

## PROFESSIONAL LIABILITY CLAIMS MADE AND REPORTED INSURANCE

**NOTICE:** This is a Claims Made and Reported Policy. Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance policy is limited to those **Claims** which are first made against the **Insured** and reported to the Underwriters during the **Policy Period** or **Extended Reporting Period**, if applicable. **Damages** and **Claims Expenses** shall be applied against the Deductible. **Claims Expenses** are within and reduce the Limit of Liability under this Policy. Certain words and phrases which appear in bold type have special meaning; please refer to Section V., Definitions. Please review the coverage afforded under this insurance policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of premium and reliance upon the statements, representations and warranties made in the application which is made a part of this insurance policy (hereinafter referred to as the "Policy" or "insurance") and subject to the Limit of Liability, exclusions, conditions and other terms of this insurance, the Underwriters agree with the **Named Insured** (set forth in Item 1 of the Declarations, made a part hereof) as follows:

### I. INSURING AGREEMENTS

#### A. Professional Liability

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses** which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** and reported to the Underwriters during the **Policy Period** or any applicable **Extended Reporting Period**, arising out of any negligent act, error or omission of the **Insured** in rendering or failing to render **Professional Services** for others on or after the Retroactive Date stated in Item 5 of the Declarations and before the end of the **Policy Period**, on behalf of the **Named Insured** designated in Item 1 of the Declarations, except as excluded or limited by the terms, conditions and exclusions of this Policy.

#### B. Defense and Settlement

1. The Underwriters shall have the right and duty to defend the **Insured** subject to the Limit of Liability, for any **Claim** first made against the **Insured** seeking payment under the terms of this insurance, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Underwriters shall choose defense counsel in conjunction with the **Insured**, but in the event of a dispute, the decision of the Underwriters is final.
2. It is agreed that the Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.
3. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to coverage and statements made in the application.
4. If the **Insured** refuses to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been

settled, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the defense of the **Claim** by tendering control of said defense to the **Insured**.

6. Subject to the Limit of Liability of this Policy, the Underwriters shall reimburse the **Insured** for all reasonable expenses, other than loss of earnings, incurred at the Underwriters' request.
7. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses** or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense of the **Claim** by tendering control of said defense to the **Insured**.

## II. PERSONS INSURED

Each of the following is an **Insured** under this insurance to the extent set forth below:

- A. if the **Named Insured** designated in Item 1 of the Declarations is an individual, the person so designated but only with respect to the conduct of the business of which he or she is the sole proprietor, and the spouse of the **Named Insured** with respect to the conduct of such a business,
- B. if the **Named Insured** designated in Item 1 of the Declarations is a partnership or joint venture, the partnership or joint venture so designated, and any partner or member thereof but only with respect to his or her liability as such.
- C. if the **Named Insured** designated in Item 1 of the Declarations is other than an individual, partnership or joint venture, the organization so designated and any executive officer, director, stockholder.
- D. any person who previously qualified as an **Insured** under (c) above prior to the termination of the required relationship with the **Named Insured**, but solely with respect to **Professional Services** performed on behalf of the **Named Insured** designated in Item 1 of the Declarations, or occurring prior to the termination of the required relationship with the **Named Insured**;
- E. the estate, heirs, executor, administrators, assigns and legal representatives of any **Insured** in the event of the **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy; and
- F. An **Additional Insured**, but only as respects the vicarious liability of such individual or entity for **Bodily Injury** caused by negligent acts, errors or omissions of the **Named Insured** otherwise covered under this policy.

This Policy shall not apply to any liability arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in this Policy as a **Named Insured**.

Persons Insured does not include any individual who acts as or any legal entity that employs a physician, surgeon, podiatrist, nurse, anaesthetist, chiropractor, acupuncturist or physical therapist, unless it has been previously agreed by underwriters and such person is specifically listed in the Certificate of Insurance and/or the Declarations, and solely with respect to **Professional Services** as defined in Section V – Definitions.

### III. TERRITORY

This insurance applies to any **Claims** made and negligent acts, errors, omissions or **Accidents** which take place anywhere in the world.

