUY THIS PRODUCT?

Directors and officers of non-profit organizations carry significant risk to their personal assets in the event of the organization's bankruptcy or insolvency. These organizations along with their directors, officers, employees and volunteers may be the subject of numerous other types of claims that can incur significant defence costs over several years. It is important to remember that a lawsuit doesn't need to have merit to have a financial impact.

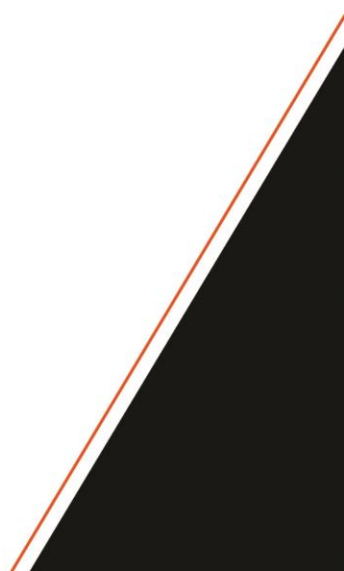
A broad policy form that encompasses liability coverage for directors and officers (D&O), employment practices (EPL), fiduciary and outside directorship (ODL) is a core component of a non-profit organization's risk management program. It can protect the organization and individuals against a variety of tortious allegations from general negligence to misrepresentation, defamation, wrongful termination, discrimination, harassment, non-disclosure, as well as statutory liabilities under human rights, environmental, and occupational health and safety legislation, for example.

Visit our website ([www.victorinsurance.ca](http://www.victorinsurance.ca)) for current claims examples and detailed loss statistics.

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#### WHO WILL BENEFIT?

**Canadian non-profit organizations** including those with operations outside Canada.



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## WHAT ARE THE COVERAGE AGREEMENTS?

- Clear insuring agreements for D&O, EPL, fiduciary and ODL
- Full entity coverage
- Clear "pay on behalf of" language
- Insurer has the right and duty to defend

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## WHAT ARE THE COVERAGE DETAILS?

- Directors and officers liability
- Fiduciary liability
- Worldwide jurisdiction
- Employment practices liability
- Non-profit outside directorship liability
- Limits up to \$15 million

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## WHAT ARE THE POLICY FEATURES? (SUBJECT TO UNDERWRITING)

- Defence costs in excess of limits
- Affirmative coverage for bankruptcy related statutory liabilities
- Third party EPL coverage
- Broad severability provisions
- Available extensions for public relations management costs and workplace violence costs
- Extradition coverage
- Additional Side A excess limit
- No settlement hammer clause
- Zero deductible
- Punitive and exemplary damages in Canada
- First dollar defence
- Bodily Injury and Property Damage exclusion with carve-outs
- Broad pollution defence for insured persons
- Final non-appealable adjudication language in conduct exclusions
- Three-year policy term option with annual aggregate limits

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## HOW ARE CLAIMS HANDLED?

Victor is renowned for the efficient and effective defence of our clients. Our highly specialized team of claims analysts, adjusters and legal counsel ensures that claims are managed proactively throughout the entire life of a claim.

Although many claims take the form of lawsuits, where possible, Victor tries to resolve the situation through discussion, negotiation, mediation and arbitration. It's our experience that this approach can help settle claims effectively, while respecting both your directors' and officers' privacy, and the corporation's confidentiality.

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## WHAT OTHER INSURANCE SOLUTIONS DO WE OFFER?

- Architects & Engineers Professional Liability
- Builders Risk and Wrap-Up Liability
- Commercial General Liability
- Commercial Property Insurance
- Commercial Umbrella Liability
- Crime Insurance
- Employment Practices Liability
- Environmental & Pollution Liability
- Errors & Omissions
- Fiduciary Liability
- Group and Retiree Benefits
- Technology and Cyber Liability

Visit us at [victorinsurance.ca](http://victorinsurance.ca) to learn more.



This document is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the program described. Please remember only the insurance policy can give actual terms, coverage, amounts, conditions and exclusions. Program availability and coverage are subject to individual underwriting criteria.

