

*SPECIMEN* **ExecPro<sup>®</sup>**  
A-Side Protection

# ExecPro<sup>®</sup>

## A-Side Excess and Difference in Conditions Liability Insurance Policy

Great American Insurance Group - Executive Liability Division:  
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

### Table of Contents

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I.	Insuring Agreements.....	Page 1
II.	Discovery Period.....	Page 2
III.	Definitions.....	Page 3
IV.	Exclusions.....	Page 7
V.	Limit of Liability.....	Page 8
VI.	Costs of Defence and Settlements.....	Page 8
VII.	Notice of Claim.....	Page 9
VIII.	General Conditions.....	Page 10
	(A) Cancellation or Non-Renewal.....	Page 10
	(B) Proposal Form.....	Page 10
	(C) Action Against the Insurer.....	Page 10
	(D) Amalgamation, Merger or Acquisition.....	Page 11
	(E) Conversion to Run-Off Coverage.....	Page 11
	(F) Outside Entity Provision.....	Page 11
	(G) Coverage Extensions.....	Page 12
	(H) Subrogation.....	Page 12
	(I) Related Wrongful Acts.....	Page 12
	(J) Assignment.....	Page 12
	(K) Conformity to Statute.....	Page 12
	(L) Entire Agreement.....	Page 12
	(M) Corporation Represents Insured Persons.....	Page 13
	(N) Representative of the Insurer.....	Page 13
	(O) Other Insurance.....	Page 13
	(P) Reporting Duties.....	Page 13
	(Q) Territory and Valuation.....	Page 13

**THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form, and subject to all other terms, conditions and limitations of this Policy, the **Insured Person(s)** and **Insurer** agree:

**Section I. Insuring Agreements**

**A. FOLLOW-FORM EXCESS NON-INDEMNIFIABLE LOSS COVERAGE**

This Policy shall provide coverage for **Non-Indemnifiable Loss** of **Insured Persons** that is excess of the **Total Underlying Limits**. Coverage under this Insuring Agreement shall be subject to the following terms and conditions of this Policy and shall not follow any inconsistent terms or conditions of the **Primary Policy**:

- (1) Item 1, Item 2, Item 3 and Item 5 of the Declarations;
- (2) Section V, Section VI., Section VII. and Section VIII; and
- (3) Definitions of **Policy Period**, **Underlying Insurer(s)**, **Underlying Policy(ies)**, **Primary Policy**, and **Total Underlying Limits**.

In all other respects, this Policy shall provide coverage in accordance with the terms, conditions, exclusions and limitations of the **Primary Policy** listed in Item 8 of the Declarations as they were in existence on the inception date of the **Policy Period** or **Discovery Period**.

**B. UNINSURED NON-INDEMNIFIABLE LOSS AND D.I.C. COVERAGE**

This Policy shall pay the **Non-Indemnifiable Loss** of any **Insured Person(s)**, subject to the terms, conditions and exclusions of this Policy, arising from a **Claim** first made against such **Insured Person(s)** during the **Policy Period** or **Discovery Period** for any **Wrongful Act** of such **Insured Person(s)**, but only if:

- (1) the **Underlying Insurer(s)**:
  - (a) refuses to pay loss under the **Underlying Policy(ies)** and either files an action to rescind the coverage for such **Insured Person(s)** or otherwise provides written notification of intent to rescind;
  - (b) wrongfully refuses to indemnify such **Insured Person(s)** as required under the terms and conditions of the **Underlying Policy(ies)**;
  - (c) is financially unable to indemnify the **Insured Person(s)**;