### IV. EXCLUSIONS

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect:

- a. to any **Claim** arising out of **Personal Injury, Property Damage** or **Advertising Liability**, except with respect to **Bodily Injury** arising out of any negligent act, error or omission of any **Insured** in the rendering or failing to render **Professional Services**;
- b. to any **Claim** arising out of any criminal, dishonest, fraudulent or malicious act, error or omission of any **Insured**, committed with actual criminal, dishonest, fraudulent or malicious purpose or intent. However, notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim**, but shall not apply to any **Damages** which the **Insured** might become legally obligated to pay;
- c. to any **Claim** arising out of or relating to any liability under any contract or agreement, whether written or oral, unless such liability would have attached to the **Insured** in the absence of such contract or agreement;
- d. to any **Claim** based upon an express or implied warranty or guarantee, or breach of contract in respect of any agreement to perform work for a fee;
- e. to any **Claim** arising out of any **Insured's** activities as a trustee, partner, officer, director or employee of any trust, charitable organization, corporation, company or business other than that of the **Named Insured**;
- f. to any **Claim** arising out of failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture;
- g. to any **Claim** arising out of any financial or investment advice given, referrals, warranties, guarantees or predictions of future performance made by any **Insured** as regards specific and identifiable investment items including but not limited to personal property, real property, stocks, bonds or securities;
- h. to any **Claim** arising out of the actual or alleged 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;
- i. to any **Claim** arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property

right, including but not limited to patent, trademark, trade secret, trade dress and copyright.

- j. to any **Claims** arising out of any negligent act, error or omission of any **Insured** in the rendering or failing to render **Professional Services**, if the **Insured** did not hold a valid license or certificate at the time of the performance of the **Professional Services**, except as provided for in Section XXV, Licensure.
- k. to any **Claim** arising out of any negligent act, error or omission of any **Insured** in the rendering or failing to render **Professional Services** to **Professional Athletes**.
- l. to any **Claim** arising out of the failure of any **Insured** to diagnose or treat any condition, disease or injury or to refer a client to any healthcare provider for treatment of any condition, disease or injury.
- m. to any **Claim** arising out of medical professional malpractice including but not limited to the rendering or failing to render medical professional services, treatment or advice.
- n. to any **Claim** arising out of the performance of any procedure involving the cutting or penetration of human tissue.
- o. to any **Claim** arising out of a procedure performed by any **Insured** that is outside the legal scope of practice in the Province/s stated in the Evidence of Insurance and/or Declarations.
- p. to any **Claim** arising out of the participation on a peer review committee, including, but not limited to, peer review committees of a hospital, trade association, or standards review organization.
- q. to any **Claim** arising out of any liability of the **Named Insured** as a proprietor, medical director, superintendent, administrator, or executive officer of any hospital, sanitarium, surgicenter, clinic with bed and board facilities, skilled nursing facility, convalescent hospital, laboratory or any other similar business enterprise.
- r. to any **Claim** arising out of or resulting from or in relation to any person who has ever been a research subject of the **Named Insured** or who was ever solicited to be a research subject of the **Named Insured**.
- s. to any **Claim** arising out of any acts, error or omissions by any **Insured** while employed by the Canadian Government or any other governmental or public entity.
- t. to any **Claim** arising out of a counter-claim by a person who was sued for fees. Collection suits triggering this exclusion include, but are not limited to, those collections suits filed by a collection agency. Any **Claim** made subsequent to a collection suit shall be presumed to be in response to the collection suit and to be in the nature of a counter-claim and, therefore, shall be within this exclusion.
- u. Any **Claim** against any **Insured** that involves, among others, any health care practitioner with whom any **Insured** currently or in the future 1) is in partnership, 2) has an employment relationship, 3) has an independent contractor relationship or 4) shares office space

- v. to any **Claim** made by or against or in connection with any business enterprise (including the ownership, maintenance or care of any property in connection therewith), not named in the Declarations, which is owned by any **Insured** or in which any **Insured** is a trustee, partner, officer, director or employee;
- w. to any **Claim** arising out of or resulting from any actual or alleged acts, errors, or omissions related to any of the **Insured's** pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts, including any violation of any provision of, in Canada, *the Pension Benefits Standards Act, 1985* (R.S.C., 1985, c. 32 (2nd Supp.)), the *Ontario Pensions Benefit Act*, in the United States, the *Employee Retirement Income Security Act of 1974* (ERISA) or any similar federal law or legislation, or similar law or legislation of any state, province, territory or other jurisdiction, or any amendment to the Canadian Pension Benefits Standards Act or ERISA or any violation of any regulation, ruling or order issued pursuant to the Pension Benefits Standards Act or ERISA or such similar laws or legislation;
- x. to any **Claim** or circumstance which might lead to a **Claim** in respect of which any **Insured** has given notice to any insurer of any other policy or self-insurance in force prior to the effective date of this Policy;
- y. to any **Claim** or circumstance which might lead to a **Claim** known to any **Insured** prior to the inception of this Policy and not disclosed to the Underwriters at inception;
- z. to any **Claim** or circumstance that might lead to a **Claim** arising out of any negligent act, error or omission which first took place, or is alleged to have taken place, prior to the Retroactive Date as set forth in Item 5 of the Declarations;
- aa. to any **Claim** arising out of, or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment or relative or domestic partner of such person;
- bb. to any **Claim** arising out of discrimination including but not limited to discriminatory employment practices, allegations of actual or alleged violations of civil rights or acts of discrimination based entirely or in part on the race, gender, pregnancy, national origin, religion, age or sexual orientation;
- cc. to any **Claim** directly or indirectly arising out of:
1. the actual, alleged or threatened discharge, dispersal, release or escape or failure to detect the presence of **Pollutants**; or
  2. the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to or testing for **Pollutants** contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever; or
  3. any governmental or regulatory directive or request that the **Insured** or anyone acting under its direction or control to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize said **Pollutants**;

