

PROFESSIONAL LIABILITY INSURANCE POLICY

IN CONSIDERATION OF the payment of the premium and in reliance upon all statements made and information furnished to Trisura Guarantee Insurance Company (hereinafter called the “**Insurer**”) including the statements made in the Application and subject to all the terms, conditions and limitations of this Policy, the **Insurer** agrees as follows:

I INSURING AGREEMENTS

COVERAGE A: ERRORS AND OMISSIONS LIABILITY

The **Insurer** shall pay on behalf of the **Insured** any **Loss**, in excess of the **Deductible**, that the **Insured** is legally obligated to pay on account of any covered **Claim** for a **Wrongful Act** first committed or allegedly committed on or after the **Retroactive Date** and provided that such **Claim** is first made against the **Insured** during the **Policy Period** or **Discovery Period**, if exercised.

COVERAGE B: SUPPLEMENTAL PAYMENTS

The **Insurer** shall reimburse the **Insured** all reasonable expenses, including travel expenses and loss of wages up to \$500.00 per day, incurred by the **Insured** at the **Insurer's** request to attend depositions, arbitration proceedings or trials in connection with the defence of a covered **Claim**.

COVERAGE C: CORPORATE BRAND PROTECTION/CRISIS MANAGEMENT EXPENSES COVERAGE

The **Insurer** shall pay on behalf of the **Corporation** all **Crisis Management Expenses** incurred by the **Corporation**, in excess of the **Deductible**, to avert or mitigate damage to any of the **Corporation's** brands and/or reputation caused by a **Newsworthy Event** first occurring on or after the **Retroactive Date** and before the end of the **Policy Period**.

II DEFINITIONS

Whenever appearing in this Policy, words and phrases appearing in **bold type** shall have the meanings set forth below. These Definitions apply to the singular and the plural of these terms as circumstances and context require.

Application means all application forms, including attachments and materials requested therein or submitted therewith, for this Policy or for any policy of which this Policy is a direct or indirect renewal or replacement. All such application forms, attachments and materials are deemed attached to and incorporated into this Policy.

Bodily Injury means bodily injury, sickness or disease of any person, and, if arising out of the foregoing, disability, emotional distress, mental anguish, mental injury, shock or death at any time. However, **Bodily Injury** shall not mean emotional distress, mental anguish or mental injury resulting from **Personal Injury**.

Claim means:

- (i) any written demand for monetary damages, services, or non-monetary or injunctive relief;
- (ii) a civil proceeding seeking monetary damages, services, or non-monetary or injunctive relief, commenced by the issuance of a notice of action, statement of claim, writ of summons, complaint or similar pleading; or
- (iii) an arbitration, mediation or other alternative dispute resolution proceeding seeking monetary damages, services, or non-monetary or injunctive relief, commenced by receipt of a notice to appoint an arbitrator or mediator, an arbitration or mediation demand or similar document,

against any **Insured** for a **Wrongful Act**, including any appeal therefrom. A **Claim** shall be deemed to have been first made at the earliest date upon which written notice thereof, or a copy of the **Claim**, was personally received by any **Insured** by any means including personal delivery, facsimile transmission or email.

Corporation means the **Named Insured** and any **Subsidiary**.

Crisis Management Expenses means reasonable costs, charges, fees and expenses incurred by the **Corporation**, with the prior written consent of the **Insurer**, for services provided by a lawyer or public relations consultant solely for the purposes of responding to a **Newsworthy Event** and averting or mitigating damage to and restoring the **Corporation's** reputation or brands.

Damages means compensatory, punitive or exemplary damages, judgments (including pre-judgment and post-judgment interest) or settlements. **Damages** shall not include:

- (i) any fine, penalty, forfeiture, sanction, tax, fee, statutory or liquidated damages, or the multiple portion of any multiplied damage award;
- (ii) any non-monetary or equitable relief or redress, including but not limited to any cost or expense of complying with any injunctive, declaratory, or administrative relief or specific performance award;
- (iii) any payment, restitution, return or disgorgement of any fees, profits, deposits, commissions, expenses, royalties, charges or any funds allegedly wrongfully or unjustly held or obtained; or
- (iv) any other matter, sum or award that is uninsurable under the law pursuant to which the Policy shall be construed.