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# **VICTOR**

## **Non-Profit Directors and Officers**

### **Non-Profit Organizations**

Victor's Directors and Officers (D&O) management liability insurance for non-profit organizations protects the organization and its directors and officers against allegations of negligent acts, with broad coverage that includes employment practices and fiduciary liability.

### **Eligibility**

Our portfolio includes a broad variety of risks including the following:

- Professional associations
- Homes for the disabled
- Mental and physical rehab centres
- Shelters
- Community organizations
- Employment agencies
- Medical clinics
- Business development centres
- Sports organizations

### **Coverage Details**

- Policy Form – Claims-made and reported
- Policy Period – Annual and three-year policies (term or aggregate limits, fixed annual installments)
- Capacity – Limits up to \$15,000,000
- Territory – Claims made anywhere in the world

### **Policy Features**

- Multiple insuring agreements: D&O, Non-Profit Outside Directorship, Employment Practices and Fiduciary
- First dollar defence coverage (zero deductibles on most risks)
- Bi-lateral discovery period
- Broad definition of insured (includes the entity, directors, officers, trustees, employees, volunteers and committee members)
- Non-rescindable Side A
- 60-day notice of non-renewal

## **CLAIMS EXAMPLES**

### **Negligence and Breach of Trust**

After filing for bankruptcy, a non-profit organization was sued for negligence and breach of trust for failing to repay a temporary operating fund provided by another organization for a fundraising event.

### **Unethical Conduct**

A former member sued the board of a professional association alleging that the board of directors had targeted her, and that they had not followed the organization's bylaws, when they revoked her membership for unethical conduct.

### **Wrongful Termination**

After being terminated for sexual misconduct and harassment, a senior executive sued the non-profit organization for wrongful termination, and the directors and officers for alleged interference with contractual relations.

### **Wrongful Termination**

As part of a corporate reorganization, a large non-profit organization terminated the employment of a long-term employee. The employee sued the organization alleging wrongful termination. The employee also alleged that she had been defamed as a result of a written communication that had found its way into the hands of individuals outside the board of directors of the organization.

### **Negligent Misrepresentation**

A non-profit organization successfully applied for, and received, government funding for the purpose of organizing and hosting an event. Unfortunately, the expenses incurred for the event far exceeded the revenues received. After a government audit, it was determined that the funds had not been used for the purposes described in the funding application. The government commenced an action seeking damages due to the alleged negligent misrepresentations in the application documents and for the alleged breach of fiduciary duty on the part of the directors of the organization.

### **Breach of Fiduciary Duty**

A member of a professional association sued the association and several of its directors and officers as a result of a disagreement with respect to licensing requirements. The member sought damages as compensation for the alleged breach of fiduciary duty, defamation and interference with economic interests.

# Policy

## Non-Profit Entity Management Liability Insurance

### SECTION I – INSURING AGREEMENTS

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

#### A. Insured Person and Entity Liability

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

#### B. Non-Profit Outside Directorship Liability

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

#### C. Employment Practices Liability

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

#### D. Fiduciary Liability

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

#### E. Defence

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

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

### SECTION II – DEFINITIONS

#### A. “BENEFIT PLAN” means:

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

#### B. “CLAIM” means:

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

against any INSURED for a WRONGFUL ACT;

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

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

#### D. “DAMAGES” means:

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

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

E. "DEFENCE COSTS" means reasonable and necessary legal, accounting, adjusting, investigating, expert or appeal expenses incurred for the defence of CLAIMS for which coverage is provided by this policy. DEFENCE COSTS does not include salaries, wages, overhead or benefit expenses of any INSURED PERSON.

F. "EMPLOYMENT PRACTICES WRONGFUL ACT" means any actual or alleged:

1. wrongful termination of an individual employment contract;
2. discrimination or harassment adversely affecting any employee of or applicant for employment with the ENTITY;
3. wrongful deprivation of career opportunity or failure to employ or promote;
4. wrongful discipline of employees;
5. negligent evaluation of employees;
6. employment-related misrepresentation;
7. employment-related defamation;
8. retaliatory treatment against an employee of the ENTITY on account of such employee's exercise of his/her rights under law;
9. discrimination or harassment with respect to any past, present or prospective customers or clients of the ENTITY.