- (d) is unable to pay as a result of a liquidation or reorganization proceeding commenced by or against the **Company** pursuant to the Bankruptcy and Insolvency Act R.S.C. 1985, c. B-83, the Companies Creditors Arrangement Act R.S.C. 1985, C. 11, or the U.S. Bankruptcy Code (collectively "Code"), and as a result, **Loss** under any **Underlying Policy(ies)** cannot be paid by the **Underlying Insurer(s)** because such proceeds are subject to the automatic stay under the Code. As a condition precedent to the **Insurer** being liable under this subsection, the **Company** or **Insured Person(s)** shall arrange for the **Underlying Insurer(s)** to request relief from the automatic stay under the Code; or
  - (e) fails to indemnify such **Insured Person(s)** within sixty (60) days after the **Insured Person(s)** requests such indemnification in writing. In the event that it is established that the **Underlying Insurer(s)** are liable for such **Claim**, the **Insured Person(s)** will repay the **Insurer** upon demand all **Loss** advanced by virtue of this provision;
- (2) according to the terms and conditions of the **Underlying Policy(ies)**, the **Underlying Insurer(s)** is not liable for such portion of the **Loss** arising from such **Claim**.

No **Corporation** or other entity is covered in any respect under this Policy.

## Section II. Discovery Period

- A.** In the event the **Insurer** refuses to renew this Policy or the **Corporation** chooses to cancel or not renew this Policy, the **Insured Person(s)** shall have the right, upon payment not to exceed seventy-five percent (75%) of the annual premium, (or if the **Policy Period** is other than annual, seventy-five percent (75%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured Person(s)** during the period of twelve (12) months after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the **Discovery Period**.

The **Insured Person(s)** shall have the right to choose an extended **Discovery Period** of thirty-six (36) months upon payment not to exceed one hundred fifty percent (150%) of the annualized premium, or seventy-two (72) months upon payment not to exceed two hundred twenty-five percent (225%) of the annualized premium.

- B.** As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C.** The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.
- D.** If the **Discovery Period** is purchased, the entire premium shall be deemed earned at its commencement without any obligation by the **Insurer** to return any portion thereof.

### Section III. Definitions

#### A. "Claim" shall mean:

- (1) a written demand for monetary or non-monetary relief made against any **Insured Person(s)** and reported to the **Insurer** pursuant to Section VII.A.;
- (2) a civil, criminal, administrative, arbitration or regulatory proceeding, or any appeal therefrom, made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of an originating proceeding, complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, including any proceeding initiated against any **Insured** before any provincial or federal human rights tribunal or any similar governmental body (including but not limited to the Equal Employment Opportunity Commission);
- (3) a civil, criminal, administrative or regulatory investigation (including a provincial securities commission or federal/provincial human rights tribunal or commission inquiry, a Securities and Exchange Commission, Equal Employment Opportunity Commission and/or grand jury investigation) of any **Insured Person(s)**:
  - (a) but only after such **Insured Person(s)** is identified in writing by the investigating authority as a person against whom a proceeding described in clause (2) above may be commenced; or
  - (b) in the case of an investigation by a provincial securities commission or territorial securities commission, the Securities and Exchange Commission or a similar state or foreign government authority, after the service of a subpoena, receipt of a Wells Notice, receipt of a target letter or receipt of a formal order of investigation upon such **Insured Person(s)**;
- (4) a written request to enter into an agreement to toll any applicable statute of limitation prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding;
- (5) the official request for **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**; or
- (6) any proceeding initiated by the Minister of National Revenue against a **Director** based upon, arising out of or attributable to the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee pursuant to the Income Tax Act R.S.C. 1985, the Unemployment Insurance Act R.S.C. 1985, c.U-1, and The Canada Pension Plan R.S.C., c.8, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law.

#### B. "Cleanup Costs" shall mean all costs incurred in connection with cleaning up, removing, eliminating, abating, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

#### C. "Company" shall mean:

- (1) the **Corporation**;
- (2) any **Subsidiary**;
- (3) any foundation or charitable trust controlled or exclusively sponsored by the **Corporation** or any **Subsidiary**; or
- (4) in the event of **Financial Insolvency**, the resulting debtor-in-possession (or foreign equivalent status), if any.

