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Policy

Errors and Omissions Insurance for Associations

THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY.

TERMS IN CAPITAL LETTERS HAVE SPECIAL MEANING. PLEASE REFER TO THE DEFINITIONS SECTION OF THIS POLICY (PART I).

PART I - DEFINITIONS

As used in this policy, the following words or expressions shall mean:

1. **CLAIM**

- (a) Any written or oral monetary demands; or
- (b) any written or oral allegations;

received by the INSURED and in relation to the rendering of INSURED SERVICES and resulting from a single fault, error, omission or negligent act in the rendering of INSURED SERVICES.

2. **DAMAGES**

Compensatory DAMAGES including all pre-judgement and post-judgement interest.

3. **FISSIONABLE SUBSTANCE**

Any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

4. **INSURANCE MANAGER**

The insurance administrator under this policy, who is duly authorized to issue this policy as well as to issue and receive notices under this policy for and on behalf of the INSURERS and whose name and address appears on the Declarations page. The INSURANCE MANAGER is not a party to this contract of insurance.

5. **INSURED**

- (a) All members of the Named INSURED, as mentioned in the Declarations who presently subscribe to this insurance contract;
- (b) the Named INSURED, as mentioned in the Declarations and the members of its governing

body, but only for CLAIMS resulting from INSURED SERVICES rendered by a member provided that such member is insured under this contract of insurance;

- (c) any present or former employee of the Named INSURED while acting within the scope of their duties for the Named INSURED.

6. **INSURED SERVICES**

Those services as defined in Endorsement No. 1.

7. **INSURERS**

The insurance companies whose names appear in the Declarations. It is agreed that such INSURERS are binding themselves severally and not jointly, each in its own layer of coverage only, and each only for that amount determined by multiplying its percentage proportion of coverage by the amount of the LOSS.

8. **LOSS**

One or more CLAIMS resulting from the same or related error, omission or negligent act in the rendering of INSURED SERVICES, regardless of the number of suits, claimants or INSUREDS. Such CLAIMS will be considered first reported within the policy period in which the earliest CLAIM was reported and subject to that single limit of liability.

9. **NUCLEAR ENERGY HAZARD**

The radioactive, toxic, explosive, or other hazardous properties of RADIOACTIVE MATERIAL.

10. **NUCLEAR FACILITY**

- (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, uranium, or any one or more of them;

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

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

11. POLLUTION

Emission, release, discharge, dispersal, escape or disposal of smoke, gases, vapours, soot, fumes, acids, alkalis, toxic substances, waste materials, irritants, contaminants or pollutants into or upon land or any water of any description no matter where located or how contained, or into any drainage or sewage system, or into the atmosphere.

12. RADIOACTIVE MATERIAL

Uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.

PART II - INSURING AGREEMENTS

A. GENERAL AGREEMENTS

In consideration of the premium indicated in the Declarations, and in reliance upon the statements made in the application form, and subject to the terms, conditions, and limitations contained in this policy, the INSURERS agree to pay on behalf of the INSURED all sums which the INSURED shall become legally obligated to pay as DAMAGES because of a CLAIM presented to the INSURERS during the policy period resulting from an error, omission or negligent act in the rendering of INSURED SERVICES by the INSURED which took

place subsequent to the retroactive date specified in the Declarations.

THIS POLICY OF INSURANCE, SUBJECT TO ITS TERMS, CONDITIONS AND LIMITATIONS, IS DESIGNED FOR APPLICATION TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURERS DURING THE POLICY PERIOD.

B. DEFENCE AND OTHER PAYMENTS

With respect to the insurance afforded by the General Agreements of Part II of this policy, the INSURERS further agree:

1. that they shall have the right and duty to defend the INSURED in any suit first brought against the INSURED before a Canadian court of civil jurisdiction, even though this suit is unfounded, false or fraudulent;
2. to pay any premium payable under guarantee bonds required to release attachments and any premium payable on appeal bonds but without any obligation to apply for or furnish any such bonds;
3. to pay expenses incurred in Canada in any investigation, defence, arbitration, litigation and settlement of any CLAIM;
4. to pay costs taxed against the INSURED following a judgement by a Canadian court of civil jurisdiction;
5. to pay reasonable expenses incurred by the INSURED at the request of the INSURERS, other than loss of revenue.

C. The payment of the sums provided for in paragraph B of Part II is to be considered an integral part of the applicable limit of liability of the INSURERS.