G. "ENTITY" means

1. the non-profit organization or association named in the Declarations;
2. any SUBSIDIARY at the inception date of the policy;
3. any former SUBSIDIARY but coverage is only afforded with respect to WRONGFUL ACTS occurring during its currency as a SUBSIDIARY;
4. any SUBSIDIARY acquired or created after the inception date of this policy on condition that:
  - (a) written notice together with full information thereof, is provided to VICTOR within ninety (90) days of the acquisition or creation of any new SUBSIDIARY whose total annual revenues exceed twenty-five per cent (25%) of the total annual revenues of the ENTITY as reflected in the ENTITY'S most recent annual financial statements prior to such acquisition or creation;

(b) coverage shall apply only to WRONGFUL ACTS occurring subsequent to the effective date of such acquisition unless the INSURER agrees, after presentation of a complete application and all appropriate information, to provide coverage by endorsement for WRONGFUL ACTS occurring prior to such acquisition;

(c) an additional premium as may be required by the INSURER be paid.

H. "FIDUCIARY WRONGFUL ACT" means any actual or alleged act, error or omission arising out of the management or administration of a BENEFIT PLAN.

I. "INSURED" means any INSURED PERSON and the ENTITY.

J. "INSURED PERSON" means any individual who was, now is or shall be a director, officer, trustee, employee, volunteer or member of any duly constituted committee of the ENTITY, including the estates, heirs, legal representatives or assigns of any said deceased, incompetent, insolvent or bankrupt individuals.

K. "INTERRELATED WRONGFUL ACTS" means WRONGFUL ACTS that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

L. "INSURER" means the insurance companies whose names appear in the Declarations.

M. "LOSS" means DAMAGES and DEFENCE COSTS resulting from a CLAIM for which coverage is provided by this policy.

N. "ORIGINAL POLICY" means the first policy purchased by the ENTITY providing coverage of a similar nature to this policy and which has continued through renewal or reinstatement on an uninterrupted basis since its inception. Each Insuring Agreement is considered separately.

O. "OUTSIDE DIRECTOR" means any INSURED PERSON acting in the capacity as a duly elected or appointed director, officer or trustee of an OUTSIDE ENTITY provided such position is being held at the specific request of the ENTITY.

P. "OUTSIDE DIRECTORSHIP WRONGFUL ACT" means a D&O WRONGFUL ACT committed by an OUTSIDE DIRECTOR.

Q. "OUTSIDE ENTITY" means any legally constituted non-profit organization or association.

R. "POLICY PERIOD" means the period from the inception date of this policy to the policy expiration date as set out in the Declarations, or a shorter period in the event the policy is cancelled.

S. "POLLUTANTS" means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis,

chemicals and waste reconditioned or reclaimed materials as well as any air emission, odour, waste water, oil or oil products, infectious or biological waste, asbestos or asbestos products or any noise.

- T. "SUBSIDIARY" means any non-profit organization or association more than fifty per cent (50%) owned by the ENTITY.
- U. "VICTOR" means the insurance manager whose name and address appear in the Declarations which is authorized to be the agent of the INSURER. VICTOR is not a party to this contract of insurance.
- V. "WRONGFUL ACT" means a D&O WRONGFUL ACT, an EMPLOYMENT PRACTICES WRONGFUL ACT, a FIDUCIARY WRONGFUL ACT, and/or an OUTSIDE DIRECTORSHIP WRONGFUL ACT.