- D. "**Corporation**" shall mean the entity named in Item 1 of the Declarations.
- E. "**Costs of Defence**" shall mean reasonable and necessary legal fees, costs incurred in the investigation, defence or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defence** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Person(s)**.
- "**Costs of Defence**" shall also mean reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the **Insurer** resulting from an **Insured Person** lawfully:
- (1) opposing, challenging, resisting or defending any request for or any effort to obtain the **Extradition** of that **Insured Person**; or
  - (2) appealing any order or other grant of **Extradition** of that **Insured Person**.
- F. "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be directors and/or officers of the **Company**.
- G. "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any past, present or future employee of the **Company** or **Outside Entity**, or any applicant for employment with the **Company** or **Outside Entity** alleging an **Employment Practices Wrongful Act** against any **Insured Person(s)**.
- H. "**Employment Practices Wrongful Act**" shall mean any of the following acts related to employment:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
  - (2) misrepresentation;
  - (3) violation of employment laws;
  - (4) sexual or workplace harassment;
  - (5) discrimination;
  - (6) wrongful failure to employ or promote;
  - (7) wrongful discipline;
  - (8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
  - (9) failure to grant tenure;
  - (10) negligent employee evaluation;
  - (11) retaliation;
  - (12) failure to provide adequate workplace or employment policies or procedures;
  - (13) defamation (including libel and slander);
  - (14) invasion of privacy;
  - (15) wrongful demotion;
  - (16) negligent reassignment;
  - (17) violation of any provincial, territorial federal, state or local civil rights laws;
  - (18) negligent hiring;
  - (19) negligent supervision;
  - (20) negligent training;
  - (21) negligent retention; or
  - (22) acts described in (1) through (21) above, arising from the use of the **Company's** internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Company's** internet, e-mail, telecommunication or similar systems.
- I. "**Extradition**" shall mean any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

- J. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator examiner or similar official to control, supervise, manage or liquidate the **Company**.
- K. "**Insured Person(s)**" shall mean any past, present or future **Director, Officer**, trustee or governor of a **Corporation**, management committee member of a joint venture, member of the management board of a limited liability company or employee of the **Company**.
- L. "**Loss**" shall mean:
- (1) compensatory damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements, pre-judgment interest, post-judgment interest and **Costs of Defence**;
  - (2) taxes and related penalties and interest assessed against a **Director** based upon, arising out of or attributable to the failure to deduct, withhold or remit tax from a payment of salary or wages of an employee pursuant to the Income Tax Act R.S.C. 1985, the Unemployment Insurance Act R.S.C. 1985,c.U-1, and the Canada Pension Plan R.S.C., c.8, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law;
  - (3) any amount constituting wages pursuant to the Canada Business Corporations Act R.S.C. 1985, c. C-44 and the Business Corporations Act, R.S.C. 1990, c.B.16, the regulations promulgated thereunder and amendments thereto or any similar provisions of any provincial law;
  - (4) unpaid tax liabilities of the **Company** arising under the laws of Canada, the laws of any province of Canada, or any municipality therein, which the **Company** is unable to pay due to **Financial Insolvency** and which **Directors** become legally obligated to pay; or
  - (5) civil penalties assessed against any **Insured Person** pursuant to Section 4(2) and 5.5(2) of the Corruption of Foreign Public Officials Act of Canada and Section 2(g)(2)(B) of the U.S. Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B).

Notwithstanding the foregoing, **Loss** shall not include:

- (6) other than **Cost of Defence**, any criminal or civil fines or penalties imposed by law;
- (7) taxes; or
- (8) any matter which may be deemed uninsurable under the law pursuant to which this Policy is construed.