D. TERRITORIAL LIMIT

This insurance applies only to CLAIMS which give rise to suits or judicial proceedings first brought against the INSURED within Canada.

PART III - EXCLUSIONS

The coverage afforded under this policy does not apply to:

1. BANKRUPTCY/INSOLVENCY

CLAIMS resulting from the bankruptcy or insolvency of the INSURED.

2. CARE, CUSTODY AND CONTROL

CLAIMS resulting from damage caused to property in the care, custody or control of the INSURED or property over which the INSURED is for any purpose exercising control.

3. DELIBERATE, DISHONEST OR FRAUDULENT ACTS

CLAIMS resulting from deliberate, dishonest, criminal or fraudulent acts committed by the INSURED, unless it was done in order to protect persons or property, but this exclusion does not apply to any INSURED who is neither the author of nor an accomplice to the act.

4. ECONOMIC RETURN

CLAIMS resulting from estimates of profit, return on capital, economic return, or other estimates giving rise to forecasts of economic return.

5. FINES, PENALTIES

Fines, penalties, punitive or exemplary damages.

6. INSURED VS INSURED

CLAIMS initiated by one or more INSURED against any other INSURED.

7. LIABILITY OF OTHERS

CLAIMS resulting from the liability of others assumed by the INSURED under a contract or agreement; however, this exclusion shall not apply to the INSURED'S legal liability for sub-consultants contractually bound to the INSURED or for the INSURED'S liability for errors, omissions or negligent acts of the INSURED'S own employees.

8. LIBEL AND SLANDER

CLAIMS resulting from DAMAGES resulting from:

- (a) oral or written publication of material, declaration or interview by the media that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- (b) oral or written publication of material that violates a person's right of privacy.

9. NUCLEAR ENERGY

CLAIMS:

- (a) resulting from any liability imposed by or arising under the Nuclear Liability Act; or
- (b) 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

- (c) resulting directly or indirectly from the NUCLEAR ENERGY HAZARD arising from:

- (i) the ownership, maintenance, operation or use of a NUCLEAR FACILITY by or on behalf of an INSURED;
- (ii) the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY; and
- (iii) the possession, consumption, use handling, disposal or transportation of FISSIONABLE SUBSTANCES, or of other RADIOACTIVE MATERIAL;

but this exclusion shall not be construed to apply in any commercial or medical radioactive isotopes.

10. OTHER ACTIVITIES

CLAIMS resulting from the legal liability of the INSURED resulting from the operation of any business enterprise, other than INSURED SERVICES.

11. OTHER INSURANCE

CLAIMS covered by other insurance to which the INSURED has subscribed.

12. PRIOR KNOWLEDGE

CLAIMS or circumstances, reported or not in the application, known to the INSURED before the effective date of this policy; however, when this policy replaces, without interruption, a policy previously issued by the INSURANCE MANAGER, this exclusion applies only to LOSSES previously known to the INSURED before the inception date of the policy which was replaced.

13. POLLUTION

CLAIMS arising out of or attributable to POLLUTION.

14. RELATED ENTITIES

CLAIMS made against the INSURED, when such CLAIMS are made by or involve another business:

- (a) owned totally or partially by an INSURED; or
- (b) controlled or managed totally or partially by an INSURED; or
- (c) which is directly or indirectly involved in any way in the ownership or management of an INSURED'S business; or
- (d) of which an INSURED is a partner, director, officer or employee.

15. WAR RISK

CLAIMS resulting from DAMAGES caused directly or indirectly by war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection.

**PART IV - COMPUTATION OF AMOUNTS
PAYABLE BY THE INSURERS**

LIMIT OF LIABILITY OF THE INSURERS

Subject, when applicable, to the deductible as stated in the Declarations, the liability of the INSURERS under the General Agreement of Part II of this policy is limited, for each LOSS and per policy period, to the amounts as stated in the Declarations. Moreover, such deductible shall apply to investigation, adjusting and legal defence expenses, and any other payment made under Part II of this policy.

PART V - CONDITIONS

1. ACTION AGAINST THE INSURERS

No action or legal proceedings may be initiated against the INSURERS unless the INSURED has fully complied with the requirements of this policy.

2. AMENDMENTS

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 policy or estop the INSURERS from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement, signed by the INSURANCE MANAGER, issued to form a part of this policy.

