

THE GUARANTEE  
COMPANY OF  
NORTH AMERICA



Guarantee SHIELD

**CORPORATE SHIELD PLUS**  
**PRIVATE CORPORATION**  
**AND**  
**DIRECTORS' AND OFFICERS' LIABILITY**  
**INSURANCE POLICY**



# CORPORATE SHIELD PLUS

## PRIVATE CORPORATION AND DIRECTORS' & OFFICERS' LIABILITY INSURANCE POLICY

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# CORPORATE SHIELD PLUS

## PRIVATE CORPORATION AND DIRECTORS' AND OFFICERS' LIABILITY INSURANCE POLICY

POLICY NO.:

REPLACING POLICY NO.:

### DECLARATIONS

Item 1. NAME AND ADDRESS OF THE CORPORATION:

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

Item 3. LIMITS OF LIABILITY:

- (a) \$ Limit of liability each Policy Period under Insuring Agreements A, B and C.
- (b) \$ Limit of liability each Policy Period under Insuring Agreement D.
- (c) \$ Limit of liability each Claim for Wrongful Employment Practice.
- (d) \$ Aggregate limit of liability each Policy Period under Insuring Agreements A, B, C and D including Wrongful Employment Practice.

Item 4. ADDITIONAL LIMIT OF LIABILITY – DIRECTORS AND OFFICERS ONLY:

\$ Dedicated ADDITIONAL LIMIT OF LIABILITY under Insuring Agreement A only.

Item 5. RETENTIONS:

- (a) \$ each Director or Officer each Loss, but in no event exceeding an aggregate of \$ each Loss for all Directors and Officers.
- (b) \$ each Loss under Insuring Agreements B and C.
- (c) \$ each Loss under Insuring Agreement D.
- (d) \$ each Loss for Wrongful Employment Practice.

Item 6. PREMIUM: \$

Item 7. DISCOVERY CLAUSE:

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

Item 8. ENDORSEMENTS attached at issuance: -

Item 9. INSURER ISSUING OFFICE:

These DECLARATIONS along with the completed and signed Application and any Application Information and this Corporate Shield PLUS Private Corporation and Directors' and Officers' Liability Insurance Policy and any endorsements thereto shall constitute the contract between the Directors and Officers, the Corporation and the Insurer.

Signed and sealed this            day of            .

THE GUARANTEE COMPANY OF NORTH AMERICA

\_\_\_\_\_  
\_\_\_\_\_

Guarantee SHIELD

## SECTION I

## INSURING AGREEMENTS

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

- A. the **Insurer** agrees with the **Directors and Officers** that if, during the **Policy Period**, any **Claim** or **Claims** are made against them, or any of them, jointly or severally, and notice is given to the **Insurer** in accordance with **SECTION VIII** of this **Policy**, the **Insurer** will pay in accordance with the provisions of this **Policy**, on behalf of the **Directors and Officers**, or any of them, all **Loss** which the **Directors and Officers** or any of them shall become legally obligated to pay, except for such **Loss** for which the **Corporation** is required or permitted by law to indemnify the **Directors and Officers** unless and to the extent only that the **Corporation** is unable to make actual indemnification solely by reason of its **Insolvency**;

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

- B. the **Insurer** agrees with the **Corporation** that if, during the **Policy Period**, any **Claim** or **Claims** are made against the **Directors and Officers**, or any of them, jointly or severally, and notice is given to the **Insurer** in accordance with **SECTION VIII** of this **Policy**, the **Insurer** will pay in accordance with the terms of this **Policy**, on behalf of the **Corporation**, all **Loss** for which the **Corporation** may be required or permitted by law to indemnify the **Directors and Officers**;
- C. the **Insurer** agrees with the **Corporation** that if, during the **Policy Period**, any **Claim** or **Claims** are made against the **Corporation**, and notice is given to the **Insurer** in accordance with **SECTION VIII** of this **Policy**, the **Insurer** will pay in accordance with the terms of this **Policy**, on behalf of the **Corporation**, all **Loss** which the **Corporation** shall become legally obligated to pay;
- D. the **Insurer** agrees with the **Insureds** that if, during the **Policy Period**, a **Derivative Demand** is made upon the Board of Directors of the **Corporation**, and notice is given to the **Insurer** in accordance with **SECTION VIII** of this **Policy**, the **Insurer** will pay in accordance with the terms of this **Policy**, on behalf of the **Insureds**, all **Investigation Costs** which the **Corporation** or the Board of Directors incur and which arise from the **Derivative Demand**.

## SECTION II

## DEFINITIONS

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

1. The term "**Affiliate**" means any corporate entity which shares an ownership connection directly or indirectly with the **Corporation** but whose operations and financial results are not necessarily consolidated with those of the **Corporation**.
2. The term "**Applicant**" means any natural person (except a **Director** of the **Corporation**) who has been acknowledged as applying or as having applied, or is or was an acknowledged candidate, for full time or part time employment by the **Corporation**.
3. The term "**Application**" means the most recent written **Application** completed, signed and submitted to the **Insurer** on behalf of all persons who would be insured in any capacity under the insurance **Policy** being applied for (i.e. **Proposed Insureds** as defined in the **Application**) in support of their request that this **Policy** be issued or renewed, as the case may be.
4. The term "**Application Information**" means all documents and all information, whether in paper or any other form, submitted to the **Insurer** with an **Application**, or otherwise submitted or made available to the **Insurer** in support of a request that this **Policy** be issued or renewed, as the case may be.
5. The term "**Arbitration**" shall mean any formal and binding **Arbitration** process pursuant to **Statute** or agreement, by which parties submit a dispute for final resolution by one or more arbitrators.
6. The term "**Based Upon**" means based upon, resulting from, arising out of or in any way involving or alleging, directly or indirectly.
7. The term "**Begun**" when used with reference to a **Prosecution** or **Inquiry** means either the beginning of the **Prosecution** or **Inquiry** or the **Insured's** first notice thereof, whichever comes first.

8. The term "**Claim**" means:
- (a) a written notice from any party:
    - i) that it is the intention of such party to hold the **Directors and Officers**, or solely with respect to **Insuring Agreement C**, the **Corporation**, civilly liable for **Damages** caused by a **Wrongful Act**, or
    - ii) that it is the intention of such party to seek an **Oppression Remedy** against the **Directors and Officers**, or solely with respect to **Insuring Agreement C**, the **Corporation**, with respect to a **Wrongful Act**;
  - (b) a civil suit against the **Directors and Officers**, or any of them, or solely with respect to **Insuring Agreement C**, the **Corporation**:
    - i) claiming **Damages** caused by a **Wrongful Act**, or
    - ii) seeking an **Oppression Remedy** with respect to a **Wrongful Act**;
  - (c) a **Prosecution** of an **Insured** for a **Wrongful Act**;
  - (d) an **Inquiry Based Upon** a **Wrongful Act** by an **Insured**;
  - (e) a demand or notice of an **Arbitration** claiming **Damages** against the **Directors and Officers**, or any of them, or solely with respect to **Insuring Agreement C**, the **Corporation**, caused by a **Wrongful Act**;
  - (f) a **Regulatory or Administrative Proceeding** against an **Insured** alleging a **Wrongful Act**;
  - (g) an **Extradition Proceeding**;
  - (h) a **Securities Claim**,
- including any appeals therefrom.
9. The term "**Corporation**" means:
- (a) the corporation named in **Item 1.** of the **DECLARATIONS**;
  - (b) any **Subsidiary** at the effective date of this **Policy**;
  - (c) any former **Subsidiary**, but coverage is only afforded with respect to **Loss** arising from **Wrongful Acts** committed or allegedly committed while it was a **Subsidiary**;
  - (d) any **Subsidiary** which the **Corporation** creates or acquires after the effective date of this **Policy**, directly or through one or more of its **Subsidiaries**, whose total assets represent no more than thirty-five per cent (35%) of the consolidated assets of the **Corporation** prior to the said creation or acquisition;
  - (e) any **Subsidiary** which the **Corporation** creates or acquires after the effective date of this **Policy**, directly or through one or more of its **Subsidiaries**, whose total assets represent more than thirty-five per cent (35%) of the consolidated assets of the **Corporation** prior to the said creation or acquisition. Automatic coverage for such **Subsidiary** is limited to a period of ninety (90) days after the creation or acquisition thereof, unless the following conditions are met within such period:
    - i) written notice of all such changes together with such information as may be requested is provided to the **Insurer**, and
    - ii) the **Insurer** agrees, after receipt and review of all requested information, to extend coverage to the newly created or acquired **Subsidiary** by endorsement to the **Policy**, and
    - iii) any additional premium which may be required by the **Insurer** is paid.
10. The term "**Costs, Charges and Expenses**" means reasonable and necessary amounts incurred for the defence or legal representation of **Insureds** in respect of **Claims**, such as legal, accounting, adjusting or investigating expenses and the cost of any appeal bond, attachment bond, or similar bond. However, the term is exclusive of i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of **Directors, Officers** or **Employees** of the **Corporation** in connection with **Claims**, and ii) **Investigation Costs**.