Notwithstanding subparagraph (8) above, for a **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the **Insurer** shall not assert the portion of any amounts incurred by any **Insured Person(s)** attributable to such violations constitutes uninsurable **Loss** and shall treat that portion of all settlements, judgments and **Costs of Defence** as constituting **Loss** under the Policy.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

- M. "**Non-Indemnifiable Loss**" means **Loss** for which the **Company** is neither permitted nor required to indemnify an **Insured Person(s)** or for which the **Company** has refused to indemnify an **Insured Person(s)**; provided, however, that in the event the **Company** refuses to indemnify an **Insured Person(s)**, **Loss** shall only be deemed **Non-Indemnifiable Loss** if such **Insured Person(s)** complies with Section VIII H. Subrogation.
- N. "**Outside Entity**" shall mean any not-for-profit entity.
- O. "**Policy Period**" shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- P. "**Pollutants**" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, including any materials to be recycled, reconditioned or reclaimed.
- Q. "**Primary Policy**" shall mean the Policy named in Item 8 of the Declarations.
- R. "**Related Wrongful Acts**" shall mean **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- S. "**Subsidiary**" shall mean any entity in which the **Corporation** owns, directly or indirectly, more than fifty percent (50%) of the voting stock:
- (1) on or before the inception date of this Policy;
  - (2) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** after such date, if the entity's total assets do not exceed fifty percent (50%) of the total consolidated assets of the **Corporation** as of the inception date of this Policy; or
  - (3) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company**, other than described in (2) above, if the **Corporation**, within ninety (90) days provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.
- T. "**Total Underlying Limits**" shall mean the amount listed in Item 8 of the Declarations.
- U. "**Underlying Insurer(s)**" shall mean the insurer(s) of each respective **Underlying Policy**.
- V. "**Underlying Policy(ies)**" shall mean the policy(ies) listed in Item 8 of the Declarations.
- W. "**Wrongful Act**" shall mean:
- (1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Person(s)** in their capacity with the **Company**;
  - (2) any matter claimed against any **Insured Person(s)** solely by reason of their status with the **Company**; or
  - (3) any matter claimed against any **Insured Person(s)** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**.



#### Section IV. Exclusions

Solely with respect to Insuring Agreement I.B., the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured Person(s)**:

A. brought about or contributed to by:

- (1) any **Insured Person(s)** gaining any profit, advantage or remuneration to which they were not legally entitled. However, this exclusion shall not apply to that portion of **Loss** from a **Claim** attributable to an alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended, or similar statutory provisions of any provincial, territorial or federal securities law; or
- (2) the deliberately fraudulent or criminal acts of any **Insured Person(s)**;

provided, however, this exclusion shall only apply if a final, non-appealable adjudication, or admission of any **Insured Person(s)** by reason of a guilty plea or other written admission under oath establishes that such conduct in fact occurred. It is understood and agreed that this exclusion shall not apply to **Costs of Defence**;

B. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving the **Company** and/or any **Insured Persons** and known to the **Company** or any **Insured Persons** as of the date stated in Item 6 of the Declarations, or any fact, circumstance or situation underlying or alleged in such prior or pending proceeding;

C. for any actual or alleged:

- (1) bodily injury, sickness, disease, or death of any person;
- (2) damage to or destruction of any tangible property, including the loss of use thereof; or
- (3) mental anguish or emotional distress;

provided, however part (1) of this exclusion shall not apply to **Costs of Defence** incurred by any **Insured Persons** for any **Claim** involving alleged violations of Section 217.1 of the Criminal Code, as amended by Bill C-45, and part (3) of this exclusion shall not apply to any **Employment Practices Claim**;

D. initiated by or on behalf of the **Company**, if initiated by or with the solicitation, approval, active assistance or active participation of two or more persons each of whom at the time such **Claim** is brought is the President, Chief Executive Officer, Member of the Management board of a Limited Liability Company, Chief Financial Officer, Executive Vice President or in-house General Counsel of the **Company**, however, this exclusion shall not apply to:

- (1) any **Claim** initiated by the receiver, conservator, liquidator, trustee, rehabilitator, examiner, creditors committee, or similar official of the **Company**, if any, in the event of **Financial Insolvency**;
- (2) any **Claim** initiated after another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity;
- (3) any **Claim** if the solicitation, approval, assistance or participation described above is:
  - a. solely pursuant to or in compliance with a subpoena or similar legal process, or