### SECTION III – EXTENSIONS

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

#### A. Discovery Period (Bilateral)

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

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

Premium Calculation:

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

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

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

#### B. Spousal/Co-defendant Clause

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

### SECTION IV – EXCLUSIONS

This insurance does not apply to:

- A. CLAIMS for bodily injury, sickness, mental anguish, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof or injury resulting from false arrest, detention, imprisonment, wrongful entry or eviction. However, this exclusion shall not apply to allegations of mental anguish in a CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT.
- B. CLAIMS arising out of or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of POLLUTANTS into or upon real or personal property, the atmosphere or water, whether such discharge, dispersal, release or escape is intentional or accidental; or to LOSS resulting from any direction or request to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize POLLUTANTS. However, this exclusion shall not apply to:
  - 1. any CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT arising from an employee's actual or threatened disclosure of the matters described in this exclusion;
  - 2. DEFENCE COSTS incurred in defending the INSURED PERSONS arising from a CLAIM covered under Insuring Agreement A of Section I first brought within the territorial limits and jurisdiction of Canada.
- C. CLAIMS based upon, arising out of, directly or indirectly resulting from or in consequence of:
  - 1. ionising radiation or contamination by radioactivity from any nuclear fuel or from any

- nuclear waste from the combustion of nuclear fuel;
2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- D. CLAIMS arising from any WRONGFUL ACT if notification has been given under any policy which has expired prior to or upon the inception of this policy and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such LOSS, in whole or in part, as a result of such notice.
- E. CLAIMS based upon, arising out of, directly or indirectly resulting from or in consequence of any pending or prior litigation as at the inception date of the ORIGINAL POLICY or derived from the same or essentially the same facts as alleged in such pending or prior litigation.
- F. CLAIMS arising out of or attributable to any fraudulent, dishonest or criminal act committed deliberately by any INSURED PERSON as determined by a judgement or other final adjudication.
- G. CLAIMS arising out of or attributable to any INSURED PERSON gaining any profit, remuneration or advantage to which such INSURED PERSON was not legally entitled as determined by a judgement or other final adjudication.
- H. CLAIMS initiated or instituted, directly or indirectly, by or on behalf of the ENTITY. However, this exclusion shall not apply to:
1. any CLAIM made derivatively provided that such CLAIM is brought totally without the solicitation, assistance, participation or intervention of any INSURED PERSONS or the ENTITY; and
  2. any CLAIM brought by a liquidator, receiver or trustee in bankruptcy.
- I. CLAIMS for an actual or alleged breach of contract except that this exclusion shall not apply to:
1. allegations of tortious conduct arising out of or attributable to an actual or alleged breach of contract; and
  2. DEFENCE COSTS for CLAIMS arising from an EMPLOYMENT PRACTICES WRONGFUL ACT.
- J. CLAIMS arising out of or attributable to any grievance brought pursuant to a collective agreement.
- K. CLAIMS for the rendering or failure to render any kind of professional service for others, either gratuitously or for a fee.
- L. CLAIMS for an OUTSIDE DIRECTORSHIP WRONGFUL ACT initiated or instituted, directly or indirectly, by or on behalf of the OUTSIDE ENTITY or a duly elected or appointed director, officer or trustee of the OUTSIDE ENTITY.

- M. CLAIMS already covered under another valid and collectible insurance policy. However, this exclusion shall not apply to the difference in limit between the limit of liability under this policy and that of such other insurance policy. Any coverage provided by this policy shall be specifically excess of and shall not act in contribution with such other insurance policy.

NOTE: The WRONGFUL ACT of any INSURED shall not be imputed to any other INSURED for purposes of determining the applicability of the Exclusions in Section IV.

## SECTION V – COMPUTATION OF AMOUNTS PAYABLE

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

## SECTION VI – NOTICE OF CLAIM

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

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



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

If the effective date of termination of the policy is a Saturday, Sunday, or Statutory Holiday, any CLAIM reported to VICTOR on the business day immediately following the termination date, will be deemed to have been reported within the POLICY PERIOD.

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

## SECTION VII – DEFENCE AND SETTLEMENT

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

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

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

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

## SECTION VIII – GENERAL CONDITIONS

### A. Authorized Agent of the INSUREDS

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

### B. Non-rescindable

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

### C. Non-renewal

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

### D. Cancellation

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

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

### E. Payment of LOSS

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

#### 1. DEFENCE COSTS:

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

#### 2. DAMAGES:

The payment of DAMAGES by the INSURER shall be based on the relative legal exposure of the INSUREDS to covered and uncovered

allegations, which shall be determined upon settlement or final adjudication of the CLAIM.