11. The term "**Damages**" means:
- (a) with respect to the **Directors and Officers**:
    - i) direct compensatory civil damages which the **Directors and Officers** are legally liable to pay as a result of a judgment or settlement;
    - ii) punitive or exemplary damages or the multiple portion of any multiplied damage award awarded pursuant to a judgment or settlement, but only if not declared uninsurable under the law pursuant to which this **Policy** is construed;
    - iii) any costs or expenses incurred or to be incurred by the **Directors and Officers** which are required by, pursuant to or in any way involve any order for, grant of or agreement to provide injunctive, administrative or any other non-monetary remedy or relief;
    - iv) an **Oppression Remedy**, provided that the complainant seeking the **Oppression Remedy** is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any **Insured** unless the **Insured** in question is a **Director or Officer** engaged in **Whistleblower Activity**;
    - v) pre-judgment and post-judgment interest and legal fees and expenses awarded pursuant to a judgment or settlement;
  - (b) with respect to the **Corporation**:
    - i) direct compensatory civil damages, which the **Corporation** is legally liable to pay as a result of a judgment or settlement;
    - ii) punitive or exemplary damages or the multiple portion of any multiplied damage award awarded pursuant to a judgment or settlement, but only if not declared uninsurable under the law pursuant to which this **Policy** is construed;
    - iii) an **Oppression Remedy**, provided that (i) the complainant seeking the **Oppression Remedy** is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any **Insured** unless the **Insured** in question is a **Director or Officer** engaged in **Whistleblower Activity** and (ii) the remedy is an award of direct compensatory civil damages;
    - iv) pre-judgment and post-judgment interest and legal fees and expenses awarded pursuant to a judgment or settlement.
  - (c) "**Damages**" shall not include:
    - i) civil or criminal fines or penalties, other than **Statutory Liabilities**;
    - ii) any costs or expenses incurred or to be incurred by the **Corporation** which are required by, pursuant to or in any way involve any order for, grant of or agreement to provide injunctive, administrative or any other non-monetary remedy or relief;
    - iii) any costs or expenses incurred or to be incurred by the **Corporation** which are required by, pursuant to or in any way involve any order, grant, judgment or agreement under the *Canadian Human Rights Act*, the *Employment Equity Act*, the *Americans with Disabilities Act*, the *Civil Rights Act of 1964* or similar provisions of any other pertinent **Statute**;
    - iv) any amount that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by the **Corporation** in connection with its purchase or redemption of its own securities or assets or those of a **Subsidiary**;
    - v) **Damages** which may be deemed uninsurable under the law pursuant to which this **Policy** shall be construed or by which the **Corporation** is governed.
12. The term "**Derivative Demand**" means any written notice, as described in Section 239(2)(a) of the *Canada Business Corporations Act, R. S. C. 1985, c. C-44*, to the **Directors** of the **Corporation** of the complainant's intention to apply to the Court under Section 239(1) for leave to bring an action in the name and on behalf of the **Corporation**, or intervene in an action to which the **Corporation** is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the **Corporation**, or any similar provision of any provincial or foreign **Statute**.

13. The terms "**Directors and Officers**" and "**Director or Officer**" may be used interchangeably and shall mean:
- (a) any persons who were, now are, or will be duly elected, appointed or de facto directors or officers of the **Corporation**, (or management committee members or members of the board of managers of the **Corporation**, if so designated in the **Corporation's** by-laws) or any equivalent executive position under applicable law in any country other than Canada or the United States of America, but solely in their capacities as such;
  - (b) any persons who were, now are or will be duly elected or appointed trustees or general partners of the **Corporation**, but solely in their capacities as such. However where the **Corporation** is a **Subsidiary**, any coverage available to them under this **Policy** in their capacities as trustees or general partners shall be excess to any other liability insurance coverage whatsoever available to them in that capacity, and no payment or contribution shall be made by the **Insurer** until such other liability insurance coverage is exhausted;
  - (c) any person contemplated by (a) or (b) above, who served or serves as a director of any non-profit entity at the request of or with the consent of the **Corporation**, but solely in their capacity as a director of the non-profit entity;
  - (d) the estates, heirs, legal representatives or assigns of any persons contemplated by (a), (b) or (c) above, in the event of their death, incapacity, bankruptcy or insolvency;
  - (e) the **Spouse** of any person described in (a), (b), (c) or (d) above, if such **Spouse** is named as a co-defendant in a **Claim** against any such person as a result of an alleged **Wrongful Act** solely by reason of such **Spouse's** status as a **Spouse** or such **Spouse's** ownership interest in property which the claimant seeks as recovery;
  - (f) an **Employee**, on the condition that:
    - i) he/she is named in a **Claim** as a co-defendant with an **Insured** who is not an **Employee**, but only for so long as the **Claim** names both; or
    - ii) he/she is the subject of a **Prosecution** or **Inquiry** which also involves or is directed against an **Insured** who is not an **Employee**, but only for so long as the **Prosecution** or **Inquiry** involves or is directed against both; or
    - iii) he/she is a licensed lawyer, notary, chartered accountant, certified management accountant or certified general accountant, but only while performing, or in respect of, services rendered to the **Corporation** or to the Board of Directors of the **Corporation** solely in his/her professional capacity.
14. The term "**Employee**" means a natural person (except when acting as a **Director** of the **Corporation**) who currently provides or previously provided services to the **Corporation**, whether part-time or full-time, in the ordinary course of the **Corporation's** business and whom the **Corporation** compensates or compensated by salary, wages or commissions and maintains or maintained the right to control and direct in the performance of such services. However, **Employee** does not mean any broker, factor, commission merchant, consignee, independent or dependent contractor, consultant, or other agent or representative of the same general character.
15. The term "**Extradition Proceeding**" means a formal proceeding, including the execution of a warrant for the arrest or detention of any **Directors or Officers**, to extradite any **Directors or Officers** from the country in which he or she is presently residing to another country which is a sovereign state, for the purposes of either **Prosecution** by that state or imposing a sentence on any **Directors or Officers** by that state in respect of a criminal offence actually or allegedly committed or attempted by such **Directors or Officers** even if that offence would not have constituted a criminal offence if it had been committed or attempted in Canada.
16. The term "**Government Sponsored Benefit Plan**" means any benefits or compensation plan created by any **Statute** of which the funds and contingent liabilities are held or managed by a government or governmental body and which provides for workers' compensation benefits, employment (or unemployment) insurance, unemployment compensation, retirement benefits, social or old age security, Canada Pension Plan or Quebec Pension Plan benefits, health insurance or disability benefits, or automobile insurance or accident benefits.
17. The term "**Investigation Costs**" means reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred by the **Corporation** or its Board of Directors or any committee of the Board of Directors in connection with the investigation or evaluation of any **Derivative Demand**. However, the term is exclusive of i) the regular or overtime salaries or wages, fees, benefit costs and travel or accommodation expenses of **Directors, Officers** or **Employees** of the **Corporation** in connection with the investigation or evaluation of any **Derivative Demand**, and ii) **Costs, Charges and Expenses**.