- b. protected pursuant to Section 806 of the Sarbanes Oxley Act of 2002 or any similar federal whistleblower statute;
- (4) any **Claim** if and to the extent independent legal counsel selected by the **Company** with the prior consent of the **Insurer** (such consent not to be unreasonable withheld) opines in writing that the failure of the **Company** to make such **Claim** would likely result in liability to one or more **Insured Person(s)** of such **Company** for failure to assert such **Claim**;
- (5) is initiated solely and entirely in a jurisdiction other than the United States of America, its territories and possessions or Canada; or
- (6) the **Cost of Defence** for any such **Claim**;

**E. for Cleanup Costs.**

With respect to Section IV. of the Policy, no fact pertaining to or conduct by any **Insured Person** shall be imputed to any other **Insured Person**.

**Section V. Limit of Liability**

The Limit of Liability stated in Item 3 of the Declarations is the aggregate limit of the **Insurer's** liability for all **Loss** under Insuring Agreements I.A. and I.B. combined, arising out of all **Claims** first made against each and every **Insured Person** during the **Policy Period** and any **Discovery Period**, and, solely with respect to Insuring Agreement I.A., excess of the **Total Underlying Limits**. The Limit of Liability for any **Discovery Period** shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**. The Limit of Liability shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period**, regardless of the time of payment or the number of **Claims**.

**Costs of Defence** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defence** shall serve to reduce the Limit of Liability.

Solely with respect to Insuring Agreement I.A., it is expressly agreed that liability for any covered **Non-Indemnifiable Loss** with respect to **Claims** first made against **Insured Person(s)** during the **Policy Period** or **Discovery Period** and reported in writing to the **Insurer** pursuant to the terms and conditions of this Policy shall attach to the **Insurer** only after the **Underlying Insurer(s)** and the **Insured Person(s)** or the **Company** have paid the full amount of the **Total Underlying Limits**, and the **Company** or the **Insured Person(s)** have paid the full applicable Retention amount under any **Underlying Policy**.

If the **Total Underlying Limits** are exhausted by reason of the **Underlying Insurer(s)** and the **Insured Person(s)** or the **Company** paying **Loss** covered thereunder, this Policy shall continue in force as primary insurance.

**Section VI. Costs of Defence and Settlements**

- A.** The **Insured Person(s)** shall not incur **Costs of Defence**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured Person(s)** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defence** incurred prior to the **Insurer's** consent shall not be covered hereunder.
- B.** The **Insured Person(s)**, and not the **Insurer**, have the duty to defend all **Claims**, provided that the **Insured Person(s)** shall only retain counsel as is mutually agreed upon with the **Insurer**.

- C. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured Persons** in the investigation, defence or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured Persons** shall fully cooperate with the **Insurer** and shall provide all information and particulars it may reasonably require; provided, however, the failure by an **Insured Person** to cooperate with or provide such information to the **Insurer** shall not impair the rights of any other **Insured Person** under this Policy.
- D. If a **Claim** made against any **Insured Person(s)** includes both covered and uncovered matters, or is made against any **Insured Person(s)** and others, the **Insured Person(s)** and the **Insurer** recognize that there must be an allocation between insured and uninsured **Loss**. The **Insured Person(s)** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between insured and uninsured **Loss**.
- E. The **Insurer** shall advance **Costs of Defence** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Such advancement shall be made within sixty (60) days after receipt and review of the invoices containing such **Insured Person(s) Costs of Defence**. Any advancement shall be on the condition that:
- (1) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;
  - (2) the **Insured Person(s)** and the **Insurer** have agreed upon the portion of the **Costs of Defence** attributable to covered **Claims** against the **Insured Person(s)**. Prior to any final agreement the **Insurer** shall advance the portion of **Costs of Defence** deemed by the **Insurer** to be covered; and
  - (3) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured Person(s)** will repay the **Insurer** upon demand all **Costs of Defence** advanced by virtue of this provision.