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

**F. Action Against INSURER**

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

**G. Subrogation**

In the event of any payment under this policy, the INSURER shall be subrogated to the extent of such payment to all the rights of recovery of the INSUREDS and the INSUREDS shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the INSURER effectively to bring suit in the name of the INSUREDS.

**H. Severability**

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

**I. Territory**

Except as otherwise stated, coverage shall apply worldwide.

**J. Currency**

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

**K. Headings**

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

**L. Conformity to Statute**

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

**M. Interpretation**

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

**N. Declarations**

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





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# Specimen Endorsement

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Bodily Injury and Property  
Damage Exclusion (Absolute)

It is agreed that Item A of Section IV - Exclusions is amended to read as follows:

- A. CLAIMS arising out of or attributable to bodily injury, sickness, mental anguish, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof or injury resulting from false arrest, detention, imprisonment, wrongful entry or eviction. However, this exclusion shall not apply to allegations of mental anguish in a CLAIM for an EMPLOYMENT PRACTICES WRONGFUL ACT.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP101

SAMPLE - THIS IS NOT A POLICY



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# Specimen Endorsement

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## Public Relations Management Costs (\$50,000)

The INSURER agrees to reimburse the ENTITY for PUBLIC RELATIONS MANAGEMENT COSTS paid by the ENTITY as a result of an ADVERSE EVENT.

### Definitions Specific to This Endorsement

A. ADVERSE EVENT means any of the following events first occurring and reported during the POLICY PERIOD:

1. the unanticipated death, incapacity or resignation of any executive officer;
2. an unanticipated financial loss incurred by the ENTITY due to a catastrophic event;
3. the seeking of protection by the ENTITY under the Companies' Creditors Arrangement Act; or
4. the bankruptcy of the ENTITY;

which results in the public communication of unfavourable information regarding the INSUREDS and which could reasonably be considered to lessen public confidence in the ENTITY.

B. PUBLIC RELATIONS MANAGEMENT COSTS means the reasonable fees, costs and expenses incurred and paid by the ENTITY, with the INSURER'S prior written consent, to a professional law firm or public relations firm for services provided to prevent and minimize business disruption and negative publicity with respect to an ADVERSE EVENT.

### Sublimit and Deductible

Notwithstanding Item A of Section V - Computation of Amounts Payable, the limit of liability of the INSURER under this endorsement shall be \$50,000 per POLICY PERIOD, which amount shall be included in the aggregate limit of liability of the INSURER as stated in the Declarations. There shall be no deductible applicable to this amount.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.



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# Specimen Endorsement

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Workplace Violence Costs (\$250,000)

The INSURER agrees to reimburse the ENTITY for WORKPLACE VIOLENCE COSTS paid by the ENTITY resulting from any WORKPLACE VIOLENCE.

## Definitions Specific to This Endorsement

A. PREMISES means the buildings, facilities or properties occupied by the ENTITY.

B. WORKPLACE VIOLENCE means an intentional and unlawful:

1. act of deadly force with a lethal weapon; or
2. threat of deadly force with the display of a lethal weapon;

which occurs on or in the PREMISES and which did or could reasonably result in bodily injury or death to an INSURED PERSON.

C. WORKPLACE VIOLENCE COSTS means the reasonable fees, costs and expenses incurred and paid by the ENTITY for:

1. services of an independent security consultant or an independent public relations consultant for ninety (90) days following a WORKPLACE VIOLENCE event;
2. counselling seminars for employees conducted by an independent consultant following a WORKPLACE VIOLENCE event;
3. security guard services for up to thirty (30) days following a WORKPLACE VIOLENCE event;
4. services of an independent forensic analyst; and
5. other reasonable services expenses incurred and paid by the ENTITY, with the prior written approval of the INSURER.