18. The terms "**Inquiry**" and "**Inquiries**" mean any inquiry, investigation or commission **Begun** pursuant to **Statute** during the **Policy Period** which a **Director or Officer** reasonably believes may lead to disclosures or findings of fact or of law which are relevant to the civil, penal or criminal liability of a **Director or Officer** or of the **Corporation**.
19. The term "**Insolvency**" means the financial position of the **Corporation** as a debtor as that term is defined and used in Canada within the provisions of the *Bankruptcy and Insolvency Act, R.S.C. c. B-3*, or similar provisions of any other provincial or foreign **Statute**. Without limiting the generality of the foregoing, **Insolvency** shall occur when (i) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a provincial, state or federal court, agency or official or by a creditor to take control of, supervise, manage or liquidate the **Corporation**, (ii) a reorganization proceeding relating to the **Corporation** has been brought in Canada under the *Companies' Creditors Arrangement Act, R.S.C. c. C-36*, (iii) the **Corporation** becomes a debtor in possession under Chapter 11 of the *United States Bankruptcy Code*, or (iv) a reorganization proceeding relating to the **Corporation** has been brought in any foreign jurisdiction under similar provisions of any pertinent **Statute**.
20. The terms "**Insured**" and "**Insureds**" may be used interchangeably and shall mean any one or more of the **Corporation** and the **Directors and Officers**, whether jointly or severally.
21. The term "**Interrelated Wrongful Acts**" means all causally-related **Wrongful Acts**.
22. The term "**Loss**" means (i) **Damages**, and (ii) **Costs, Charges and Expenses**.
23. The term "**Oppression Remedy**" shall mean an order or other remedy sought under Section 241 or Section 214 of the *Canada Business Corporations Act, R.S.C. 1985, c. C-44* or similar provisions of any provincial or foreign **Statute**.
24. The term "**Pay Differential**" means any actual or alleged differential in pay or salary between **Employee(s)** who perform the same work or substantially the same work.
25. The term "**Pay Equity**" means any actual or alleged differential in pay or salary between **Employee(s)** who perform different work of equal or comparable value.
26. The term "**Policy Period**" means the period of time from the effective date shown in **Item 2** of the **DECLARATIONS** to the earlier of the expiry date shown in **Item 2** of the **DECLARATIONS** or the effective date of cancellation of this **Policy**. If the **DISCOVERY CLAUSE** option is engaged in accordance with **SECTION III**, then such period (herein the **Discovery Period**) shall be part of and not in addition to the **Policy Period**.
27. The term "**Pollutants**" means any solid, liquid or gaseous substance, emanation, irritant, radiation, or contaminant in any form (including but not limited to noise, smoke, vapours, fumes, odours, electromagnetic radiation, thermal contamination, greenhouse gas emissions, soot, oil or oil products, asbestos or asbestos products, silica, mould, acids, alkalis, chemicals, medical waste or any other waste materials) which constitutes a nuisance, hazard or pollutant of any kind.
28. The term "**Prosecution**" means any prosecution, charge, information, indictment or other proceeding against an **Insured** during the **Policy Period** by the Crown or by any other government or governmental body or regulatory authority seeking penal or criminal sanctions anywhere in the world, including, without limitation, a criminal prosecution.
29. The term "**Regulatory or Administrative Proceeding**" means any formal proceeding pursuant to a **Statute** before a board, tribunal, commissioner, adjudicator or other judicial or quasi-judicial officer which may lead to a ruling or decision binding on an **Insured**, including without limitation a proceeding before a labour standards commission, labour relations board or other similar body.
30. The term "**Securities Claim**" means any **Claim** made against any **Insured**:
- (a) **Based Upon** the purchase or sale of, or offer to purchase or sell, any securities issued by the **Corporation**; or
  - (b) brought by one or more of the securities holders of the **Corporation** in their capacity as such, either directly or derivatively on behalf of the **Corporation**.
31. The term "**Spouse**" means a spouse or domestic partner recognized as such by **Statute** or in the written provisions of any benefits program established by the **Corporation**.
32. The term "**Statute**" shall include all applicable federal, state, provincial, territorial or local statutes or by-laws or Common or Civil law in force and any amendments thereto and all applicable regulations or statutory instruments promulgated thereunder, anywhere in the world. Any reference to a **Statute** by name shall include all amendments, all regulations or all other statutory instruments promulgated thereunder, and any new **Statute** which replaces or is substituted for the named **Statute** in whole or in part.



33. The term "**Statutory Liabilities**" means unpaid liabilities of the **Corporation**, including unpaid tax liabilities and unpaid wages and deductions at source, for which any **Director or Officer** becomes personally liable in their capacity as a **Director or Officer** under any applicable **Statute** if the **Corporation** is in **Insolvency**.
34. The term "**Subsidiary**" means:
- (a) any non-publicly traded **Corporation** of which more than fifty per cent (50%) of the voting stock is owned by the **Corporation** named in **Item 1.** of the **DECLARATIONS**, either directly or through one or more of its **Subsidiaries**; or
  - (b) any partnership, limited partnership, general partner, trust or joint venture which the **Corporation** is responsible for managing under the terms and conditions of a written agreement governing such partnership, limited partnership, general partner, trust or joint venture.
35. The term "**Third Party**" means any natural person who is a customer, vendor, service provider, client or other business invitee of the **Corporation**.
36. The term "**Whistleblower Activity**" shall mean an activity whereby a **Director or Officer**, legitimately and in good faith:
- (a) reports or submits complaints regarding financial statement disclosure issues, accounting, internal accounting controls, auditing matters or violations of the **Corporation's** code of business conduct and/or ethics; or
  - (b) provides information, causes information to be provided or otherwise assists in a **Prosecution, Inquiry, Regulatory or Administrative Proceeding** or official investigation of any kind regarding any conduct which he or she reasonably believes to be a violation of:
    - i) employment or labour **Statutes**; or
    - ii) securities **Statutes** (including the rules and regulations of the Ontario Securities Commission, the securities regulatory authorities in the other provinces and territories of Canada and the United States Securities and Exchange Commission, the *United States Securities Act of 1933*, as amended, the *United States Securities Exchange Act of 1934*, as amended, the Toronto Stock Exchange and the New York Stock Exchange); or
    - iii) any other **Statutes** regarding fraud or the commission or possible commission of a criminal offence.
37. The term "**Wrongful Act**" means:
- (a) with respect to **Directors and Officers**, any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Directors and Officers**, individually or collectively, in the discharge of their legal duties solely in their capacity as **Directors and Officers** of the **Corporation**, including without limitation **Wrongful Employment Practices**, or any other matters, including **Statutory Liabilities**, claimed against them solely by reason of their being **Directors and Officers**;
  - (b) with respect to the **Corporation**, any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Corporation**, including without limitation **Wrongful Employment Practices**.
38. The term "**Wrongful Employment Practice**" means, with respect to an **Employee, Applicant** or **Third Party** only, any actual or alleged:
- (a) wrongful termination, dismissal, or discharge (either actual or constructive) from employment;
  - (b) breach of any oral or written employment contract or agreement, or quasi employment contract or agreement;
  - (c) employment-related misrepresentation;
  - (d) employment-related discrimination;
  - (e) wrongful failure to employ or promote, or wrongful discipline, demotion, deprivation of a career opportunity, or failure to grant tenure, or negligent **Employee** evaluation;
  - (f) workplace harassment (including sexual harassment), or retaliation, or invasion of privacy, or employment-related defamation, or other unwelcome verbal, visual or physical conduct of a provocative nature that creates an intimidating, hostile or offensive working environment;
  - (g) retaliatory treatment of an **Employee** as a result of such **Employee's** exercise of rights pursuant to any **Statute** governing or relating to employment standards, or arising from such **Employee's** involvement with or report to a regulatory or government agency with respect to the operation of the **Corporation's** business.