#### Section VII. Notice of Claim

- A. The **Insured Person(s)** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Such notice shall be given as soon as practicable from the date the General Counsel, Risk Manager, or person with equivalent responsibility first has knowledge of the **Claim**, and in no event later than ninety (90) days after the end of the **Policy Period**.
- B. If, during the **Policy Period** or **Discovery Period**, any **Insured Person** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of:
- (1) the specific **Wrongful Act**;
  - (2) the injury or damage which has or may result therefrom; and
  - (3) the circumstances by which the **Insured Person(s)** first became aware thereof;
- then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured Person(s)** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured Person(s)**.
- C. In addition to furnishing the notice as provided in Sections VII.A. or VII.B., the **Insured Person(s)** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

- D. Notice to the **Insurer**, pursuant to this section of the Policy, shall be e-mailed to [ELDClaims@gaic.com](mailto:ELDClaims@gaic.com) or mailed to:

**GREAT AMERICAN INSURANCE GROUP  
ELD CANADA, CLAIMS DEPARTMENT  
1515 WOODFIELD ROAD; SUITE 500  
SCHAUMBURG, IL 60173**

## **Section VIII. General Conditions**

### **A. Cancellation or Non-Renewal**

- (1) This Policy may be canceled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the pro rata portion of the premium, unless this Policy is converted to Run-Off pursuant to Section VIII. E. wherein the entire premium for this Policy shall be deemed earned.
- (2) This Policy may only be canceled by the **Insurer** if the **Corporation** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

### **B. Proposal Form**

- (1) It is agreed by the **Corporation** and the **Insured Person(s)** that the particulars and statements contained in the Proposal Form(s), any information provided therewith, any public documents filed by the **Company** on the SEC's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), or on the System for Electronic Document Analysis and Retrieval ("SEDAR") within the twelve (12) month period prior to the inception date of this Policy, the most recent Form 10-K filed and the most recent annual report (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto), are the basis of this Policy and are to be considered as incorporated in and constituting a part of the Policy. The Proposal Form and any information provided therewith shall be construed as a separate Proposal Form for coverage by each **Insured Person**. There shall be no coverage for any **Claim** made with respect to any **Insured Person(s)** who had knowledge, as of the effective date of the **Policy Period**, of any facts that were not truthfully and accurately disclosed in the Proposal Form. No statement in the Proposal Form or knowledge possessed by any one **Insured Person** shall be imputed to any other **Insured Person(s)** for the purpose of determining the availability of coverage with respect to **Claims** made against any other **Insured Person(s)**.
- (2) This Policy shall not be rescinded by the **Insurer** in whole or in part for any reason.
- (3) In the event that any provision of this Policy shall be declared or deemed invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portion of this Policy.

### **C. Action Against the Insurer**

- (1) 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, and until the **Insured Person's** obligation to pay shall have been finally determined by an adjudication against any **Insured Person(s)** or by written agreement of the **Insured Person(s)**, claimant and the **Insurer**.

- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against any **Insured Person(s)** nor shall the **Insurer** be impleaded by any **Insured Person(s)** or their legal representative in any such **Claim**.

#### **D. Amalgamation, Merger or Acquisition**

If during the **Policy Period**, the **Company** acquires the assets of another entity, by amalgamation, merger or otherwise, and the acquired assets of such other entity exceed fifty percent (50%) of the assets of the **Company** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

Solely with respect to Insuring Agreement B, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured Person(s)** for any **Wrongful Act** of any **Subsidiary** or the **Insured Person(s)** of such **Subsidiary** or any entity that merges with the **Company** or the **Insured Person(s)** of such entity that merges with the **Company** occurring:

- (1) prior to the date such entity became a **Subsidiary** or was merged with the **Company**;
- (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
- (3) subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**.