- dd. to any **Claim** arising out of the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses or benefits due to the insolvency, liquidation or bankruptcy of any such individual entity;
- ee. to any **Claim** arising out of or resulting from:
1. any conduct, physical act, gesture, or spoken or written words of a sexual or physically violent nature by any **Insured**, including but not limited to, sexual intimacy (whether or not consensual), sexual molestation, sexual or physical assault or battery, sexual or physical abuse, sexual harassment or exploitation; or
  2. the **Insured's** actual or alleged negligent employment, investigation, supervision, hiring, training or retention of any employee, **Insured** or person for whom the **Insured** is legally responsible and whose conduct falls within paragraph (1), above.
- ff. to any **Claim** for punitive or exemplary **Damages**, or **Damages** which are a multiple of compensatory **Damages**, fines, sanctions, taxes or penalties, or the return of or reimbursement for fees, costs or expenses charged by any **Insured**;
- gg. to any **Claim** arising out of **Personal Injury** to any employee or volunteer worker of the **Insured** arising out of and in the course of his employment by the **Insured**, or under any obligation for which the **Insured** or any carrier as his insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Disability Benefits Law or under any similar law;
- hh. to Any **Claim** arising out of or resulting from any actual or alleged violation of any securities law, regulation or legislation, including but not limited to, in Canada, the *Ontario Securities Act* R.S.O. 1990, c.S.5, in the United States, the *Securities Act of 1933*, the *Securities Exchange Act of 1934*, the *Investment Act of 1940*, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any provincial, state or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws.
- ii. to Any **Claim** arising out of or resulting from any actual or alleged violation of the Canadian Criminal Code regarding Organized Crime (Section 467), in United States *Organized Crime Control Act of 1970* (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO), as amended or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any province, state, territory or other jurisdiction similar to the foregoing, whether such law is statutory, regulatory or common law.
- jj. to any **Claim** based upon or arising out of any actual or alleged violation of any federal, provincial, state, or local anti-trust, restraint or trade, unfair competition, or price fixing law, or any rules or regulations promulgated thereunder;
- kk. to any **Claim** caused directly or indirectly, in whole or in part, by:
1. any fungus(es) or spore(s);
  2. any substance, vapour or gas produced by or arising out of any fungus(es) or spore(s); or



3. any materials, product, building component, building or structure that contains, harbours, nurtures or acts as a medium for any fungus(es) or spore(s);

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that injury or **Damages**.

For the purposes of this Exclusion, the following Definitions are added:

“Fungus(es)” includes, but is not limited to, any form of mold, mushroom or mildew.

“Spore(es)” mean any reproductive body produced by or arising out of any fungus(es).

This Exclusion shall not apply to **Claims** arising from medical research activities that would otherwise be covered hereunder;