## Sublimit and Deductible

Notwithstanding Item A of Section V - Computation of Amounts Payable, the limit of liability of the INSURER under this endorsement shall be \$250,000 per POLICY PERIOD, which amount shall be included in the aggregate limit of liability of the INSURER as stated in the Declarations. There shall be no deductible applicable to this amount.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

SAMPLE - THIS IS NOT A POLICY



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# Specimen Endorsement

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## Defence Costs in Excess of Limit Amendment

It is agreed that Item A of Section V - Computation of Amounts Payable is amended to read as follows:

- A. The INSURER will pay LOSS in excess of the deductible stated in the Declarations up to the limit of liability except that DEFENCE COSTS shall be paid over and above the limit of liability provided the said limit has not been previously exhausted by the payment of DAMAGES. The deductible shall apply to DAMAGES but not DEFENCE COSTS.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP312

SAMPLE - THIS IS NOT A POLICY



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# Specimen Endorsement

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## Amended Definition of Damages

It is agreed that Item D of Section II - Definitions is amended to read as follows:

D. "DAMAGES" means:

1. compensatory damages, including but not limited to amounts for which the INSURED PERSONS are statutorily liable due to the insolvency of the ENTITY (including penalties and interest related to such statutory liabilities) pursuant to any Canadian federal, provincial or territorial law; and
2. punitive or exemplary damages first rendered by a court in Canada;

which the INSUREDS are legally obligated to pay as a result of a judgement, settlement or assessment including pre and post-judgement interest. DAMAGES shall not include fines, penalties or damages which may be deemed uninsurable under the law pursuant to which this policy shall be construed. However, it is agreed that the insurability of punitive or exemplary damages and statutory liability related penalties shall be governed by such applicable law of the jurisdiction which most favours coverage for punitive or exemplary damages and statutory liability related penalties provided such jurisdiction has a substantial relationship to the relevant INSURED PERSONS, to the ENTITY or to the CLAIM giving rise to the DAMAGES.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP360A



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# Specimen Endorsement

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## Modified Conduct Exclusions (Final Adjudication)

It is agreed that Items F and G of Section IV - Exclusions are amended to read as follows:

- F. CLAIMS arising out of or attributable to any fraudulent, dishonest or criminal act committed deliberately by any INSURED as determined by final non-appealable adjudication in the CLAIM.
- G. CLAIMS arising out of or attributable to any INSURED gaining any profit, remuneration or advantage to which such INSURED was not legally entitled as determined by final non-appealable adjudication in the CLAIM.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP377A

SAMPLE - THIS IS NOT A POLICY



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# Specimen Endorsement

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## Amended EPL Wrongful Act Definition

It is agreed that Item F of Section II - Definitions is deleted in its entirety and replaced with the following:

F. "EMPLOYMENT PRACTICES WRONGFUL ACT" means any actual or alleged:

1. wrongful termination of employment;
2. breach of an employment contract;
3. discrimination or harassment adversely affecting any employee of or applicant for employment with the ENTITY;
4. wrongful deprivation of career opportunity or failure to employ, promote or grant tenure;
5. wrongful discipline of employees or infliction of emotional distress;
6. negligent evaluation of employees;
7. employment-related misrepresentation;
8. employment-related defamation;
9. retaliatory treatment against an employee of the ENTITY on account of such employee's exercise of his/her rights under law;
10. discrimination or harassment with respect to any past, present or prospective customers or clients of the ENTITY.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP400A





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# Specimen Endorsement

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## Deletion of the Hammer Clause

It is agreed that Section VII is amended to read as follows:

No DEFENCE COSTS payable under this policy shall be incurred without the INSURER'S consent which is not to be unreasonably withheld. The INSURER shall not settle or compromise any CLAIM without the written consent of the INSUREDS involved in the CLAIM.

Where the INSURER has directed the INSUREDS to conduct their own defence, the INSURER shall have the right and shall be given the opportunity to effectively associate with the INSUREDS in the investigation, defence and settlement of any CLAIM that appears reasonably likely to be covered in whole or in part by this policy.

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

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

DONP417

SAMPLE - THIS IS NOT A POLICY