It is understood and agreed that:

- (a) the insurability of punitive or exemplary damages shall be governed by the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy, or the **Claim** giving rise to such damages and which is favourable to the insurability of such damages; and
- (b) the definition of **Damages** shall not include **Defence Costs**.

Deductible means the amount stated in Item 4 of the Declarations.

Defence Costs means all reasonable and necessary costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses incurred in the investigation, adjustment, negotiation, arbitration or defence of any covered **Claim**, whether paid by the **Insurer** or by the **Insured** with the **Insurer's** prior written consent. **Defence Costs** shall also include the premium for appeal, attachment or similar bonds, but the **Insurer** shall have no obligation to apply for or furnish any such bonds. **Defence Costs** does not include:

- (i) loss of earnings or salaries or other compensation paid to any **Insured**;
- (ii) costs, charges, fees or expenses incurred prior to the time that a **Claim** is first made against the **Insured**; or
- (iii) any loss or expense otherwise covered under any other provisions of this Policy.

Discovery Period means the period described in Section III, Discovery Period.

Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, provincial, territorial, state, local or foreign law or under the provisions of any formal program established by the **Corporation**.

Employee means any natural person whose labour or service is engaged by and directed by the **Corporation**, including any part-time, seasonal, **Leased Employee** and temporary employee, as well as a volunteer.

Executive means any natural person who is a director, officer, partner, in-house General Counsel or Risk Manager of the **Corporation**, or those serving in a functionally equivalent position in a foreign jurisdiction.

First Inception Date means the inception date of the first Miscellaneous Professional Liability Policy (or policy providing coverage of a similar nature to that afforded by this Policy) issued by the **Insurer** to the **Named Insured** and which has continued through renewal or reinstatement on an uninterrupted basis since its inception.

Independent Contractor means any natural person or business entity providing services for the **Corporation**, but only for a **Wrongful Act** committed within the capacity and scope of such independent contractor's duties performed on behalf of the **Corporation** and pursuant to the terms of a written contract between such independent contractor and the **Corporation** where such written contract was entered into and executed by both parties before the date of such **Wrongful Act**.

Insured means:

- (i) the **Corporation**; and
- (ii) the **Insured Persons**.

Insured Persons means any:

- (i) natural person who was, now is, or during the **Policy Period** becomes, a director, officer, principal, partner, shareholder or **Employee** (including their estates, heirs, legal representatives or assigns in the event of their death, incapacity, bankruptcy or insolvency) of the **Corporation**, but only while performing **Professional Services** on behalf of the **Corporation**; and
- (ii) **Independent Contractors**.

Insurer means Trisura Guarantee Insurance Company.

Interrelated Wrongful Acts means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

Leased Employee means any natural person who is leased to the **Corporation** as an employee through a temporary employment or staffing agency, but only for acts, errors or omissions committed under the direct supervision, at the direction, and for the benefit of the **Corporation**.

Loss means **Damages** and **Defence Costs**.

Management Control means:

- (i) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors or equivalent governing body of a corporation; the management committee members of a joint venture or partnership; or the members of the management board of a limited liability company; or
- (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Corporation**, to elect, appoint or designate a majority of: the board of directors or equivalent governing body of a corporation; the management committee of a joint venture or partnership; or the management board of a limited liability company.

Named Insured means the person and/or entity named in Item 1 of the Declarations.

Newsworthy Event means any actual or alleged negative publicity against the **Corporation**, that has been publicised through any media channel, including television, print media, radio or the world wide web, resulting from a **Claim** that is covered under this Policy.

Personal Injury means injury arising out of one or more of the following offences:

- (i) false arrest, detention or imprisonment, or malicious prosecution;
- (ii) the publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right to privacy; or
- (iii) wrongful entry or eviction, or other invasion of the right to private occupancy.

Policy Period means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this Policy.