- ll. to any Claim based upon or arising out of any action or proceeding brought by or on behalf of any federal, state or local governmental, regulatory or administrative agency, regardless of the name in which such action or proceeding is brought, Provided however that this exclusion does not apply to claims or claims expenses arising from or attributable to Professional services performed by or on behalf of the Named Insured".
- mm. Any **Claim** arising out of or resulting from any actual or alleged violation of the Canadian Labour Code, Parts I and II; the Canadian Human Rights Act, Section 11, in the US, the *Fair Labor Standards Act of 1938*, the *National Labor Relations Act*, the *Worker Adjustment and Retraining Act of 1988*, the *Certified Omnibus Budget Reconciliation Act of 1985*, the *Occupational Safety and Health Act of 1970*. Any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation.
- nn. to any **Claim** based upon or arising out of any **Insured's** data processing services, including but not limited to:
1. conversion of data from source material into media for processing on the **Insured's** electronic data processing system;
  2. processing of data by the **Insured** on the **Insured's** electronic data processing system; or
  3. design or formulation of an electronic data processing program or system;
- oo. to any **Claim** for **Personal Injury, Property Damage** or **Advertising Liability** based upon or arising out of the **Named Insured's Products**;
- pp. to any **Claim** based upon the manufacture, handling, sale or distribution of Phenylpropanolamine, Phenylpropanolamine Hydrochloride, PPA or any product or drug containing any of these substances;
- qq. to any **Claim** arising from a service rendered, or which should have been rendered and was not, while any **Insured** or its employee or agent is under the influence of intoxicants, narcotics or drugs;
- rr. to any **Claim** arising out of any actual or alleged act, error or omission in the rendering or failing to render pharmacy services, including the manufacture, sale, distribution,

- use, administration, prescription, handling or resale of any pharmaceuticals or drugs, whether on a wholesale, retail, over-the-counter or illegal basis;
- ss. to any **Claim** based on the willful non-compliance of any **Insured** with any Food and Drug Administration (FDA) rules, regulations, and statutes found at Food and Drugs, 21 C.F.R. Chapter 1 § 1.1 to § 1299, as amended and revised, or treating a patient with drugs, medical devices, biologics or radiation-emitting products that have been disapproved or not yet approved by the FDA;
  - tt. to any **Claim** based upon or arising out of any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;
  - uu. to any **Claim** against any subsidiary designated in the Declarations or its past, present, or future employees, directors, officers, trustees, review board or committee members, or volunteers acting in his or her capacity as such, which are based upon, arise out of, directly or indirectly result from, are in consequence of, or in any way involve any fact, circumstance, situation, transaction, event, , or negligent acts, errors or omissions or series of facts, circumstances, situations, transactions, events, or negligent acts, errors or omissions happening before the date such entity became a subsidiary;
  - vv. to any **Claim** relating to or arising out of asbestos, silica or lead;
  - ww. to any **Claim** associated with implementation of any compliance program or any policies, procedures or practices relating to participation as a provider of medical services to a managed care organization or under a healthcare benefit program, whether initiated voluntarily or pursuant to direction by, order of, or in settlement with a government body, hospital, healthcare facility or managed care organization;
  - xx. to any **Claim** based upon, arising out of, resulting from, any actual or alleged: (1) failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond; (2) commingling, mishandling of or liability to pay, collect or safeguard funds; or (3) failure to collect or pay premiums, commissions, brokerage charges, fees or taxes;
  - yy. to any **Claim** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
  - zz. to any **Claim** brought against any **Insured** by any other **Insured** hereunder;
  - aaa. to any **Claim** made by a business enterprise in which any **Insured** has greater than a fifteen (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the **Insured**;
  - bbb. to any **Claim** arising out of or resulting from the distribution of unsolicited email, direct mail or facsimiles, or telemarketing;
  - ccc. to any **Claim** arising out of or resulting from an electronic chatroom or bulletin board any **Insured** hosts, owns or which the **Insured** exercises control;
  - ddd. to any **Claim** arising out of or resulting from any oral or written publication of material, if done by or at the direction of the Insured with the knowledge of its falsity;



eee. to any **Claim** arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person, or the environment, or that affects the value, marketability, condition or size of any property, provided this Exclusion shall not apply to any patient receiving **Professional Services** including but not limited to the medical administration of radiation therapy

fff. to any **Claim** arising out of or resulting from or in relation to Acquired Immune Deficiency Syndrome (AIDS), meaning the potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), AIDS-Related Complex (ARC), hepatitis or any other infectious disease or any complex or syndrome related thereto, or the use or misuse or confidentiality of any information relating to HIV, ARC, AIDS, hepatitis or any other infectious disease, including the failure to disclose the health status of the **Insured**.

ggg. to any **Claim** arising out of or relating to any loss, damage, or cost or expense of whatsoever nature directly or indirectly caused by, resulting from happening through, arising out of or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage, cost or expense.