3. ASSIGNMENT

Assignment of interest under this policy shall not bind the INSURERS until its consent is endorsed hereon; if, however, the Named INSURED should be adjudged bankrupt, insolvent or incompetent or die within the policy period, this policy shall cover the Named INSURED'S legal representative as Named INSURED. The INSURED agrees that any notice of any kind the INSURERS mail to the Named INSURED at the address shown on the Declarations page shall constitute notice to the INSURED'S legal representatives.

4. CANCELLATION OF POLICY

(a) The Named INSURED may cancel this policy by giving written notice to the INSURANCE MANAGER to this effect, indicating when thereafter the cancellation shall be effective. The INSURERS will reimburse the excess of premium paid by the INSURED over and above the premium earned for the time on risk, the calculation being made in accordance with the customary short rate table and procedure.

(b) The INSURERS or the INSURANCE MANAGER may cancel this policy by giving to the Named INSURED written notice to this effect, either by registered mail or by delivering it by hand and the termination takes effect thirty (30) days after the date of the notice; in the event of non-payment of premium, the termination takes effect fifteen (15) days after the date of the notice. The INSURERS or INSURANCE MANAGER shall reimburse this excess premium paid by the INSURED over the earned premium for the time on risk, such calculation to be made on a pro rata basis.

5. CONFORMITY WITH LAW

Provisions of this policy which are at variance with the law of the Province shown in the Declarations are hereby modified in order to conform with such law.

6. CO-OPERATION OF THE INSURED

The INSURED must co-operate with the INSURERS or the INSURANCE MANAGER and, at the request of the INSURERS or the INSURANCE MANAGER, assist to effect settlement, forward proceedings, attend hearings and trials, assist in securing and giving evidence and in obtaining the attendance of witnesses.

The INSURED shall not, without the INSURERS' or INSURANCE MANAGER'S approval and except at the INSURED'S own cost, voluntarily make any payment, assume any obligation or incur any expense.

7. NAMED INSURED REPRESENTS ALL INSUREDS

The Named INSURED, INSURED, INSURERS and INSURANCE MANAGER agree that the Named INSURED represents all INSUREDS under this policy.

8. NOTICE OF CLAIM

This is a claims-made and reported policy. The INSURED shall, as soon as practicable after being made aware of a CLAIM for which coverage would be afforded by this policy, provide written notice with the full particulars thereof to the INSURANCE MANAGER, ENCON Group Inc., at the address indicated in the Declarations.

If during the policy period the INSURED becomes aware of a circumstance which could reasonably give rise to a CLAIM, the INSURED shall give written notice thereof to the INSURANCE MANAGER as soon as practicable and prior to the date of the termination of the policy. Any such CLAIM received by the INSURED resulting from such circumstances shall be treated as a CLAIM made during the policy period in which such notice was given.

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

Notwithstanding the aforementioned, any late notice or absence of notice is cause of forfeiture of the rights of the INSURED, if the INSURANCE MANAGER sustains injury therefrom.

9. RIGHT TO AUDIT

The INSURERS or INSURANCE MANAGER may, at any time, inspect the premises of the INSURED. In relation to the object of this policy, the INSURERS or INSURANCE MANAGER may also examine the financial records and files of the INSURED during the policy period and during the two (2) years which follow its expiry or cancellation provided that prior notice of forty-eight (48) hours is given to the INSURED.

10. SETTLEMENT AND CONTESTATION OF CLAIMS

In the event of a CLAIM, the INSURERS or INSURANCE MANAGER will not settle the LOSS without first obtaining the written consent of the INSURED.

However, if a settlement is rendered impossible by the sole refusal of the INSURED, the latter must continue the defence at the Named INSURED'S own expense and the liability of the INSURERS will then be limited to the amount for which the CLAIM could have been so settled together with expenses incurred under the present policy at the date of such refusal.

11. SEVERABILITY OF INTERESTS

In the event that a CLAIM is made against more than one INSURED, it is agreed that the obligation of the INSURERS under this policy is the same as if separate policies had been issued to each. Notwithstanding the number of INSUREDS involved, the total amount payable hereunder on behalf of all INSUREDS shall not exceed the limit of the INSURERS' liability stated in the Declarations.

12. SUBROGATION

In the event of any payment under this policy, the INSURERS shall be subrogated to all the INSURED'S rights of recovery therefore 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.

13. SUSPENSION OF PERMIT OR PROVISIONAL ADMINISTRATION

If the Named INSURED has its permit or license to practice suspended by virtue of the laws governing its practice, or if a provisional administration is imposed by governmental authority, notice must be given to the INSURANCE MANAGER within a period of not more than thirty (30) days from such suspension or provisional administration.