## SECTION III

## DISCOVERY CLAUSE

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

## SECTION IV

## EXCLUSIONS

### A. GENERAL EXCLUSIONS

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

1. which is insured by another valid policy or policies, including without limitation any policy of general liability insurance, except with respect to any excess **Loss** beyond the amount or amounts of coverage under such other policy or policies, and then only when the limits of coverage under the policy or policies have been exhausted by payment by the other insurer(s). The **Insurer** shall have no obligation to defend or to make any contribution to the cost of defending or to pay **Investigation Costs** in respect of any **Claim** or **Derivative Demand** insured by another policy or policies unless and until the limits of coverage under the other policy or policies have been exhausted by payment by the other insurer(s);
2. for bodily injury, sickness, disease, handicap, impairment or death of any person.

However, this exclusion shall not apply to **Loss** in connection with a **Prosecution** against the **Directors and Officers** by the Crown in Canada pursuant to Section 217.1 of the *Criminal Code of Canada* (as amended by Bill C-45);
3. for damage to or destruction of any tangible or intangible property, including loss of use thereof;
4. **Based Upon**:
  - (a) any demand, suit or other proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the effective date of this **Policy**, or, if this **Policy** is part of a series of consecutive renewals issued by the **Insurer**, the effective date of the original **Policy**, or **Based Upon** the same or substantially the same facts underlying or alleged therein; or
  - (b) any **Claim** or **Derivative Demand** already made or **Begun** against any **Insured**, or which arises from any fact, circumstance or situation indicating the possibility of a **Claim** or **Derivative Demand** and already known to any **Insured**, upon the effective date of this **Policy**, or, if this **Policy** is part of a series of consecutive renewals issued by the **Insurer**, the effective date of the original **Policy**;

5. if the **Claim** or **Derivative Demand** is the same or substantially the same as a **Claim** or **Derivative Demand** first made or **Begun** against an entity and/or its **Directors** or **Officers**, or the **Claim** or **Derivative Demand** is **Based Upon** a **Wrongful Act** which was committed by an entity and/or its **Directors** or **Officers**, before that entity became a **Subsidiary**;
6. **Based Upon:**
- (a) the actual or threatened presence, discharge, dispersal, release, escape or disposal of **Pollutants** in or on real or personal property (immoveable or moveable), water or the atmosphere, whether such presence, discharge, dispersal, release, escape or disposal is intentional or accidental;
  - (b) any direction or request that the **Corporation** test for, monitor, reduce, clean up, remove, contain, treat, detoxify or neutralize **Pollutants** or any voluntary decision to do so.
- However this exclusion shall not apply to any **Securities Claim, Derivative Demand** or to any coverage provided under **Insuring Agreement A** of this **Policy Based Upon** the matters described in 6(a) and 6(b) above;
7. **Based Upon** their service as **Directors** of any for-profit entity other than the **Corporation**, even if directed or requested by the **Corporation** to serve as **Directors** of such other for-profit entity. However, this exclusion shall not apply to any **Claim** or **Derivative Demand Based Upon** their services as **Directors** of a non-profit entity at the request or with the consent of the **Corporation**;
8. **Based Upon:**
- (a) any negligence or breach of duty or obligation in connection with any employee benefit plan or trust, of any nature whatsoever, established or maintained for the purpose of providing benefits to **Employees** of the **Corporation** or any **Affiliate** of the **Corporation**;
  - (b) any violation of the responsibilities, obligations or duties imposed by the *Pension Benefit Standards Act of Canada R.S. 1985 c.32 (2nd Supp.)*, by the *Employee Retirement Income Security Act of 1974* of the United States of America, or by similar provisions of any other **Statute**, upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to **Employees** of the **Corporation** or to any **Affiliate** of the **Corporation**;
9. **Based Upon** any violation of the responsibilities, obligations or duties imposed by or pursuant to any **Statute** governing or in any way relating to a **Government Sponsored Benefit Plan**.
- However, this exclusion shall not apply to any **Claim** for (i) retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to such **Government Sponsored Benefit Plan** or (ii) **Statutory Liabilities**;
10. **Based Upon:**
- (a) any breach of any contract or agreement, whether verbal or written, by the **Corporation**, including without limitation any commercial contractual liability of the **Corporation** to an existing or potential customer, client, consumer, distributor, supplier, franchisee, franchisor, vendor, agent or representative, or any other third party;
  - (b) any liability of others assumed by the **Corporation** under any contract or agreement, whether verbal or written.
- However, this exclusion shall not apply to the **Directors and Officers**;
11. **Based Upon:**
- (a) any violation of or failure to meet the responsibilities, obligations or duties imposed by the *Canada Labour Code* or similar provisions of any other **Statute**;
  - (b) any labour relations, collective bargaining, collective agreements, labour disputes, grievances, lock-outs, strikes, picketing, or any other employer vs employee conflict or dispute of any kind.
- However, this exclusion shall not apply to any **Claim** or **Derivative Demand** that specifically alleges that **Wrongful Employment Practices** have been committed, or to any **Claim** against the **Directors and Officers** or the **Corporation** for retaliatory treatment of any claimant as a result of such claimant's exercise of collective bargaining rights or rights under any collective agreement;
12. seeking injunctive, administrative or any other non-monetary remedy or relief.
- However, this exclusion shall not apply to the **Directors and Officers**;