For the purpose of this Exclusion, terrorism means an act or threat of violence or an act harmful to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear. In any action, suit or other proceedings where the Underwriters allege that by reason of this Exclusion, a loss, damage, cost or expense is not covered by this Policy, the burden of proving that such loss, damage, cost or expense is covered shall be upon the **Insured**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect;

## V. DEFINITIONS

Wherever used in this Policy, the bolded terms have the meaning provided:

- a. **“Additional Insured”** means:
  1. any natural person or entity that the **Named Insured** has expressly agreed in writing to add as an **Additional Insured** under this policy in the Certificate of Insurance provided by Underwriters prior to the commission of any act for which such person or entity would be provided coverage for under this Policy, but only to the extent the **Named Insured** would have been liable and coverage would have been afforded under the terms and conditions of this Policy had such **Claim** been made against the **Named Insured**; and
  2. any other person or entity added as an **Additional Insured** by endorsement to this Policy
- b. **“Advertising Liability”** means injury arising out of one or more of the following, committed in the course of the **Insured’s** advertising activities:
  - (1) libel, slander or defamation;

- (2) infringement of copyright, title slogan, trade dress, or advertising idea;
  - (3) piracy or idea misappropriation under an implied contract; or
  - (4) invasion of right of privacy.
- c. **“Bodily Injury”** means physical injury (including death at any time resulting therefrom), mental injury, mental illness, mental anguish, humiliation, emotional upset, shock, sickness, disease or disability.
- d. **“Claim”** means a written notice received by any **Insured** of an intention to hold the **Insured** responsible for compensation for **Damages**, including the service of suit or institution of arbitration proceedings against the **Insured**.
- e. **“Claims Expenses”** means:
- (1) reasonable and customary fees charged by an attorney(s) designated and agreed by the Underwriters in consultation with the **Insured**, but subject always to the Underwriters’ final decision; and
  - (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if incurred by the Underwriters, or by the **Insured** with the written consent of the Underwriters.

**Claims Expenses** does not include any salary, overhead or other charges by the **Insured** for any time spent in co-operating in the defense and investigation of any **Claim** or circumstance which might lead to a **Claim** notified under this insurance.

- f. **“Damages”** means a civil monetary judgment, award or settlement and does not include:
- (1) the restitution of compensation and expenses paid to the **Insured** for services and goods; and
  - (2) judgments or awards deemed uninsurable by law.
- g. **“Extended Reporting Period”**, if applicable, means the period of time stated in item 6 the Declarations page after the end of the **Policy Period** for reporting **Claims**, arising out of negligent acts, errors or omissions which take place prior to the end of the **Policy Period** but subsequent to the Retroactive Date identified in Item 5 of the Declarations.
- h. **“Named Insured”** means the individual practitioner or legal entity identified in Item 1 of the Declarations, which is a member of the Master Policyholder identified in the Declarations and that has purchased coverage under this Master Policy.
- i. **“Named Insured’s Products”** means goods or products manufactured, sold, handled or distributed by the **Named Insured** or by others trading under its name including but not limited to vitamins, dietary supplements, performance enhancing drugs and automated external defibrillators. **Named Insured’s Products** includes any container thereof (other than a vehicle), but shall not include a vending machine or any property, other than such container rented to or located for use of others but not sold.

- j. **“Personal Injury”** means:
- (1) **Bodily Injury**;
  - (2) false arrest, false imprisonment, wrongful eviction, detention or malicious prosecution;
  - (3) libel, slander, defamation of character or invasion of right of privacy, unless arising out any advertising activities; or
  - (4) wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.
- k. **“Policy Period”** means the period of time between the inception date and the effective date of termination, expiration or cancellation of this insurance shown in Item 2 of the Declarations and specifically excludes any **Extended Reporting Period**.
- l. **“Pollutants”** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to asbestos and/or lead (or products containing asbestos and/or lead whether or not the asbestos and/or lead is or was at any time airborne as a fibre or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever), smoke, vapour, soot fumes, acids, alkalis, toxic chemicals and waste (waste includes materials to be recycled, reconditioned or reclaimed).
- m. **“Professional Athlete”** means an individual or group(s) of individuals who have been paid \$25,000 or more per year in the past 36 months, or is likely to be paid \$25,000 or more in the future, from a professional sports organization, club or team for the performance of athletic activities.
- n. **“Professional Services”** means those professional services performed by the **Insured** as and listed in Declarations, prior written approval from the Underwriters.
- o. **“Property Damage”** means:
- (1) physical injury to or destruction of tangible property, including consequential loss of use thereof; or
  - (2) loss of use of tangible property which has not been physically injured or destroyed.