Pollutants means any substance, located anywhere in the world, exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by or pursuant to the Canadian Environmental Protection Act, 1999, c. 33, the United States of America Environmental Protection Agency or any similar federal, provincial, territorial, state, county, municipal, local or foreign law. Such substances shall include, but are not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, lead or lead products, silica or silica products, mould of any type, electric or magnetic or electromagnetic field and noise. Waste materials include materials to be recycled, reconditioned or reclaimed.

Professional Services means those services coming within the scope of the **Insured's** Professional Capacity specified in Item 5 of the Declarations and encompassing the performance of services customary to the Professional Capacity so defined.

Property Damage means:

- (i) physical injury to, or loss or destruction of, tangible property including all resulting loss of use thereof; or
- (ii) loss of use of tangible property which has not been physically injured or destroyed.

Retroactive Date means the first date upon which the **Named Insured** purchased a policy providing coverage of a similar nature to that afforded by this Policy and which has continued through renewal on an uninterrupted basis since its inception.

Subsidiary means any entity which is listed in the **Application** and in which the **Named Insured** has or had **Management Control**, either directly or indirectly through one or more other **Subsidiaries**:

- (i) on or before the inception date of this Policy;

- (ii) after the inception date of this Policy by reason of being created or acquired by the **Named Insured** after such date, but only: (i) for a period of 90 days from the date upon which it became a **Subsidiary**; or (ii) until the end of the **Policy Period**, whichever occurs first (referred to as the Auto-Subsidiary Period).

The **Insurer** shall extend coverage to the **Insureds** of any **Subsidiary** described in (ii) above beyond its respective Auto-Subsidiary Period if during such Auto-Subsidiary Period:

- (a) written notice of the acquisition or creation of such **Subsidiary** is given to the **Insurer** by the **Named Insured**;
- (b) the **Named Insured** provides the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- (c) the **Named Insured** accepts any special terms, conditions, exclusions or additional premium charge as may be required by the **Insurer**; and
- (d) the **Insurer**, at its sole discretion, agrees to provide such coverage and confirms such agreement in writing.

An entity becomes a **Subsidiary** when the **Named Insured** acquires **Management Control** of such **Subsidiary**, either directly or indirectly through one or more other **Subsidiaries**. An entity ceases to be a **Subsidiary** when the **Named Insured** ceases to have **Management Control** of such **Subsidiary**, either directly or indirectly through one or more other **Subsidiaries**.

In all events, coverage as is afforded under this Policy with respect to any **Claim** made against any **Insureds** of any **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective date upon which the **Named Insured** acquired **Management Control** of such **Subsidiary** and prior to the date upon which the **Named Insured** ceased to have **Management Control** of such **Subsidiary**.

Terrorism means an ideologically motivated unlawful act or acts including but not limited to the use of violence or force, or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

Wrongful Act means any actual or alleged negligent act, error or omission, misstatement or misleading statement committed in the performance of **Professional Services** for others by the **Insured**, for the **Insured** or on behalf of the **Insured**, but in no event shall coverage extend to any party other than the **Insured**.

III EXTENSIONS

Discovery Period

If the **Named Insured** terminates, or the **Named Insured** or the **Insurer** refuses to renew, this Policy, the **Insureds** shall have the right, upon payment of the additional premium calculated at that percentage set forth in Item 6(A) of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy for the period of time set forth in Item 6(B) of the Declarations following the effective date of such termination or non-renewal, but only for any **Wrongful Act** committed prior to the effective date of such termination or non-renewal. The rights contained in this paragraph shall terminate unless written notice of such election, together with payment of the additional premium due, is received by the **Insurer** within 60 days following the effective date of termination or non-renewal.

In the event of a Transaction as described in Section IX, paragraph (E), the **Named Insured** shall have the right, within 60 days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** for a period of up to 6 years or for such period as the **Named Insured** may request. Coverage during such period shall apply only to any **Wrongful Act** committed prior to the effective date of the Transaction. The **Insurer** shall offer such **Discovery Period** on such terms, conditions and premium as the **Insurer** may in its sole discretion decide. In the event of a Transaction, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

The extension and the rights contained herein shall not be available in the event of termination resulting from non-payment of premium. The entire premium for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**. This extension, once effected, is not cancellable. The **Discovery Period**, if exercised, shall form part of the **Policy Period** and shall not increase the Limit of Liability of the **Insurer** for the **Policy Period**.