13. for taxes, duties, levies, fees, charges or any other amount due by the **Corporation** to any level of government or governmental agency.
- However, this exclusion shall not apply to the **Directors and Officers**;
14. for salary, wages, pay in lieu of notice, termination or severance pay (including an enhancement to amounts paid as termination or severance pay or pay in lieu of notice on account of bad faith or inducement), "back pay", bonuses, benefits, stock options, expenses (including mitigation expenses), or any other type of employment related compensation or benefit.
- However, this exclusion shall not apply to the **Directors and Officers**;
15. for "front pay", future **Damages** or other future economic relief for failure to reinstate or rehire.
- However, this exclusion shall not apply to the **Directors and Officers**;
16. **Based Upon Pay Differential.**
- However, this exclusion shall not apply to the **Directors and Officers**;
17. **Based Upon Pay Equity**, including any violation of the responsibilities, obligations or duties imposed under Section 11 of the *Canadian Human Rights Act*, the *Employment Equity Act* or similar provisions of any other **Statute**. However, this exclusion shall not apply to any **Claim** for retaliatory treatment of any claimant as a result of such claimant's exercise of rights pursuant to such **Statute**;
18. **Based Upon:**
- (a) any decision made or not made by the **Corporation** to file for bankruptcy or to initiate a proceeding under the *Companies' Creditors Arrangement Act* or Chapter 11 of the *United States Bankruptcy Code*, or similar provisions of any other **Statute**;
- (b) any preferential payment made by the **Corporation** prior to the **Corporation's Insolvency**.
- However, this exclusion shall not apply to the **Directors and Officers**;
19. **Based Upon:**
- (a) the **Corporation's** payment of or failure to pay dividends or distributions of earnings;
- (b) the **Corporation's** granting of or failure to grant share options;
- (c) the **Corporation's** issuance or transfer of shares, or its failure to issue or transfer shares;
- (d) the **Corporation's** payment of allegedly inadequate or excessive consideration in connection with the **Corporation's** purchase of shares of the **Corporation**.
- However, this exclusion shall not apply to the **Directors and Officers**;
20. **Based Upon** any violation of the responsibilities, obligations or duties imposed by the *Competition Act* or similar provisions of any other **Statute** with respect to unfair trade practices, anti-trust or anti-competitive behavior (including, but not limited to, tortious interference in another's business or contractual affairs, price fixing and discrimination).
- However, this exclusion shall not apply to the **Directors and Officers**;
21. **Based Upon** a fault, error or omission in the conception, design, manufacturing, engineering, marketing, advertising, selling, distribution, use or consumption of, or any failure to provide accurate or complete information, instructions or warnings on, any product;
22. **Based Upon** professional misconduct of any kind, including without limitation any professional disciplinary complaint, charge, investigation or proceeding pursuant to **Statute**;

23. made or **Begun** against the **Insureds** by or on behalf of any **Director or Officer**.
- However, this exclusion shall not apply to:
- (a) any **Claim Based Upon Wrongful Employment Practices** brought by a former **Officer**;
  - (b) any **Claim** brought by a **Director or Officer** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;
  - (c) any **Claim** brought by a **Director or Officer** or a former **Director or Officer** based upon, arising from or attributable to such **Director or Officer** engaging in **Whistleblower Activity**;
  - (d) any **Claim** brought by a past **Director or Officer** who has not served as a duly elected or appointed **Director or Officer** of the **Corporation** for at least three (3) years prior to such **Claim** being first made;
24. made or **Begun** against the **Directors or Officers** by or on behalf of the **Corporation**, or any **Subsidiary** or **Affiliate** of the **Corporation**, or by any security holder of the **Corporation** or of any **Subsidiary** or **Affiliate**, whether directly or derivatively, except:
- (a) where such **Subsidiary** or **Affiliate** or security holder bringing such **Claim** or **Derivative Demand** is acting totally independently of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any of the **Insureds**, other than when the solicitation of, or assistance of, or participation of, or intervention of, any **Director or Officer** arises from the **Director or Officer** engaging in **Whistleblower Activity**;
  - (b) in the event of a bankruptcy proceeding by or against the **Corporation**, any **Claim** or **Derivative Demand** brought by the examiner, trustee, receiver, receiver manager, liquidator or rehabilitator (or any assignee thereof), if any, of the **Corporation**.

#### **B. BENEFIT OF DOUBT EXCLUSIONS**

1. If a **Claim** or **Derivative Demand** is made against a **Director or Officer** alleging that the **Director or Officer** committed a criminal or other intentionally dishonest act, the **Insurer** will defend and indemnify the **Director or Officer** or pay **Investigation Costs**, subject to the terms and conditions of this **Policy**, until such time as the **Director or Officer** shall admit the criminal or other intentionally dishonest act, or shall be held to have committed same by final judgment, including appeals therefrom. Once such admission or final judgment has occurred, however, the **Insurer** shall then have no further obligations to the **Director or Officer** in question in relation to the **Claim** or **Derivative Demand** under this **Policy**, whether for defence or the payment of **Loss** or **Investigation Costs** or otherwise.
2. If a **Claim** or **Derivative Demand** is made against a **Director or Officer** i) for the return of any remuneration paid to the **Director or Officer** without the prior lawful approval of the Board of Directors or any governing body or person whose approval is required by the by-laws of the **Corporation**, or ii) alleging that the **Director or Officer** gained any other profit or advantage to which such person was not legally entitled, the **Insurer** will defend and indemnify the **Director or Officer** or pay **Investigation Costs**, subject to the terms and conditions of this **Policy**, until such time as such remuneration, profit or advantage shall be admitted to have been unlawful or shall be held to have been unlawful by final judgment, including appeals therefrom. Once such admission or final judgment has occurred, however, the **Insurer** shall then have no further obligations to the **Director or Officer** in question in relation to the **Claim** or **Derivative Demand** under this **Policy**, whether for defence or the payment of **Loss** or **Investigation Costs** or otherwise.
3. If a **Claim** or **Derivative Demand** is made against a **Director or Officer** for an accounting of or the disgorgement of benefits or profits arising out of, or resulting from, the purchase or sale of securities of the **Corporation** or any **Affiliate** of the **Corporation** by any person or company, where the **Directors or Officers** or the **Corporation** possessed information, or informed any person or company, of a material fact or a material change that had not been generally available to a seller or purchaser of such securities, the **Insurer** will defend and indemnify the **Director or Officer** or pay **Investigation Costs**, subject to the terms and conditions of this **Policy**, until such time as such benefits or profits shall be admitted to have been unlawful or shall be held to have been unlawful by final judgment, including appeals therefrom. Once such admission or final judgment has occurred, however, the **Insurer** shall then have no further obligations to the **Director or Officer** in question in relation to the **Claim** or **Derivative Demand** under this **Policy**, whether for defence or the payment of **Loss** or **Investigation Costs** or otherwise.

### C. COVERAGE FOR DEFENCE ONLY

1. Notwithstanding the exclusions in **Section IV A** of this **Policy**, in the event of a **Claim**:
  - (a) for salary, wages, pay in lieu of notice, termination or severance pay (including an enhancement to amounts paid as termination or severance pay or pay in lieu of notice on account of bad faith or inducement), "back pay", bonuses, benefits, stock options, expenses (including mitigation expenses), or any other type of employment related compensation or benefit;
  - (b) for "front pay", future **Damages** or other future economic relief for failure to reinstate or rehire;
  - (c) **Based Upon Pay Differential**;
  - (d) made or **Begun** against the **Insureds** by or on behalf of any **Director or Officer**;
  - (e) made or **Begun** against the **Directors or Officers** by or on behalf of the **Corporation**, or any **Subsidiary** or **Affiliate** of the **Corporation**, or by any security holder of the **Corporation** or of any **Subsidiary** or **Affiliate**, whether directly or derivatively; or
  - (f) seeking injunctive, administrative or any other non-monetary remedy or relief,the **Insurer** shall have the right and duty to defend the **Insureds** against the **Claim**, and to pay the **Costs, Charges and Expenses** associated therewith, in accordance with the terms of this **Policy**;
2. Notwithstanding the exclusions in **Section IV A** of this **Policy**, in the event of a **Derivative Demand**:
  - (a) made against the **Insureds** by or on behalf of any **Director or Officer**;
  - (b) made against the **Directors or Officers** by or on behalf of the **Corporation**, or any **Subsidiary** or **Affiliate** of the **Corporation**, or by any security holder of the **Corporation** or of any **Subsidiary** or **Affiliate**, whether directly or derivatively; or
  - (c) seeking injunctive, administrative or any other non-monetary remedy or relief,the **Insurer** shall pay the **Investigation Costs** associated with the **Derivative Demand** in accordance with the terms of this **Policy**.