## VI. LIMIT OF LIABILITY

- A. The limit of liability stated in Item 3 a) of the Declarations as applicable to "Each **Claim**" is the limit of the Underwriters' liability for all **Damages** and **Claims Expenses** arising out of each **Claim**. Two or more **Claims** arising out of a single act, error, or omission or a series of related acts, errors, or omissions shall be treated as a single **Claim**; and
- B. The limit of liability stated in item 3 b) of the Declarations as "Aggregate" is, the total limit of the Underwriters' liability for all **Damages** and **Claims expenses** arising out of all **Claims** or circumstances which might lead to a **Claim** which are covered under the terms and conditions

of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability. .

- C. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

## VII. INNOCENT INSURED

Whenever coverage under this insurance would be excluded, suspended or lost:

- A. because of Exclusion V b) relating to intentional, criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
- B. because of non-compliance with any condition relating to the giving of notice to the Underwriters with respect to which any other **Insured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **Insureds** responsible for the loss or damage otherwise covered hereunder;

the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall be paid with respect to those **Insureds** who did not personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of (a) one or more of the acts, errors or omissions described in any such exclusion; or (b) such failure to give notice, provided that the condition be one with which such **Insured** can comply, and after receiving knowledge thereof, the **Insured** entitled to the benefit of this Section VII shall comply with such condition promptly after obtaining knowledge of the failure of any other **Insured** to comply therewith.

With respect to this provision, the Underwriters' obligation to pay in such event shall be in excess of the full extent of any assets of any **Insured** to whom the exclusion applies and shall be subject to the terms, conditions and limitations of this Policy.

## VIII. EXTENDED REPORTING PERIOD

- A. In the event of cancellation or non-renewal of this insurance, the **Named Insured** designated in Item 1 of the Declarations shall have the right to a 12, 24 or 36 month **Extended Reporting Period** for **Claims** first made against any **Insured** and reported to the Underwriters during the **Extended Reporting Period**, subject to the conditions set forth in the definition of **Extended Reporting Period** herein. In order for the **Named Insured** to invoke the **Extended Reporting Period** option, the payment of the additional premium set forth in Item 6 (a) (b) or (c) of the declarations for the **Extended Reporting Period** must be paid to the Underwriters within 30 days of the non-renewal or cancellation.
- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**.
- C. The quotation by the Underwriters of a different premium or Limit of Liability or changes in Policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.

- D. The right to the **Extended Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts in excess of the applicable Limit of Liability.
- E. All notices and premium payments with respect to the **Extended Reporting Period** shall be directed to the Underwriters through the entity named in Item 7 of the Declarations.
- F. At the commencement of the **Extended Reporting Period**, the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

## IX. OTHER INSURANCE

This insurance shall apply in excess of any other valid and collectible insurance or self-insurance available to any **Insured**, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## X. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against the **Insured**, the **Insured** shall immediately notify the Underwriters in writing through persons named in Item 7 of the Declarations and forward every demand, notice, summons or other process received by the **Insured** or its representative. The **Insured's** duty to provide notice in accordance with this provision is a condition precedent to coverage.
- B. If during the **Policy Period** the **Insured** first becomes aware of a negligent act, error or omission that could lead to a **Claim**, it must give written notice to the Underwriters through persons named in Item 7 of the Declarations during the **Policy Period** of:
  - (1) the specific, negligent act, error, or omission,;
  - (2) the injury or damage which may result or has resulted from the negligent act, error, or omission; and
  - (3) the circumstances by which the **Insured** first became aware of the negligent act, error or omission.

Any subsequent **Claim** made against the **Insured** which is the subject of the written notice shall be deemed to have been made at the time written notice was first given to the Underwriters.

- C. A **Claim** or circumstance that might lead to a **Claim** shall be considered to be reported to the Underwriters when notice is received by the Underwriters through persons named in Item 7 of the Declarations.
- D. All **Claims** arising out of the same, continuing or related negligent act, error or omission shall be considered a single **Claim** and deemed to have been made at the time the first of the related **Claims** is reported to the Underwriters. Such related **Claims** shall be subject to the each **claim** Limit of Liability identified in the Declarations.

- E. In the event of non-renewal of this insurance by the Underwriters, the **Insured** shall have thirty (30) days from the expiration date of the **Policy Period** to notify the Underwriters of **Claims** made against the **Insured** during the **Policy Period** which arise out of any negligent act, error or omission occurring prior to the termination date of the **Policy Period** and otherwise covered by this insurance.
- F. If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

## **XI. ASSISTANCE AND CO-OPERATION OF THE INSURED**

The **Insured** shall co-operate with the Underwriters in all investigations, including regarding the application and coverage under this Policy, and upon the Underwriters' request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization other than an employee of any **Insured** who may be liable to the **Insured** because of negligent acts, errors or omissions with respect to which insurance is afforded under this Policy. The **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at its own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any **Claim** without the consent of the Underwriters.

