

## MISCELLANEOUS MEDICAL PROFESSIONAL LIABILITY CLAIMS MADE INSURANCE

### THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

**NOTICE:** This is a Claims Made 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** during the **Policy Period**. **Damages** and **Claims Expenses** shall be applied against the Deductible. Certain words and phrases which appear in bold type have special meaning; please refer to Clause VII. 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**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** for **Bodily Injury** first made against any **Insured** 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 behalf of the **Named Insured**.

##### B. Errors and Omissions Liability

The Underwriters will pay on behalf of the **Insured**, **Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** for **Financial Injury** first made against any **Insured** 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 behalf of the **Named Insured**.

#### II. DEFENCE AND SETTLEMENT

- A. 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 defence counsel in conjunction with the **Insured**, but in the event of a dispute, the decision of the Underwriters is final.

- B. 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**. **Damages** and **Claims Expenses** shall be applied against the Deductible set forth in Item 4. of the Declarations.
- C. 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.
- D. 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, less the remaining Deductible, 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 defence of the **Claim** by tendering control of said defence to the **Insured**.
- E. The Underwriters shall pay all premiums on bonds to release attachments, and all premiums on appeal bonds required in any such defended suit (but without any obligation to apply for or furnish such bonds) and all costs taxed against the **Insured** in any suit, subject to the Limit of Liability.
- F. 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.
- G. The Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defence 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 defence of the **Claim** by tendering control of said defence to the **Insured**.

### III. SUPPLEMENTARY PAYMENTS

All payments made under this Clause are not subject to the Each **Claim** Deductible and are payable by the Underwriters in addition to the Limits of Liability.

#### A. Pre-Claims Assistance

If the **Insured** reports a circumstance during the **Policy Period** in accordance with XIV.B., until such time a **Claim** is made, any costs or expenses the Underwriters incurs as a result of investigating or monitoring such circumstance will be paid for by the Underwriters.

B. Defendants Reimbursement

Upon the Underwriters' request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defence of a **Claim**. After the first three (3) days' attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$500 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$20,000 for each **Claim**.

C. Regulatory/Administrative Actions Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$25,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency under the Canadian Human Rights Act, the Ontario Human Rights Code, the Ontario Occupational Health and Safety Act, or under any similar federal, provincial or state law or regulation, provided that the regulatory or administrative action:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$25,000 under this Clause III.C., the Underwriters shall not be obligated to pay any further legal fees and expenses.

D. Disciplinary Proceedings Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$15,000 in the aggregate for the **Policy Period** incurred by the **Insured** with the prior written consent of the Underwriters in responding to a **Disciplinary Proceeding** brought directly against the **Insured** during the **Policy Period**, provided that the **Disciplinary Proceeding**:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$15,000 under this Clause III.D., the Underwriters shall not be obligated to pay any further legal fees and expenses.

E. Coroner's Inquest Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, all reasonable expenses, except salaries up to \$15,000 in the aggregate for the **Policy Period** incurred by the **Insured** with prior written consent of the Underwriters, by reason of his/her having been compelled to appear before a coroner's inquest, provided the **Insured** notifies the Underwriters during the **Policy Period** that he/she is compelled to appear before the coroner's inquest.

F. Reputational Management Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, up to fifty percent (50%) of the first \$30,000 in **Reputational Management Expenses** incurred by the **Insured** for reputational management consulting services which are incurred by the **Insured** with the prior written consent of the Underwriters, in connection with a **Claim**, circumstance or incident covered under this Policy that the **Insured** reasonably believes will have a material adverse effect upon the **Insured's** reputation.

#### IV. PERSONS INSURED

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

- A. the **Named Insured** identified in Item 1. of the Declarations, and the spouse of the **Named Insured** with respect to the rendering or failing to render **Professional Services**;
- B. any present or former partner, officer, director or employee of the **Named Insured** solely while acting on behalf of the **Named Insured** while providing **Professional Services** as specified in the Policy;
- C. an **Employee**, temporary employee, independent contractor and/or medical director, of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the provision of **Professional Services**;
- D. the estate, heirs, executors, administrators, assigns, or legal representatives of any **Insured** in the event of such **Insured(s)** death, incapacity, insolvency, or bankruptcy but only to the extent that such **Insured** would otherwise be provided coverage under this Policy;
- E. any student, and/or volunteer, but only for work done under the direct supervision of the **Named Insured** and related to the rendering or failing to render **Professional Services** by the **Named Insured**;
- F. a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**; and

- G. any person who previously qualified as an **Insured** under B., C., E. or F. above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**.