### SECTION V NUCLEAR INCIDENT EXCLUSION CLAUSE

1. This **Policy** does not apply to bodily injury, sickness, disease, handicap, impairment or death or to damage to or destruction of property, whether tangible or intangible:
  - (a) with respect to which an **Insured** under this **Policy** is also insured under a contract of nuclear energy liability insurance (whether the **Insured** is named in such contract or not and whether or not it is legally enforceable by the **Insured**) issued by the Nuclear Insurance Association of Canada or any other 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**; or
  - (b) 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**; or
    - iii) the transportation, consumption, possession, handling, disposal or use of **radioactive material** (other than radioisotopes away from a **nuclear facility**) sold, handled, used or distributed by an **Insured**.
2. As used in this Exclusion, the following conditions apply:
  - (a) The term "**nuclear energy hazard**" means the radioactive, toxic, explosive or other hazardous properties of radioactive material;

- (b) The term "**radioactive material**" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- (c) The term "**nuclear facility**" means:
  - i) 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;
  - ii) 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 utilizing spent fuel, or (iii) handling, processing or packaging waste;
  - iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium and uranium 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;
  - iv) 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.
- (d) In this **SECTION V**, with respect to property, loss of use of such property shall be deemed to be damage to or destruction of property.

## **SECTION VI LIMITS OF LIABILITY**

1. The **Insurer** shall be liable to pay all **Loss** and **Investigation Costs** in excess of the retention amounts set forth in **Item 5.** of the **DECLARATIONS** up to the **LIMITS OF LIABILITY** stated in **SECTION VI 2** below. One retention amount shall apply (i) to each and every **Loss**, and (ii) to each and every **Derivative Demand**.
2. The **LIMITS OF LIABILITY** shall be the amounts set forth in **Item 3.** of the **DECLARATIONS**, and the amount shown in **Item 3.(d)** of the **DECLARATIONS** shall be the **Insurer's** maximum aggregate liability for **Loss** and **Investigation Costs** arising from all **Claims** and **Derivative Demands** made or **Begun** during the **Policy Period**, regardless of the number of **Insureds** involved, subject however to subsection 3 of **SECTION VI** below.
3. In the event that:
  - (a) the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** is exhausted by the payment of **Loss** and/or **Investigation Costs**; and
  - (b) a **Claim** made or **Begun** against the **Directors and Officers** during the **Policy Period** which is covered under **Insuring Agreement A** of **SECTION I** remains outstanding (the "**Outstanding Claim**"); and
  - (c) the **Directors and Officers** are not covered for **Loss** arising from the **Outstanding Claim** under any other insurance policy, whether primary or excess, or are covered but the limits under the policy in question have been exhausted by the payment of **Loss**,

the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS** shall apply, but only to **Loss** arising from the **Outstanding Claim**. The **Insurer's** maximum aggregate liability for **Loss** arising from all **Claims** made or **Begun** during the **Policy Period** shall then be the sum of the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS**. However, the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS** shall not apply to **Loss** arising from **Claims** which are covered under **Insuring Agreements B, C or D**.

In the event that more than one of the **Directors and Officers** is included in the same **Outstanding Claim** and the **ADDITIONAL LIMIT OF LIABILITY** is insufficient to pay all **Loss** arising from the **Claim**, the **ADDITIONAL LIMIT OF LIABILITY** shall be prorated among the **Directors and Officers** in proportion to their respective **Losses** unless otherwise mutually agreed upon by such **Directors and Officers** and the **Insurer**, or unless a court of competent jurisdiction shall decide otherwise.

4. All **Loss** arising from **Claims Based Upon** the same **Wrongful Act(s)**, or **Interrelated Wrongful Acts**, committed by one or more **Insureds**, shall be considered a single **Loss** and the **Insurer's** maximum aggregate liability for such **Loss** shall be limited to the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS**, or the sum of the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS** if available under subsection 3 of **SECTION VI**.
5. All **Investigation Costs** arising from **Derivative Demands Based Upon** the same **Wrongful Act(s)**, or wrongdoing or **Interrelated Wrongful Acts** shall be subject to a single **LIMIT OF LIABILITY** stated in **Item 3.(b)** of the **DECLARATIONS**, which shall be the **Insurer's** maximum aggregate liability for such **Investigation Costs**.
6. Where **Loss** arising from a **Claim** covered under this **Policy** or **Investigation Costs** arising from a **Derivative Demand**, are due and payable in accordance with the terms of this **Policy**, except for **Loss** payable from the **ADDITIONAL LIMIT OF LIABILITY** under subsection 3 of **SECTION VI**, it shall be paid in the following order, unless a court of competent jurisdiction shall decide otherwise:
  - (a) first, and to the extent that the **LIMIT OF LIABILITY** permits, to the **Directors and Officers** where such **Loss**, or portion thereof, is payable under **Insuring Agreement A**. However, in the event that more than one of the **Directors and Officers** is included in the same **Claim** and the **LIMIT OF LIABILITY** is insufficient to pay all **Loss** arising from the **Claim**, the **LIMIT OF LIABILITY** shall be prorated among the **Directors and Officers** in proportion to their respective **Losses** unless otherwise mutually agreed upon by such **Directors and Officers** and the **Insurer**;
  - (b) second, to the extent that all **Loss** due and payable under (a) above has been paid and the **LIMITS OF LIABILITY** permit, to the **Corporation** in respect of the **Loss**, or portion thereof, payable under **Insuring Agreement B**;
  - (c) third, to the extent that all **Loss** due and payable under (a) or (b) above has been paid and the **LIMITS OF LIABILITY** permit, to the **Corporation**, in respect of **Loss** payable under **Insuring Agreement C**;
  - (d) fourth, to the extent that all **Loss** due and payable under (a), (b) or (c) above has been paid and the **LIMITS OF LIABILITY** permit, to the **Corporation** and/or the **Directors and Officers**, in respect of **Investigation Costs** incurred by them which are payable under **Insuring Agreement D**.

However nothing in this subsection 6 of **SECTION VI** shall create or impose any fiduciary or other obligation on the **Insurer** to withhold or retain amounts which are otherwise due and payable in accordance with the terms of this **Policy**, and the **Insurer** shall be entitled to pay any such amounts, when they are due and payable, to the **Insureds** upon demand, or to any third party who has a lawful right to receive payment thereof, without enquiring into the sufficiency of the remaining **LIMITS OF LIABILITY** to pay all outstanding **Loss** and/or **Investigation Costs**.
7. In the event that **Loss** arises from a **Claim** which is covered in part under more than one of the **Insuring Agreements**, the **Retention** stated in **Item 5.** of the **DECLARATIONS** shall be applied separately to the **Loss** arising from that part of the **Claim** covered by each **Insuring Agreement**, and the sum of the **Retentions** so applied shall constitute the **Retention** for each single **Loss**. However, the total **Retentions** as finally determined shall in no event exceed the greater of the maximum **Retention** applicable under **Insuring Agreements B, C or D**.

## **SECTION VII DEFENCE AND SETTLEMENT**

1. The **Insurer** shall have the right and the duty to defend, with respect to such insurance as is afforded by this **Policy**, any **Claim** against any of the **Insureds**:
  - (a) seeking **Loss** payable under the terms of this **Policy**,
  - (b) contemplated by subsection **C** of **SECTION IV**; or
  - (c) contemplated by **Section II 8 (c), (d), (f), (g) or (h)**

and shall have the right to make such investigation of any **Claim** as it deems expedient.