Spousal and Domestic Partner Liability

This Policy shall afford coverage for **Claims** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Insured** and arising solely out of his or her status as the spouse or **Domestic Partner** of the **Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured** and the spouse or **Domestic Partner**, or property transferred from the **Insured** to the spouse or **Domestic Partner**; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or

Domestic Partner, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Act** of an **Insured** and shall be subject to the Policy's terms, conditions and exclusions.

IV EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for that portion of **Loss** on account of any **Claim** that is:

- (1) based upon, arising out of, or attributable to any **Wrongful Act** committed prior to the **First Inception Date** if, as of the **First Inception Date**, any **Executive** knew or ought reasonably to have foreseen that such **Wrongful Act** might give rise to a **Claim**;
- (2) based upon, arising out of, or attributable to any fact, circumstance, situation, transaction, event, act, error or omission which has been the subject of any notice given and accepted under any policy of which this Policy is a direct or indirect renewal or replacement;
- (3) based upon, arising out of, or attributable to any **Wrongful Act** that was first committed or allegedly committed before the **Retroactive Date**;
- (4) based upon, arising out of, or attributable to:
 - (i) any wilful misconduct or dishonest, fraudulent, deceptive, misleading, illegal, unlawful, criminal, malicious, unfair, false or bad faith act, error or omission by any **Insured**, or any collusion with or any assistance, knowledge, consent or direction of any **Insured**;
 - (ii) any wilful, intentional or knowing violation by or on behalf of or in the name or right of any **Insured** of any local, state, federal or foreign act, statute, ordinance, rule, regulation, requirement, common law or other law;
 - (iii) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled; or
 - (iv) false, deceptive or unfair business practices or any violation of consumer protection laws.

However, this exclusion does not apply:

- (a) unless the foregoing conduct is established by a judgment against, final adjudication in any proceeding against, binding arbitration against or guilty plea entered into and accepted in a court of competent jurisdiction by, such **Insured** at which time the **Insured** shall reimburse the **Insurer** for **Defence Costs** incurred up to that date; and
 - (b) to any **Insured** who was neither the author of, nor an accomplice to, the foregoing conduct, except that any act, error or omission of any **Executive** shall be imputed to the **Corporation**;
- (5) based upon, arising out of or, attributable to **Bodily Injury** or **Property Damage**. However, this exclusion does not apply to any **Claim** for emotional distress or mental anguish that is a direct result of any **Wrongful Act** arising out of the **Insured's Professional Services**;
 - (6) based upon, arising out of, or attributable to any actual or alleged:
 - (i) unauthorized acquisition, access, use or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in the **Insureds'** care, custody or control; or
 - (ii) violation of any privacy law or consumer data protection law protecting against the use, collection or disclosure of any information about a person or any confidential corporate information;
 - (7) based upon, arising out of, or attributable to any express, implied, actual, constructive, written or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, estimate or promise involving investment, profit, return on capital, economic return, or penalty clause;
 - (8) based upon, arising out of, or attributable to any actual or alleged liability assumed by or on behalf of or in the name or right of any **Insured** under any express, implied, actual, constructive, written or oral contract, agreement, warranty, guarantee, assurance, covenant, representation, estimate or promise. However, this exclusion does not apply if the **Insured's** liability would have attached even in the absence of such contract, agreement, warranty, guarantee, assurance, covenant, representation, estimate or promise;
 - (9) which is brought by or at the behest of any other **Insured** unless such **Claim** arises out of **Professional Services** provided by the **Insured** to an **Employee** of the **Insured** in a professional/client relationship where a fee for service has been paid;