## V. TERRITORY

This insurance applies to negligent acts, errors, or omissions which take place anywhere in the world and for any **Claim** or suit brought against the **Insured** anywhere in the world.

## VI. 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** in a civil proceeding, 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 professional services rendered or failed to be rendered (including but not limited to legal, architectural, engineering, accounting, financial or investment services) which are not included within the definition of **Professional Services**;
- F. 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, save as where cover is provided for a **Claim** or **Claims** for **Bodily Injury** under Insuring Clause A;
- G. 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 patent, trademark, trade secret, trade dress and copyright;

- H. 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**;
- I. to any **Claim** arising out of any violation of any provision of, in Canada, the Pension Benefits Standards Act, 1985 (R.S.C., 1985, c. 32 (2nd Supp.)), the Ontario Pension Benefits Act, R.S.O. 1990, c. P.8, the Pension Benefits Standards Act, S.B.C. 2012, c. 30, the Supplemental Pension Plans Act, C.Q.L.R. c. R-15.1, 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 any applicable similar federal, provincial or local legislation;
- J. 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;
- K. 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;
- L. 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 6. of the Declarations;
- M. 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 or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics and disability and conviction for an offence for which pardon has been granted or in respect of which a record suspension has been ordered, the Canadian Human Rights Act, R.S.C. 1985, c. H-6, the Ontario Human Rights Code, R.S.O. 1990, c. H.19, the Human Rights Code of British Columbia, R.S.B.C. 1996, c. 210, the Quebec Charter of Human Rights and Freedoms, C.Q.L.R. c. C-12, or similar legislation in any other province;
- N. 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**;
  - 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**;
- O. 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;
- P. 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;

However, notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** in a civil proceeding, but shall not apply to any **Damages** which the **Insured** might become legally obligated to pay;

- Q. 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 Insurance, Disability Benefits Law or under any similar law;
- R. to any **Claim** based upon or arising out of 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, the Securities Act, C.Q.L.R. c. V-1.1., the Securities Act, R.S.B.C. 1996, c. 418, in the United States, the Securities Act of 1933, or the Securities Exchange Act of 1934 as amended, or 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;
- S. to any **Claim** for any actual or alleged violation of the Criminal Code of Canada (Section 467.1 to 467.14), 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;

- T. to any **Claim** arising from costs of complying with physical modifications to any premises or any changes to the **Insured's** usual business operations mandated by the Americans with Disabilities Act of 1990 or any similar federal, provincial or local legislation, or in Canada, the Canadian Human Rights Act, R.S.C. 1985, c. H-6, the Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11, the Ontario Human Rights Code, R.S.O. 1990, c. H.19, the Human Rights Code of British Columbia, R.S.B.C. 1996, c. 210, the Quebec Charter of Human Rights and Freedoms, C.Q.L.R. c. C-12 or pursuant to any duty to accommodate physical restrictions under any federal or provincial Human Rights Act or Code;
- U. to any **Claim** based upon or arising out of any actual or alleged violation of any anti-trust, restraint of trade, unfair competition, or price fixing law, unfair or deceptive trade practices, or consumer protection rules or regulations promulgated thereunder; to the extent a **Claim** alleges both professional negligence and any of the above excluded enumerated offences, the Underwriters and the **Insured** will use their best efforts to reach a fair allocation between covered and uncovered **Damages**;
- V. 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);
  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);
  4. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungus(es), molds, spore(s) or mycotoxins of any kind;
  5. any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungus(es), molds, spore(s) or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungus(es), molds, spore(s) or mycotoxins; or
  6. any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungus(es), molds, spore(s) or mycotoxins of any kind;

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(s)" 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 or to any **Damages** and **Claims Expenses** which the **Insured** shall become legally obligated to pay in rendering or failing to render **Professional Services** as stated in Item 8. of the Declarations;

- W. to any **Claim** based upon or arising out of any action or proceeding brought by or on behalf of any federal, state or local governments, regulatory or administrative agency, regardless of the name in which such action or proceeding is brought;
- X. to any **Claim** based upon or arising out of any actual or alleged violation of the Personal Information Protection & Electronic Documents Act, the Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, the Personal Information Protection Act, S.B.C. 2003, c. 63, E-Health (Personal Health Information Access and Protection) Act, S.B.C. 2008, c. 38, the British Columbia Medicare Protection Act, R.S.B.C. 1996, c. 286, Act respecting the Sharing of Certain Health Information, C.Q.L.R. c. P-9.001, Act respecting the Protection of Personal Information in the Private Sector, C.Q.L.R. c. P-39.1, Act respecting Access to Documents Held by Public Bodies and the Protection of Personal Information, C.Q.L.R. c. A-2.1, the Health Insurance Act, R.S.O. 1990, c. H.6., sections 43 and 44 of the Health Insurance Act, the Health Insurance Portability and Accountability Act of 1996, the Social Security Act, 42 U.S.C. §1320a, et. Seq. or any similar federal, provincial or local legislation;
- Y. to any **Claim** 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;