## **XII. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters unless, as a condition precedent thereto, there has been full compliance with all terms of this insurance, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the claimant and the Underwriters. No person or organization shall have any right under this insurance to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or its legal representative.

## **XIII. BANKRUPTCY**

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder.

## **XIV. SUBROGATION**

In the event of any payment under this insurance, the Underwriters shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing before or after the payment of **Damages** by the Underwriters to prejudice such rights.

## **XV. CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriters from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or



changed, except by endorsement issued to form a part of this insurance, signed by the Underwriters.

## **XVI. MERGERS AND ACQUISITIONS**

A. If during the **Policy Period**, the **Named Insured** merges or acquires an entity and

- (1) the revenues of the merged or acquired entity do not exceed 10% of the **Named Insured's** annual revenues as set forth in its most recent application for insurance;
- (2) the business operations of the merged or acquired entity are of a similar nature to those of the **Named Insured** as set forth in its most recent application for insurance; and
- (3) the merged or acquired entity is located in the same province as the **Named Insured** or any subsidiary,

then this Policy will automatically cover the merged or acquired entity, subject to the policy terms, conditions and limitations, from the date such merger or acquisition becomes final but only for negligent acts, errors or omissions that take place subsequent to the merger or acquisition. In the event the total amount of revenues of all merged and acquired entities during the **Policy Period** exceed 25% of the **Named Insured's** annual revenues as set forth in its most recent application for insurance, the above provision shall no longer apply and any further mergers or acquisitions will be subject to Paragraph B., below.

B. In the event during the **Policy Period** the **Named Insured** merges or acquires an entity that does not fall within the criteria detailed in Paragraph A. above, or where Paragraph A. above no longer applies by virtue of the provision contained in the last sentence of Paragraph A. above, then the **Named Insured** shall be required to give written notice to the Underwriters prior to the completion of a merger or acquisition of the **Named Insured**, and the Underwriters expressly reserve the right to request additional premium and/or to apply amended terms and conditions if this insurance is to remain in force subsequent to any merger or acquisition.

## **XVII. ASSIGNMENT**

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, this insurance shall cover the **Insured's** legal representative as the **Insured**, as would be permitted by this Policy.

## **XVIII. CANCELLATION**

### **1. For the Master Policyholder**

A. This Policy may be cancelled by the Underwriters by mailing or delivering to the Master Policyholder at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Insurance because the Insured has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the Master Policyholder at the address shown in the

Declarations stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Mailing of notice shall be sufficient proof of notice.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery (where permitted by law) of such written notice either by the Master Policyholder or by the Underwriters shall be equivalent of mailing.

- B. In the event of the cancellation of this master policy, the coverage hereunder shall run to its natural expiry date as specified in the declarations.
- C. The Master Policyholder may cancel this master policy by surrender thereof to the Underwriters or by mailing or delivering to the Underwriters through the entity named in Item 7 of the Declarations, written notice stating when the cancellation shall be effective.

In such event, we will retain the premium at short rate or 25% of the premium whichever is greater.

## 2. For the Named Insured

- A. This Policy may be cancelled by the **Named Insured**, by surrender thereof to the Underwriters or by mailing or delivering to the Underwriters through the entity named in Item 7 of the Declarations, written notice stating when the cancellation shall be effective.
- B. This Policy may be cancelled by the Underwriters by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Insurance because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Mailing of notice shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent of mailing.
- C. If the **Named Insured** cancels this Policy, the earned premium shall be computed in accordance with the attached short rate table and procedure.
- D. If the Underwriters cancel this Policy prior to any **Claim** being reported under this Policy, earned premium shall be computed pro rata.
- E. The premium shall be deemed fully earned if any **Claim** under this Policy is reported to the Underwriters under this Policy on or before the date of cancellation.
- F. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## XIX. SINGULAR FORM OF A WORD

Whenever the singular form of a word issued, herein, the same shall include the plural when required by context.

## XX. ENTIRE CONTRACT

By acceptance of this Policy, the **Insured** agrees that the statements in the Declarations and application are his or her agreements and representations, that this insurance is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Underwriters relating to this insurance.