- (10) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Canada Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2nd Supp.), the Ontario Pension Benefits Act, R.S.O. 1990, c. P.8, the Employee Retirement Income Security Act of 1974 of the United States of America and amendments thereto (or any regulations promulgated thereunder) or by similar provisions of any federal, provincial, territorial, state or local statutory, civil or common law;
- (11) based upon, arising out of, or attributable to any actual or alleged employment related act, error or omission, or any actual or alleged harassment, misconduct or discrimination based on, but not limited to, age, race, creed, colour, ancestry, national or ethnic origin, religion, disability, handicap, marital status, citizenship, sex, sexual orientation, pregnancy or criminal conviction;
- (12) based upon, arising out of, or attributable to war, invasion, acts of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, or insurrection;
- (13) based upon, arising out of, or attributable to **Terrorism** or due to any activity or decision of a government agency or other entity to prevent, respond to or terminate **Terrorism**;
- (14) based upon, arising out of, or attributable to any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance, or the hazardous properties of nuclear or radioactive material;
- (15) based upon, arising out of, or attributable to:
- (i) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into, in or on real or personal property, water or the atmosphere; or
 - (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (16) based upon, arising out of, or attributable to the failure to obtain financing for others either gratuitously or for a fee;
- (17) based upon, arising out of, or attributable to any actual or alleged infringement, or contribution to the infringement, of a patent;
- (18) based upon, arising out of or in any way involving any legal, medical, architectural or engineering services of any type, nature or kind; or
- (19) based upon, arising out of, or attributable to any actual or alleged sexual abuse.

V LIMIT OF LIABILITY

Regardless of the number of **Insureds** against whom **Claims** are brought, **Claims** made, or persons or entities making **Claims**:

- (A) With respect to Insuring Agreement A:
- (i) the Each **Claim** Limit of Liability stated in Item 3(A) of the Declarations is the maximum aggregate liability of the **Insurer** for **Loss** for each **Claim** first made against the **Insured** during the **Policy Period**; and
 - (ii) the Aggregate Limit of Liability stated in Item 3(A) of the Declarations is the maximum aggregate liability of the **Insurer** for all **Loss** for all **Claims** first made against the **Insured** during the **Policy Period**.
- (B) With respect to Insuring Agreement B:
- (i) the Each **Claim** Limit of Liability stated in Item 3(B) of the Declarations is the maximum aggregate liability of the **Insurer** for all reasonable expenses incurred by the **Insured** at the **Insurer's** request to assist the **Insurer** in the investigation or defence of a covered **Claim**; and
 - (ii) the Aggregate Limit of Liability stated in Item 3(B) of the Declarations is the maximum aggregate liability of the **Insurer** for all reasonable expenses incurred by the **Insured** at the **Insurer's** request to assist the **Insurer** in the investigation or defence of all covered **Claims**,

which amounts shall be in addition to, and not part of, the Limit of Liability stated in Item 3(A) of the Declarations.

- (C) With respect to Insuring Agreement C:

- (i) the Each **Claim** Limit of Liability stated in Item 3(C) of the Declarations is the maximum aggregate liability of the **Insurer** for **Crisis Management Expenses** incurred by the **Corporation** to avert or mitigate damage to any of the **Corporations'** brands and/or reputation as a result of a **Newsworthy Event**; and
- (ii) the Aggregate Limit of Liability stated in Item 3(C) of the Declarations is the maximum aggregate liability of the **Insurer** for all **Crisis Management Expenses** incurred by the **Corporation** to avert or mitigate damage to any of the **Corporations'** brands and/or reputation as a result of all **Newsworthy Events**,

which amounts shall be in addition to, and not part of, the Limit of Liability stated in Item 3(A) of the Declarations.

- (D) All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be one **Claim** and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.
- (E) **Defence Costs** are part of, and not in addition to, the applicable Limits of Liability stated in Item 3 of the Declarations, and the payment of any **Defence Costs** by the **Insurer** shall reduce, and may exhaust, such Aggregate Limits of Liability, except where prohibited by the laws of the Province of Quebec. If the applicable Limit of Liability set out in the Declarations has been exhausted by payment of **Defence Costs** or any other covered **Loss**, the obligations of the **Insurer** under this Policy shall be fully fulfilled and extinguished and the **Insurer** shall not be obligated to defend or to continue to defend any **Claim**.