- Z. to any **Claim** for **Personal Injury, Property Damage** or **Advertising Liability** based upon or arising out of the **Named Insured's Products**;
- AA. to any **Claim** based on the wilful non-compliance of any **Insured** with any Health Canada regulations found at Food and Drugs Act, R.S.C., 1985, c. F-27, the Canadian Food Safety Inspection Authority (CFIA) or 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 similar federal, provincial or local legislation, or treating a patient with any drugs, medical devices, biologics or radiation-emitting products that have been disapproved or not yet approved by Health Canada, CFIA or the FDA or similar federal, provincial or local legislation;
- BB. 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;
- CC. 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;
- DD. to any **Claim** against any subsidiary 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;
- EE. to any **Claim** relating to or arising out of asbestos, silica or lead;
- FF. 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;
- GG. to any **Claim** for **Personal Injury, Property Damage** or **Advertising Liability** 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. This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above;
- HH. 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;

- II. to any **Claim** brought against any **Insured** by any other **Insured** hereunder;
- JJ. to any **Claim** arising out of or resulting from the distribution of unsolicited email, text messages, direct mail or facsimiles, or telemarketing;
- KK. to any **Claim** arising out of or resulting from any action or omission that violates or is alleged to violate:
  - 1. Canada's Anti-Spam Legislation (CASL);
  - 2. the Canadian Radio-television and Telecommunications Commission's (CRTC) Unsolicited Telecommunications Rules;
  - 3. the Telephone Consumer Protection Act (TCPA);
  - 4. the CAN-SPAM Act of 2003;
  - 5. the Fair Credit Reporting Act;
  - 6. Act respecting the regulation of the financial sector, C.Q.L.R. c. E-6.1.;
  - 7. the Consumer Reporting Act, R.S.O. 1990, c. C.33;
  - 8. the Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2.; or
  - 9. any statute, ordinance or regulation, other than CASL, TCPA, CAN-SPAM Act of 2003 or the Fair Credit Reporting Act, that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- LL. 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**;

- MM. to any **Claim** caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **Bodily Injury**;
- NN. to any **Claim** arising out of an electronic chatroom or bulletin board the **Insured** hosts, owns or over which the **Insured** exercises control;
- OO. to any **Claim** arising out of any loss made against any surgeon, physician or doctor alleging error, negligence or mistake committed in the course of their duties as licensed or qualified medical practitioners;
- PP. to any **Claim** arising out of:
1. the Nuclear Liability and Compensation Act, S.C. 2015, c. 4., law or statute, or any law amendatory thereof;
  2. **Bodily Injury** 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 such policy but for its termination upon exhaustion of its Limit of Liability;
  3. **Bodily Injury** resulting directly or indirectly from the **Nuclear Energy Hazard** arising from:
    - (a) the ownership, maintenance, operation or use of a **Nuclear Facility** by or on behalf of an **Insured**;
    - (b) 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**;
    - (c) 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 useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an **Insured**.

As used in this Policy:

4. the term **Nuclear Energy Hazard** means the radioactive, toxic, explosive, or other hazardous properties of **Radioactive Material**;
5. the term **Radioactive Material** means uranium, thorium, plutonium, 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;

6. 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 (1) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (2) processing or utilizing spent fuel, or (3) 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 custody or 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.

7. 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.

Provided, however, that this exclusion shall not apply to nuclear medicine or radiation therapy;

QQ. to any **Claim** caused by or contributed to by, or arising from:

- 1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- 2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- 3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;

4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
  5. any chemical, biological, bio-chemical, or electromagnetic weapon;
- RR. to any **Claim** based upon or arising out of any actual or alleged or threatened security breach of, unauthorized access to or unauthorized use of:
1. the **Named Insured's Product**;
  2. any property containing or incorporating the **Named Insured's Products**;
  3. any property on which the **Named Insured's** operations is or was performed;
  4. any software, data or other information in electronic form; or
  5. any equipment, parts, programs or systems involving the use of computers, the Internet, or any networks or websites, or which are designed or used for the communication or information;

by any person or organization (including any **Insured**), regardless of whether this Policy would otherwise apply to all or part of any such actual or alleged injury in the absence of any such actual, alleged or threatened breach, access or use;

- SS. to any **Claim** arising out of or resulting from the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data;

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment;

- TT. to any **Claim** arising out of or resulting from the unauthorized use of another's name or product in the **Insured's** e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

## VII. DEFINITIONS

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

- A. **"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.