2. The **Insurer** shall not settle any **Claim** without the written consent of the **Insureds** who are the subject of the **Claim**. If the **Insureds** shall refuse to provide such consent, the liability of the **Insurer** shall be limited to the lesser of:
  - (a) the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS**, or the sum of the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS** if available under subsection 3 of **SECTION VI**; or
  - (b) the sum of (i) the amount of **Loss** which the **Insurer** would have paid had the **Insureds** consented to the settlement (the "**Capped Loss**") and (ii) 50% of all **Loss** in fact incurred in excess of the **Capped Loss**. The remaining 50% of all **Loss** in fact incurred in excess of the **Capped Loss** will be uninsured and will be paid by the **Insureds** at their own expense.
3. The right and duty of the **Insurer** to defend any **Claim** or **Claims** made during the **Policy Period** and all the **Insurer's** obligations with respect to **Costs, Charges and Expenses** and **Investigation Costs** under this **Policy** shall terminate at the earlier of:
  - (a) the date on which the **Insurer** tenders to the **Insureds** the remainder of the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** or the remainder of the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS** if available under subsection 3 of **SECTION VI**, in respect of any **Loss** and/or **Investigation Costs** or aggregation of **Losses** and/or **Investigation Costs** payable under the **Policy** arising from **Claims** and/or **Derivative Demands** for which notice has been given in the same **Policy Period**, or
  - (b) the date on which the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS**, or the **LIMIT OF LIABILITY** stated in **Item 3.(d)** of the **DECLARATIONS** and the **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4.** of the **DECLARATIONS**, if available under subsection 3 of **SECTION VI**, is exhausted by the payment of any **Loss** and/or **Investigation Costs** or aggregation of **Losses** and/or **Investigation Costs** payable under the **Policy** arising from **Claims** and/or **Derivative Demands** for which notice has been given in the same **Policy Period**.
4. No **Costs, Charges and Expenses** or **Investigation Costs** shall be incurred, or settlements of **Claims** shall be made, without the **Insurer's** consent, such consent not to be unreasonably withheld. However, in the event of such consent being given, the **Insurer** will pay, subject to the provisions of **SECTION VI** and of this **Policy** generally, such **Costs, Charges and Expenses** or **Investigation Costs** and **Loss** resulting from settlements of **Claims**.
5. (a) For the purposes of this subsection 5 of **SECTION VII**:
  - i) the term "**involving**" refers only to **Claims** which are **Inquiries**;
  - ii) the term "**covered**" means "held covered subject to the terms and conditions of the **Policy**", and the fact that the amounts claimed may fall in whole or in part within a **Retention** or may exceed the available limits is not relevant to whether the **Claim** or **Derivative Demand** is "**covered**".
- (b) In relation to any **Claim** or **Derivative Demand** against or **involving** the **Insureds** and any other party or parties who are not **Insureds** under this **Policy**, the **Costs, Charges and Expenses** or **Investigation Costs** for which the **Insurer** is responsible shall be limited to those incurred on behalf of and for the principal benefit of the **Insureds** as distinguished from any such other party or parties who are not **Insureds**, who shall bear responsibility for their fair share of the **Costs, Charges and Expenses** or **Investigation Costs**. In such circumstances the **Insurer** and the **Insureds** and the party or parties who are not **Insureds** will endeavour in good faith to establish, at the earliest opportunity,
  - i) a proportional basis for the fair allocation of the **Costs, Charges and Expenses** that reflects the actual exposure of each of the parties, and
  - ii) agreement as to the retention of counsel and the carriage and conduct of the defence.
- (c) In relation to any **Claim** or **Derivative Demand** against or **involving** the **Insureds** with respect to which one or more **Insureds** are entitled to coverage under this **Policy** but other **Insureds** are not, the **Costs, Charges and Expenses** or **Investigation Costs** for which the **Insurer** is responsible shall be limited to 100% of all **Costs, Charges and Expenses** or **Investigation Costs** incurred by the **Insureds** in respect of the **Claim** or **Derivative Demand**, and the balance of 0% shall be paid by the **Insureds** who are not entitled to coverage.

However, if the **Directors and Officers** are covered under **Insuring Agreement A** with respect to the **Claim** or **Derivative Demand** described in the foregoing subparagraph (c), the **Insurer** will pay the share of **Costs, Charges and Expenses** or **Investigation Costs** attributable to the **Corporation**.

- (d) In relation to any **Claim** or **Derivative Demand**:
- i) against or involving the **Corporation** with respect to which the **Corporation** is entitled only to partial coverage under this **Policy**, the **Costs, Charges and Expenses** or **Investigation Costs** for which the **Insurer** is responsible shall be limited to 100% of all **Costs, Charges and Expenses** or **Investigation Costs** incurred by the **Corporation** in respect of the **Claim** or **Derivative Demand**, and the balance of 0% shall be paid by the **Corporation**;
  - ii) against or involving the **Directors and Officers** with respect to which the **Directors and Officers** are entitled only to partial coverage under this **Policy**, the **Costs, Charges and Expenses** or **Investigation Costs** for which the **Insurer** is responsible shall be limited to 100% of all **Costs, Charges and Expenses** or **Investigation Costs** incurred by the **Directors and Officers** or by the **Corporation** on their behalf in respect of the **Claim** or **Derivative Demand**, and the balance of 0% shall be paid by the **Directors and Officers**.

However, if the **Directors and Officers** are covered under **Insuring Agreement A** with respect to the **Claim** or **Derivative Demand** described in the foregoing subparagraph (d), the **Insurer** will pay 100% of **Costs, Charges and Expenses** or **Investigation Costs** attributable to the **Directors and Officers**.

- (e) In the event that the **Insurer** and the **Insureds** are unable to agree on the allocation of **Costs, Charges and Expenses** or **Investigation Costs** or the retention of counsel or the carriage and conduct of the **Insureds**' defence against a **Claim** described in this subsection 5 of **SECTION VII**, then any of them may, by written notice, require that the disputed issue be settled by binding **Arbitration** before a single arbitrator. The **Arbitration** shall occur as soon as possible, according to the rules agreed on by the parties. Failing agreement on the arbitrator, the rules of **Arbitration** or the schedule of hearing dates, the **Arbitration** shall proceed as determined by a competent court.

## **SECTION VIII NOTICE OF CLAIM, CIRCUMSTANCE OR DERIVATIVE DEMAND**

1. If, during the **Policy Period**, any past, present, or future President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel, Risk Manager, Director or Vice President - Legal Affairs of the **Corporation** or anyone holding an equivalent position with the **Corporation**, shall become aware of a **Claim** or **Derivative Demand** for which coverage would be afforded by this **Policy**, the **Insured** shall, as a condition precedent to any and all obligations of the **Insurer** under this **Policy**, give written notice thereof to the **Insurer** as soon as practicable and in no event later than sixty (60) days after the expiration of the **Policy Period**, or the **Discovery Period** if the **DISCOVERY CLAUSE** is engaged, within which the **Claim** or **Derivative Demand** was first made or **Begun**.

If the **Insureds** shall fail to give timely notice of a **Claim** or **Derivative Demand** to the **Insurer** and the **Insurer** suffers prejudice therefrom, the **Insureds** shall forfeit their entitlement to any coverage or benefit in respect of the **Claim** or **Derivative Demand** under this **Policy**.

2. If, during the **Policy Period**, any past, present, or future President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel, Risk Manager, Director or Vice President - Legal Affairs or anyone holding an equivalent position with the **Corporation**, shall become aware of any facts or circumstances which may reasonably be expected to give rise to a specific **Claim** or **Derivative Demand** for which coverage would be afforded by this **Policy** and written notice of such facts or circumstances is given as soon as practicable to the **Insurer** during the **Policy Period**, then all **Claim(s)** or **Derivative Demand(s)** subsequently arising from such facts or circumstances shall be deemed to have been made or **Begun** during the **Policy Period** in which the facts or circumstances were reported.
3. If the **Insureds** give notice to the **Insurer** of a **Claim** or **Derivative Demand** under **SECTION VIII 1**, then any subsequent **Claim** or **Derivative Demand Based Upon** essentially the same facts, **Wrongful Acts** or **Interrelated Wrongful Acts** shall be aggregated with and deemed to be the same as the **Claim** or **Derivative Demand** which was first reported, as the case may be.
4. All such aggregated **Claims** or **Derivative Demands** shall attach to the **Policy Period** during which the first **Claim** or **Derivative Demand** was reported and shall be subject to the same **LIMITS OF LIABILITY** stated in **Item 3**, of the **DECLARATIONS**, or the sum of the same **LIMIT OF LIABILITY** stated in **Item 3**, of the **DECLARATIONS** and the same **ADDITIONAL LIMIT OF LIABILITY** stated in **Item 4**, of the **DECLARATIONS** if available under subsection 3 of **SECTION VI**.