VI DEDUCTIBLE

- (A) The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable **Deductible**. Such **Deductible** shall be eroded (or exhausted) only by the **Insureds** payment of **Loss** otherwise covered under this Policy, and shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different **Deductibles**, the applicable **Deductible** shall be applied separately to each part of the **Loss**, but the sum of such **Deductibles** shall not exceed the largest applicable **Deductible**.
- (C) The **Insurer** shall have no obligation whatsoever, either to the **Insured** or any other person or entity, to pay all or any portion of the applicable **Deductible** on behalf of any **Insured**. The **Insurer** shall, however, at its sole discretion, have the right and option to do so, in which event the **Insured** shall repay the **Insurer** any amounts so paid, and the amounts so paid will be credited against and will reduce the **Insurer's** Limits of Liability unless and until they are repaid in full to the **Insurer**.
- (D) With respect to **Claims** insured by this Policy which give rise to legal proceedings against the **Insured** in the Province of Quebec, the **Deductible** shall only be applicable to **Damages** and shall not be applied by the **Insurer** to **Defence Costs**.

VII DEFENCE AND SETTLEMENT

- (A) Except as provided in Section VII, paragraph (B), the **Insurer** shall have the right and the duty to defend, with respect to such coverage as is afforded by this Policy, any **Claim** made against an **Insured**, even if such **Claim** is groundless, false or fraudulent. The **Insured** may propose to the **Insurer** counsel to represent the **Insured** in connection with a covered **Claim**, provided that the **Insurer**, in its sole discretion, shall have the ultimate right to select counsel to represent the **Insured** in connection with any such **Claim**. The **Insurer**, in its sole discretion, may elect to appeal any judgment in connection with a covered **Claim**, but the **Insurer** has no duty to appeal any such judgment.
- (B) The **Insureds** agree not to:
 - (i) admit or assume liability without the prior written consent of the **Insurer**;
 - (ii) settle or negotiate to settle any **Claim** unless such settlement fully resolves such **Claim** within the applicable **Deductible**; or
 - (iii) incur any **Loss, Crisis Management Expenses** or expenses under Insuring Agreement B without the prior written consent of the **Insurer**, which shall not be unreasonably withheld.

The **Insurer** shall not be liable for any assumed obligation or admission, settlement, **Loss, Crisis Management Expenses** or expenses incurred under Insuring Agreement B to which it has not provided prior written consent.

- (C) The **Insurer** may make any settlement of any **Claim** it deems expedient subject to the written consent of the **Insured**. If the **Insured** withholds consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:
- (i) the amount for which the **Insurer** could have settled such **Claim** plus **Defence Costs** incurred as of the date such settlement was proposed in writing by the **Insurer**; plus
 - (ii) 50% of any **Loss** in excess of the amount in clause (i) above incurred in connection with such **Claim** with the remaining 50% of any **Loss** being the responsibility of the **Insured**,
- provided that the Limit of Liability of the **Insurer** for such **Claim** shall not exceed the remaining applicable Limit of Liability.
- (D) The **Insurer** shall not be obligated to investigate, defend, pay or settle or continue to investigate, defend, pay or settle any **Claim** after any applicable Limit of Liability stated in Item 3 of the Declarations has been exhausted by payment of **Damages**, **Defence Costs**, or other covered **Loss** or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In either such case, the **Insurer** shall have the right to withdraw from the further investigation, defence, payment or settlement of such **Claim** by tendering control of such **Claim** to the **Insured**.