- B. **"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.

**"Bodily Injury"** shall also include injury arising out of one or more of the following committed in the course of the rendering or failure to render **Professional Services**:

1. libel;
2. slander;
3. defamation of character; or
4. invasion of right of privacy.

- C. **"Claim"** means a demand received by the **Insured** for **Damages** which alleges a negligent act, error or omission of the **Insured** in rendering or failing to render **Professional Services**.

**Claim** shall include a civil action or suit or institution of arbitration proceedings against an **Insured**.

- D. **"Claims Expenses"** means:

1. reasonable and customary fees charged by a lawyer(s) designated and agreed by the Underwriters; and
2. all other fees, costs and expenses resulting from the investigation, adjustment, defence 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 defence and investigation of any **Claim** or circumstance which might lead to a **Claim** notified under this insurance.

- E. **"Damages"** means a civil monetary judgment (including any pre and post-judgment interest), award or settlement and does not include:

1. the restitution of compensation and expenses paid to the **Insured** for services and goods;
  2. punitive, exemplary or multiplied damages, unless insurable by law under which this Policy is construed;
  3. fines, sanctions, taxes or penalties;
  4. return of or reimbursement for fees, costs or expenses charged by any **Insured**; and
  5. judgments or awards deemed uninsurable by law.
- F. **"Disciplinary Proceeding"** means any proceeding by a regulatory or disciplinary official, board or entity to investigate allegations of professional misconduct in the performance of **Professional Services**.
- G. **"Employee"** means a person whose work is directed or controlled by the **Insured**, including contract workers.
- H. **"Extended Reporting Period"**, if applicable, means the period of time 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 6. of the Declarations.
- I. **"Financial Injury"** means economic damages suffered by a person or organization.
- J. **"Insured"** means the **Named Insured** and those entities and persons identified in IV. PERSONS INSURED.
- K. **"Named Insured"** means the entity or person identified in Item 1. of the Declarations.
- L. **"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 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.
- M. **"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.
- N. **"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**.
- O. **"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).
- P. **"Professional Services"** means those professional services specifically identified in Item 8. of the Declarations.
- Q. **"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.
- R. **"Reputational Management Expenses"** means reasonable fees, costs, and expenses incurred by the **Named Insured** for reputational management consulting services provided by a public relations firm to the **Named Insured**.

## VIII. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3.(a) of the Declarations as "Each **Claim**" is the Underwriters' Limit of Liability for all **Damages** and **Claims Expenses** arising out of the same, related or continuing negligent acts, errors or omissions, without regard to the number of **Insureds, Claims** or claimants. All **Claims** arising out of the same, related or continuing negligent acts, errors or omissions shall be deemed to be a single **Claim**.
- B. The Limit of Liability stated in Item 3.(b) of the Declarations as "Term Aggregate" is the Underwriters' Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** which are covered under the terms and conditions of this Policy.
- C. The Limit of Liability for any **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**.

## **IX. DEDUCTIBLE**

The Deductible amount stated in Item 4. of the Declarations shall be satisfied by payments by the **Insured** of **Damages** and/or **Claims Expenses** resulting from each **Claim** first made to the Underwriters during the **Policy Period** and/or any applicable **Extended Reporting Period** as a condition precedent to the payment by the Underwriters of any amounts due hereunder. The Underwriters shall be liable only for the amounts in excess of such Deductible subject to the Underwriters' Limit of Liability in Item 3. of the Declarations. The **Insured** shall make direct payments within the Deductible to appropriate parties designated by the Underwriters. The Deductible is to be uninsured, unless otherwise agreed to by the Underwriters. Under no circumstances shall the Underwriters be called upon to pay the Deductible, but the Underwriters may do so at their sole discretion. Such payment shall in no way affect the Underwriters' ability to collect the Deductible from the **Insured**. The existence of "other insurance" shall not affect or abrogate the obligation of the **Insured** to pay the Deductible as required.

## **X. INNOCENT INSURED**

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

- A. because of Exclusion VI.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 clause 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** involved in such intentional, criminal, dishonest, fraudulent or malicious acts, errors or omissions to whom the exclusion applies and shall be subject to the terms, conditions and limitations of this Policy.