5. The **Insureds** shall, as a condition precedent to any and all obligations of the **Insurer** under this **Policy**, give to the **Insurer** such information, financial guarantees, and cooperation as it may reasonably require, including but not limited to a description of the **Claim** or **Derivative Demand**, or the facts or circumstances, the nature of the specific **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants or complainants, and the manner in which the **Insureds** first became aware of the **Claim, Derivative Demand** or facts or circumstances.
6. Notice hereunder shall be given to **The Guarantee Company of North America**, at the address of the **INSURER ISSUING OFFICE** as set forth in **Item 9.** of the **DECLARATIONS**.
7. After notice is given as provided in subsections 1 and 2 above, the **Insureds** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and all other documents reasonably connected with the **Claim** or **Derivative Demand** in question. At any time after notice is given, the **Insurer** shall have the right to examine under oath any **Insured** or **Employee** of the **Corporation** for the purpose of investigating the coverage available.

## SECTION IX GENERAL CONDITIONS

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

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

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

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

2. **SEVERABILITY:**

- (a) For the purposes of applying the **EXCLUSIONS** under this **Policy**, this **Policy** shall be construed as a separate agreement with each **Insured**.
- (b) For the purpose of determining the applicability of the **EXCLUSIONS** to the **Directors and Officers**, or any of them, the **Wrongful Act** or wrongful intent of any one of the **Directors and Officers** shall not be imputed to any other **Director or Officer** unless such other **Director or Officer**:
  - i) was aware of such **Wrongful Act** or wrongful intent at the time of or during its perpetration, and
  - ii) failed at the time of or during its perpetration to take reasonable steps to prevent it or to bring it to an end, whether successful or not.
- (c) For the purpose of determining the applicability of the **EXCLUSIONS** to the **Corporation**, the **Wrongful Act** or wrongful intent of any one or more of the President, Chief Financial Officer, Chief Executive Officer, Chief Operating Officer, Chairman of the Board or Chairman of the Audit Committee of the **Corporation**, whether acting jointly or severally, shall be imputed to the **Corporation**.

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

3. **CANCELLATION OR NON-RENEWAL:** This **Policy** may be cancelled by the **Corporation** at any time by mailing written notice to the **Insurer** or by the surrender of this **Policy** to the **Insurer**.

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

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

If the **Insurer** elects not to renew this **Policy**, the **Insurer** shall provide written notice to the **Corporation's** insurance broker and the **Policy Period** will be extended, if necessary, to ensure that the **Policy** expiry date is at least sixty (60) days subsequent to the date of such notice of non-renewal. If an extension of the **Policy Period** is required, the additional premium shall be computed on a pro-rata basis. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

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

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

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

5. **ACQUISITION, MERGER or CONSOLIDATION:** In the event that fifty (50) percent or more of the voting shares of the **Corporation** named in **Item 1.** of the **DECLARATIONS** are acquired by any person, entity or group of affiliated persons or entities other than whoever was holding said shares at the effective date stated in **Item 2.** of the **DECLARATIONS**, or in the event that the **Corporation** merges or amalgamates with or into another entity, written notice thereof shall be given to the **Insurer** as soon as practicable, and in no event later than ninety (90) days thereafter, together with such information as the **Insurer** may request. Effective the date of such acquisition, merger or consolidation:
- (a) the entire **Premium** charged for this **Policy** will be deemed to be fully earned and no refund will be forthcoming; and
  - (b) this **Policy** shall only apply to **Wrongful Acts** committed on or before the effective date of such acquisition, merger or consolidation and to any **Claim** or **Claims** made prior to the expiration of the **Policy Period** unless the **Insurer**, at its option, agrees to insure the surviving entity.

If the **Insurer** elects to not insure the surviving entity, the **Corporation** or the surviving entity shall have the right to exercise the **DISCOVERY CLAUSE**. Should the **DISCOVERY CLAUSE** be exercised by the **Corporation** or the surviving entity, the extension of coverage shall be limited to **Directors and Officers** and the **Corporation** as it existed prior to such acquisition, merger or consolidation.

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

The **Insurer** shall not exercise its rights of subrogation against a **Director or Officer** unless and to the extent that any of the **Exclusions** in subsection **B, Benefit of Doubt Exclusions of Section IV, EXCLUSIONS** of this **Policy** applies to such **Director or Officer**.

7. **CURRENCY: Loss** shall be paid in the legal currency of Canada. In the event that judgment is rendered or a settlement is denominated in a currency other than Canadian dollars, payment under this **Policy** shall be made in Canadian dollars at the rate of exchange published in The Globe and Mail on the date the final judgement becomes enforceable or the amount of settlement is agreed upon, respectively.
8. **PRESUMPTIVE INDEMNIFICATION:** For purposes of the coverage afforded by this **Policy** to the **Directors and Officers** and **Employees**, the **Corporation** shall be conclusively deemed to have indemnified its **Directors and Officers** and **Employees** for any **Claim** or **Loss** for which it is permitted or required by law to indemnify them, unless the **Corporation** is in **Insolvency**.

If for any reason, other than **Insolvency**, the **Corporation** refuses to indemnify its **Directors and Officers** and **Employees** for any **Claim** or **Loss** for which it is permitted or required by law to indemnify them, the **Insurer** will pay the **Claim** or **Loss** on behalf of the **Directors and Officers**. In such instances, the **Insurer** shall have the contractual right hereunder to recover from the **Corporation** the amount of such **Loss** or **Claim** equal to the retention amounts set forth in **Item 5**, of the **DECLARATIONS** not satisfied by the **Corporation** and the **Insurer** shall be subrogated to the rights of the **Directors and Officers** insured hereunder. The **Insurer** shall have the right to recover from the **Corporation** any amounts the **Insurer** pays that are the result of any unsatisfied **Retention** arising from the failure of the **Corporation** to indemnify any **Director or Officer**, other than in the situation of **Insolvency**, for any **Claim** or **Loss** incurred by such **Director or Officer**.

9. **TERRITORIAL LIMITS:** This **Policy** shall apply to **Claims** made against any **Insured** anywhere in the world.

## **SECTION X CORPORATION AS AGENT**

By acceptance of this **Policy**, the **Insureds** agree that the **Corporation** shall act on behalf of all **Directors and Officers**:

1. in preparing, signing and submitting the **Application** and **Application Information** to the **Insurer**;
2. in paying premiums due to the **Insurer**;
3. in agreeing on allocation, the retention of counsel or the carriage and conduct of the defence, as the case may be, under subsection 5 of **SECTION VII**;
4. in providing cooperation under subsection 5 of **SECTION VII**;
5. in giving notice of any **Claim** or **Derivative Demand** under subsection 1 of **SECTION VIII** or facts or circumstances under subsection 2 of **SECTION VIII**;
6. in cancelling the **Policy** or receiving notice of cancellation under subsection 3 of **SECTION IX**;
7. in receiving any return premiums that may be due under the **Policy**.

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