VIII NOTICE OF CLAIM

- (A) The **Insureds** shall, as a condition precedent to their rights under this Policy, give written notice to the **Insurer** of any **Claim** as soon as practicable after an **Executive** first becomes aware of such **Claim**, but in no event later than 60 days after the later of the expiration of the **Policy Period** or **Discovery Period**, if exercised, in which the **Claim** was first made.
- (B) If during the **Policy Period** or **Discovery Period**, if exercised, the **Insureds** become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and give written notice to the **Insurer**, as soon as practicable and prior to the date of termination of the **Policy Period** of the facts or circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, events, persons and entities involved, then any **Claim** which is subsequently made against an **Insured** and reported to the **Insurer**, alleging, based upon, arising out of, or attributable to such facts or circumstances, or alleging any **Interrelated Wrongful Acts**, shall, for the purpose of this Policy, be treated as a **Claim** made during the **Policy Period** in which such notice was given. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.
- (C) Any notice shall be deemed to have been given and received on the day and at the time it is so received by the **Insurer** at the following address:

Specialty Insurance Claims Department
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610, Box 22
Toronto, Ontario M5H 2R2
Fax: (416) 214-9597
Email: claims@trisura.com

IX GENERAL CONDITIONS

- (A) Policy Territory: This Policy applies to **Wrongful Acts** committed by the **Insured** anywhere in the world provided that suit is first brought against the **Insured** before a court of law having jurisdiction within the territorial limits of Canada.
- (B) Representations and Severability Clause: By accepting this Policy, the **Insured** agrees that:
- (i) the statements in the **Application**, and the statements in any and all supplementary information provided to the **Insurer**, are accurate and complete;
 - (ii) the **Insurer** has issued this Policy and any endorsements attached hereto in reliance upon the truth and accuracy of the **Insured's** representations; and
 - (iii) this Policy and any endorsements attached hereto, together with the completed and signed **Application** and any and all supplementary information provided to the **Insurer**, which shall be deemed to be incorporated

herein, embodies all of the agreements existing between the **Insured** and the **Insurer** and shall constitute the contract between the **Insured** and the **Insurer**.

If the **Insured** shall give notice of any **Claim** knowing the same to be false or fraudulent, this Policy shall become void and all coverage hereunder shall be forfeited. However, this clause shall not apply to any other **Insured** who is neither the author of such notice nor an accomplice thereto.

- (C) Cooperation and Subrogation: The **Insured** shall cooperate with the **Insurer** and upon the **Insurer's** request shall attend hearings and trials and shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses and the conduct of suits in connection with any **Claim** potentially covered under this Policy. The **Insured** shall assist the **Insurer** in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to the **Insured** in connection with any **Claim** potentially covered under this Policy. In the event of any payment under this Policy, the **Insurer** shall be subrogated to all the **Insured's** rights of recovery against any person or organization to the extent of such payment. The **Insured** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in its or their name(s). The **Insured** shall do nothing to prejudice such rights. The obligations of the **Insured** under this subsection will survive the termination or expiry of this Policy.
- (D) Recoveries: With respect to a **Claim**, any recovery (after payment of expenses incurred to obtain such recovery), whether effected by the **Insurer** or by the **Insured**, shall be applied (i) first to the satisfaction of the **Insured's** loss which would otherwise have been paid by the **Insurer** but for the fact that it is in excess of the Limit of Liability stated in Item 3 of the Declarations, (ii) second to reimburse the **Insurer** to reduce the **Loss** ultimately borne by the **Insurer** to what it would have been had the recovery preceded any payment of such **Loss** by the **Insurer**, and (iii) third to reimburse the **Insured** in satisfaction of the applicable **Deductible**.

Notwithstanding the foregoing, the **Insurer** agrees to waive any right of subrogation against the **Insured**, and against a customer or client of the **Insured**, with respect to any payment made in connection with a **Claim** if, and to the extent that, prior to the occurrence of any **Wrongful Act** giving rise to such **Claim**, the **Insured** had agreed to waive its right of subrogation against such customer or client pursuant to a written contract or agreement.

The obligations of the **Insured** under this subsection will survive the termination or expiry of this Policy.

- (E) Reorganization: If during the **Policy Period**:
- (i) the **Named Insured** shall consolidate with or merge into another entity such that the **Named Insured** is not the surviving entity; or
 - (ii) any person or entity, or group of persons or entities acting in concert, shall acquire **Management Control** of the **Named Insured**,

(either of the above events herein referred to as the "Transaction"),

then coverage under this Policy shall continue until termination of this Policy, but only with respect to **Claims** based upon, arising out of, or attributable to **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to the effective date of the Transaction. No coverage shall be provided for **Claims** for **Wrongful Acts**, committed, attempted, or allegedly committed or attempted, after the date of the Transaction.