#### **E. Conversion to Run-Off Coverage**

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation** representing the present right to vote for election of a majority of the Board of Directors or members of the management board of a limited liability company, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- (1) the **Corporation** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- (2) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- (3) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

#### **F. Outside Entity Provision**

In the event a **Claim** is made against any **Insured Persons** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance provided to the **Outside Entity** which covers its directors, officers, trustees or governors.

## G. Coverage Extensions

### (1) Spousal Provision

The coverage provided by this Policy shall also apply to the lawful spouse or “Domestic Partner” of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

“Domestic Partner” shall mean any natural person qualifying as a domestic partner under the provisions of any applicable provincial, territorial, federal, state or local law.

### (2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

### (3) Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person(s)** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person(s)**.

## H. Subrogation

In the event and to the extent of any payment under this Policy under Insuring Agreement I.A., the **Insurer** shall be entitled to any and all subrogation rights, privileges and protections afforded to the **Insurer** of the **Primary Policy**.

In the event of any payment under Insuring Agreement I.B, the **Insurer** shall be subrogated to the extent of such payment to all of each and every **Company's** and **Insured Person's** rights of recovery thereof, and each such **Company** and **Insured Person(s)** shall execute all papers required and shall do everything that may be necessary (including without limitation, the assertion of indemnification or contribution rights) to secure such rights including the execution of any and all documents necessary to enable the **Insurer** to effectively bring suit in the name of each such **Company** and/or each such **Insured Person(s)**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person(s)** under this Policy unless Section IV. A. applies with respect to such **Insured Person(s)**.

## I. Related Wrongful Acts

More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insured Persons** shall be considered a single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other Policy providing similar coverage.

## J. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

## K. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are amended to conform to such laws.

## L. Entire Agreement

By acceptance of this Policy, the **Insured Person(s)** and the **Insurer** agree that this Policy (including the Declarations, Proposal Forms submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**M. Corporation Represents Insured Person(s)**

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of the **Insured Person(s)** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

**N. Representative of the Insurer**

Great American Insurance Companies, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII. of this Policy.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

**O. Other Insurance**

If other valid and collectible insurance with any other insurer, whether such insurance is issued before, concurrent with, or after the inception of this Policy, is available to the **Insured Person(s)** covering a **Claim** also covered by this Policy (other than the **Underlying Policy(ies)** and insurance that is issued specifically as insurance excess of the insurance offered by this Policy), this Policy shall be excess of and shall not contribute with such other insurance. This Policy shall not be subject to the terms of any other insurance.

**P. Reporting Duties**

The **Insured Person(s)** and/or the **Company** shall give written notice to the **Insurer** within thirty (30) days after the General Counsel, Risk Manager, or person with equivalent responsibility first receives or has notice of any:

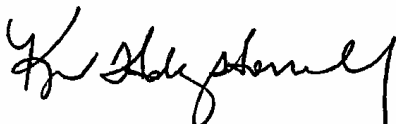
- (1) material change in the terms or conditions of the **Underlying Policy(ies)**; or
- (2) non-renewal or cancellation of the **Underlying Policy(ies)**;

occurring during the **Policy Period** or the **Discovery Period** (if elected pursuant to Section II. above), and any additional premium reasonably required by the **Insurer** as a result of such change, non-renewal or cancellation shall be paid within thirty (30) days of the request therefore by the **Insurer**.

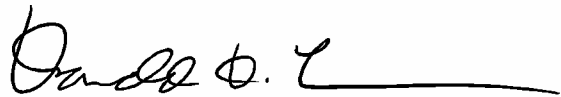
**Q. Territory and Valuation**

Except as otherwise provided in this Policy, all premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in Canadian dollars. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars at the rate of exchange set by the Globe and Mail on the date the final judgment is entered, the amount of settlement is agreed upon or the payment of such other element of **Loss** is legally due, respectively.

**GREAT AMERICAN INSURANCE COMPANY®**



Secretary



President