## **XI. EXTENDED REPORTING PERIOD**

- A. In the event of cancellation or non-renewal of this insurance, the **Named Insured** shall have the right to an **Extended Reporting Period** identified in Item 5. of the Declarations for **Claims** first made against any **Insured** to the Underwriters during the **Extended Reporting Period**. In order for the **Named Insured** to invoke the **Extended Reporting Period** option, the payment of the additional premium set forth in Item 5. 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 Deductible 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 or within the applicable Deductible.
- 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.(b) 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**.

## **XII. AUDIT**

The Underwriters may examine and audit the books, records, and operations of any **Insured** under this Policy at any time during the **Policy Period** and extensions thereof and within three (3) years after the final termination of the Policy or any **Extended Reporting Period**, as far as they relate to the subject matter of this insurance.

## **XIII. OTHER INSURANCE**

This insurance shall apply in excess of any other valid and collectible insurance or self-insurance available to any **Insured**, including insurance or indemnification (including discretionary) provided by any medical defence organisation such as the Canadian Medical Protective Association (CMPA) or any successor or similar scheme,

unless such other insurance or indemnity is written only as specific excess insurance over the Limit of Liability of this Policy.

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

- A. If during the **Policy Period**, any **Claim** is made against the **Insured**, the **Insured** shall as soon as practicable, and without delay, notify the Underwriters in writing via the contact details in Item 7(a) of the Declarations and forward to them 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 and the Underwriters shall not be subject to any liability under the **Policy** if the **Insured** fails to comply in full with this Condition XIV.

- 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 via the contact details in Item 7.(a) 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.(a) 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 one Limit of Liability identified in Item 3.(a) of 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** or during any prior policy period under a predecessor policy issued by the Underwriters, 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.

**XV. 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.

**XVI. 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.

**XVII. BANKRUPTCY**

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

**XVIII. 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 to prejudice such rights.

**XIX. 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 estop 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.

## **XX. 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; and
  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,

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 15% in the aggregate, 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, 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.

## **XXI. 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.

## **XXII. CANCELLATION**

This Policy may be cancelled by the **Named Insured** or by the Underwriters by sending registered or certified mail notice to the other party stating when, not less than 30 days thereafter, cancellation shall be effective. However in the event of non-payment of premium by the **Named Insured**, this Policy may be cancelled by the Underwriters by sending registered or certified mail notice to the **Named Insured** stating when, not less than ten days thereafter, cancellation shall be effective.

The mailing of notice as aforesaid by the Underwriters shall be sufficient proof of notice, and the insurance under this Policy shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent to mailing.

In the event this Policy is cancelled, as aforesaid, the expiration date of this Policy shall be the effective date of such cancellation.

If this Policy shall be cancelled by the **Named Insured**, the Underwriters shall retain the short rate proportion of the premium for the period this Policy has been in force, calculated in accordance with the Short Rate Cancellation Table on file with the Underwriters. If this Policy shall be cancelled by the Underwriters, the Underwriters shall retain the pro rata proportion of the premium for the period this Policy has been in force. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium with such notice.

**XXIII. SINGULAR FORM OF A WORD**

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

**XXIV. 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.

**XXV. CURRENCY**

Unless otherwise noted on the Declarations, all limits, premiums and other amounts as expressed in this Policy are in Canadian Dollars (CAD).

**XXVI. SOLE AGENT**

The **Named Insured** specified in Item 1. of the Declarations is the sole agent authorized to act on behalf of all **Insureds** with respect to giving or receiving notice of cancellation, non-renewal, premium or changes in this Policy or to request an **Extended Reporting Period**.

**XXVII. CHOICE OF LAW**

This Policy will be governed by and interpreted pursuant to the laws of the province where the company named as **Named Insured** in Item 1. of the Declarations is registered 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 named as **Named Insured** in Item 1. of the Declarations is registered.

**XXVIII. 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 be validly 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.

**XXIX. POLICY CONFORMITY WITH STATUTES**

Where the terms of this Policy are in conflict with the statutes of Canada or the province wherein the Policy is issued, the Policy terms are hereby amended to conform to such statutes.

In the event that the **Named Insured** is a surgeon, physician or doctor, he or she shall belong to and shall subscribe to the Canadian Medical Protection Association (CMPA) or shall purchase and maintain insurance which meets the minimum requirements set out by the law of the province in which he or she practices.

The **Named Insured** shall at all times conform to all legislation governing his or her profession, if applicable.

**XXX. STACKING OF LIMITS**

Any **Claim(s)** that is covered under any other Liability Policy issued by any Beazley Group company is excluded under this Policy.

**XXXI. SANCTIONS**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of Canada, the European Union, United Kingdom or United States of America.