The **Named Insured** shall give written notice to the **Insurer** of the Transaction as soon as practicable, but in no event later than 30 days after the effective date of the Transaction. The full annual premium for the **Policy Period** shall be deemed fully earned immediately upon the occurrence of the Transaction and the Policy may not be cancelled. As set out in Section III, Discovery Period, the **Named Insured** shall also have the right to request an offer from the **Insurer** of a **Discovery Period**.

- (F) Termination of Policy: This Policy shall terminate at the earliest of the following times:
- (i) upon receipt by the **Insurer** of a written notice of cancellation from the **Named Insured**;
 - (ii) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations of this Policy;
 - (iii) 20 days after receipt by the **Named Insured** of the **Insurer's** notice of cancellation due to non-payment of premium; or
 - (iv) at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

If the Policy is terminated in accordance with item (i) above, the **Insurer** shall refund to the **Named Insured** the unearned premium computed at the customary short rate. If the Policy is terminated in accordance with items (iii) or (iv) above, the refund shall be computed pro rata.

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.

- (G) **Action Against Insurer:** No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms and conditions of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined: (a) by judgment against the **Insured** after actual trial; or (b) by written agreement of the **Insured**, the claimant and the **Insurer**.

No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured** to determine the liability of the **Insured**, nor shall the **Insurer** be impleaded by the **Insured** or its legal representatives.

- (H) **Bankruptcy or Insolvency:** The bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of its obligations under this Policy.

- (I) **Other Insurance:** This insurance shall be excess over, and shall not contribute with, any other valid and collectible insurance available to the **Insured**, including but not limited to any insurance under which there is a duty to defend the **Insured**, a duty to pay on behalf of the **Insured**, or a duty to advance **Defence Costs**, to or on behalf of the **Insured**, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy Number of this Policy. This Policy will not be subject to the terms of any other insurance.

In the event that other insurance is provided by the **Insurer** (or would be provided but for the application of the deductible amount, exhaustion of the limit of liability or failure to submit a notice of a **Claim**), the **Insurer's** maximum aggregate limit of liability for all loss and expense combined in connection with a **Claim** covered, in part or in whole, by this Policy and such other insurance policy shall not exceed the greater of the applicable Limit of Liability of this Policy or the limit of liability of such other insurance policy.

- (J) **Non-Renewal:** If the **Insurer** decides not to offer renewal terms for this Policy, the **Insurer** shall provide written notice to the **Named Insured** at least 60 days prior to the Policy expiration date.

- (K) **Valuation and Currency:** Except as otherwise provided in this Policy, all premiums, limits, **Deductibles**, **Loss** and any other amounts under this Policy are expressed and payable in the currency of Canada. If judgment is rendered, settlement is agreed or **Loss** under this Policy is incurred in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars at the rate of exchange set by The Bank of Montreal on the date upon which the final judgment is entered, the amount of the settlement is agreed upon or **Loss** is due, respectively.

- (L) **Assignment:** This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

- (M) **Changes:** Notice to any agent, broker or representative or knowledge possessed by any agent, broker, representative or any other persons shall not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by endorsement issued by the **Insurer** to form a part of this Policy.

- (N) **Notices:** All notices, other than Notice of Claim, shall be given in writing addressed to:

Specialty Insurance Department
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610, Box 22
Toronto, Ontario M5H 2R2
Fax: (416) 214-9597

- (O) **Headings:** The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

X QUEBEC

With respect to the Province of Quebec only, it is the express wish of all parties that this Policy and any related documents be drawn up in English. Il est de la volonté expresse des parties aux présentes que cette police et tous les documents qui s'y rattachent soient rédigés en anglais.

XI AUTHORIZATION CLAUSE

It is agreed that the **Named Insured** shall act on behalf of all **Insureds** with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receiving of any return premiums that may become due under this Policy, and the negotiation, agreement to and acceptance of any endorsement or settlement and the exercising or declining to exercise any right to a **Discovery Period**.

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