## XXI. NUCLEAR INCIDENT EXCLUSION

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; nor
- (b) to bodily injury or property damage with respect to which an Insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (c) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
  - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
  - (ii) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
  - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this policy:

1. The term „nuclear energy hazard“ means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
2. The term „radioactive material“ means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
3. The term „nuclear facility“ means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

- (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

4. The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

## **XXII. SERVICE OF SUIT**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

## **XXIII. CHOICE OF LAW**

This Policy will be governed by and interpreted pursuant to the laws of the province where the company or individual named as **Named Insured** in the Declarations is registered or located and the laws of Canada applicable therein, and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the Courts of the province where the company or individual named as **Named Insured** in the Declarations is registered or located.

## **XXIV. SEVERAL LIABILITY**

### **Insurer's liability several not joint**

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate

taken together) is shown next to its stamp. This is subject always to the provision concerning “signing” below.

In the case of a Lloyd’s syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member’s proportion. A member is not jointly liable for any other member’s proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd’s, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd’s syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd’s, at the above address.

### **Proportion of liability**

Unless there is “signing” (see below), the proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its “written line”.

Where this contract permits, written lines, or certain written lines, may be adjusted (“signed”). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of a Lloyd’s syndicate taken together) is referred to as a “signed line”. The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to “this contract” in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

## **XXV. LICENSURE**

- A. It is a condition of the coverage afforded under the Policy that the facilities of the **Named Insured** and any **Insured** requiring a license to practice shall be licensed in accordance with all relevant federal, province, state and local requirements. The **Named Insured** warrants that as of the inception date of this Policy it has secured all relevant licenses. .
- B. If, during the **Policy Period**, any **Insured’s** licensure status is altered by withdrawal, revocation, denial, suspension or failure to renew, the **Named Insured** shall give written notice of such change to Underwriters within thirty days of the change becoming effective. Following receipt of such notice, the Underwriters may elect, at their sole option, to revise any Insuring Agreements, Definitions, Exclusions, Endorsements or other Conditions of this Policy with respect to the **Insured**, with effect from such date of such withdrawal, revocation, denial, suspension or failure to renew. Such action does not waive the Underwriters’ option to invoke the provisions of Section XVIII of this Policy. Furthermore, the Underwriters will have no obligation to respond to any **Claim** arising out of **Professional Services** which took place subsequent to the date of withdrawal, revocation, denial, suspension or failure to renew.

## **XXVI. SHORT RATE CANCELLATION TABLE**

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:

A. For insurances written for one (1) year:

Days Insurance in Force	Per cent. of Year Premium	Days Insurance in Force	Per cent. of Year Premium
1 - 73	30	206 - 209	66
74 - 76	31	210 - 214	(7 months) 67
77 - 80	32	215 - 218	68
81 - 83	33	219 - 223	69
84 - 87	34	224 - 228	70
88 - 91 (3 months)	35	229 - 232	71
92 - 94	36	233 - 237	72
95 - 98	37	238 - 241	73
99 - 102	38	242 - 246	(8 months) 74
103 - 105	39	247 - 250	75
106 - 109	40	251 - 255	76
110 - 113	41	256 - 260	77
114 - 116	42	261 - 264	78
117 - 120	43	265 - 269	79
121 - 124 (4 months)	44	270 - 273	(9 months) 80
125 - 127	45	274 - 278	81
128 - 131	46	279 - 282	82
132 - 135	47	283 - 287	83
136 - 138	48	288 - 291	84
139 - 142	49	292 - 296	85
143 - 146	50	297 - 301	86
147 - 149	51	302 - 305	(10 months) 87
150 - 153 (5 months)	52	306 - 310	88
154 - 156	53	311 - 314	89
157 - 160	54	315 - 319	90
161 - 164	55	320 - 323	91
165 - 167	56	324 - 328	92
168 - 171	57	329 - 332	93
172 - 175	58	333 - 337	(11 months) 94
176 - 178	59	338 - 342	95
179 - 182 (6 months)	60	343 - 346	96



183 - 187	.....	61	347 - 351	.....	97
188 - 191	.....	62	352 - 355	.....	98
192 - 196	.....	63	356 - 360	.....	99
197 - 200	.....	64	361 - 365	(12 months) .....	100
201 - 205	.....	65			

B. For Insurances written for more or less than one (1) year:

1. If insurance has been in force for twelve (12) months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than twelve (12) months:
  - (a) Determine full annual premium as for an insurance written for a term of one (1) year.
  - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one (1) year the insurance has been in force to the length of time beyond one (1) year for which the insurance was originally written.
  - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

Furthermore and notwithstanding the foregoing, the Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned upon inception of the Policy if any **Claim** or any circumstance that could reasonably be the basis for a **Claim** is reported to the Underwriters under this Policy on or before such date of cancellation.