

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER
PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT,
R.S.C., C.B-3, AS AMENDED, AND SECTION 55
OF THE COURT OF QUEEN'S BENCH ACT,
C.C.S.M., C. C280, AS AMENDED

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION
VENTURES, INC., NYGARD NY RETAIL, LLC., NYGARD
ENTERPRISES LTD., NYGARD PROPERTIES LTD., 4093879
CANADA LTD., 4093887 CANADA LTD., and NYGARD
INTERNATIONAL PARTNERSHIP,

Respondents.

AFFIDAVIT OF GREG FENSKE
AFFIRMED this 24th day of April, 2020

LEVENE TADMAN GOLUB LAW CORPORATION

Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, MB R3C 3Z5

WAYNE M. ONCHULENKO
Telephone No. (204) 957-6402
Fax No. (204) 957-1696
File No. 113885/WMO

QB BOX 105

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER
PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT,
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INTERNATIONAL PARTNERSHIP,

Respondents.

AFFIDAVIT OF GREG FENSKE

I, **GREG FENSKE**, of the City of Winnipeg, in the Province of
Manitoba, AFFIRM:

1. I previously held the position of Director of Systems for the Nygard Group of Companies (hereinafter "Nygard") and as such have personal knowledge of the facts and matters which are hereinafter deposed to be me except where same are stated to be based on information and belief, and which I believe to be true.
2. This is a supplemental affidavit to the affidavit that I affirmed on April 8, 2020 and is in support of the Respondents' two Notices of Motion

before the Court on April 29, 2020. This affidavit addresses recent developments in the Respondents' and Non-Debtors' interactions with the Receiver. Specifically, this affidavit addresses:

- a. attempts to access the Gardena Premises for the purpose of inspection and to obtain copies of building plans and maintenance records;
- b. attempts to address "tailing coverage" matters relating to an insurance policy provided by AIG Insurance Company of Canada and procured by Nygard Enterprises Ltd. (the **"Insurance Policy"**). A copy of the portion of the Insurance Policy in my possession is attached hereto and marked as **Exhibit "O"**; and
- c. the Receiver's request for a Key Employee Retention Plan (**"KERP"**), particularly as it may pertain to the Debtors' Chief Executive Officer (Sajjad Hudda) and Chief Financial Officer (Kevin Carkner).

ACCESS TO PROPERTIES

3. On April 14, 2020 at 10:07 AM and April 16, 2020 at 8:49 AM, counsel for Edsons and Brause exchanged emails with counsel for the Receiver regarding access to the Gardena Properties. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the said emails.

4. On April 20, 2020 at 3:03 PM, counsel for the Respondents wrote to counsel for the Receiver to reiterate its request (in a more formal manner) to enter the Gardena Premises. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of the said email.
5. On April 21, 2020 at 3:19 PM, counsel for the Receiver responded setting out its terms respecting access by Edsons and Brause to the properties. The conditions included, but were not limited to the following:
 - a. Access to Gardena Properties will be arranged on 48 hours prior written notice, through legal counsel. The request for access will describe the purpose of the access and the names of the persons who will attend on behalf of the landlord.
 - b. The cost of the Receiver having a representative present for the purpose of the access will be paid by Brause or Edson's as the case may be. Unless a particular situation requires the attendance of the Receiver, the Receiver will arrange a third party representative or representatives to attend on behalf of the Receiver and, in such case, the cost to be paid by Edson's or Brause, as the case may be, shall be USD250 for attendances up to 3 hours.

Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of the said email.

6. On April 21, 2020 at 5:46 PM, counsel for the Respondents responded advising that: 1) its client is not prepared to pay the \$250.00 as set out by the Receiver; 2) the lease sets out a notice period of 24 hours; and 3) the landlords wanted to remove the building plans and records that as they are not part of the Receiver's mandate. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a true copy of the said email.
7. On April 21, 2020 at 6:06 PM, counsel for the Receiver responded advising as to the justification for the conditions and repeating that the Receiver does not agree to the removal of any property, documents etc. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a true copy of the said email.
8. On April 21, 2020 at 6:40 PM, counsel for the Receiver wrote that it was agreeable to the issue of costs being determined by the Court however, reiterated the conditions for attendance as set out above. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a true copy of the said email.
9. On April 21, 2020 at 8:00 PM, counsel for the Receiver wrote that it had sorted out the matter of insurance. Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a true copy of the said email.
10. On April 21, 2020 at 8:36 PM, counsel for the Respondents wrote that he would get back to counsel for the Receiver as soon as he had

instructions. Attached hereto and marked as **Exhibit “H”** to this my Affidavit is a true copy of the said email.

11. On April 22, 2020 at 9:43 AM, counsel for the Respondents wrote that one of the main reasons to attend on that date was to get copies of the building plans and records of maintenance so the maintenance can be resumed. Counsel continued in stating that it did not see a good reason why the Receiver could not provide copies of the landlords' documents and if the landlords could not have these documents they would not be attending on that date. Attached hereto and marked as **Exhibit “I”** to this my Affidavit is a true copy of the said email.

DIRECTORS AND OFFICERS LIABILITY INSURANCE

12. On April 18, 2020, counsel for the Respondents wrote to counsel for the Receiver to advise that the Directors and Officers of the companies in receivership (the “Debtor Companies”) were inquiring about the status of the Directors and Officers insurance policies purchased by some, or all, of the Debtor Companies. He advised that their understanding is that it is a “claims made” policy that expires in June or July of this year and that the Directors and Officers understand that there is an ability to purchase tailing coverage of either three years or six years. Counsel advised that the Directors and Officers would like the Receiver to purchase the tailing coverage option for them, or, failing that, instruct the Debtor Companies' insurance broker (who is believed to be HUB Insurance) to purchase

the tailing coverage providing that the Directors and Officers personally pay for said coverage. Attached hereto and marked as **Exhibit "J"** to this my Affidavit is a true copy of the said email.

13. On April 20, 2020, counsel for the Receiver wrote to counsel for the Receiver and advised that it had forwarded the email to the Receiver and will get back to counsel. Attached hereto and marked as **Exhibit "K"** to this my Affidavit is a true copy of the said email.
14. On April 20, 2020, counsel for the Respondents wrote to counsel for the Receiver that the Directors advise that this matter is of urgency the Directors. Attached hereto and marked as **Exhibit "L"** to this my Affidavit is a true copy of the said email.
15. On April 22, 2020, counsel for the Respondents wrote to counsel for the Receiver as follows: "To provide context on the urgency of this request, the applicable policy expires on June 1, 2020 and the purchase of tailing coverage must be both declared and paid for no later than 30 days before the policy expires (i.e. May 1, 2020). To that end, can you please confirm that the Receiver will assist the Directors and Officers in procuring the tailing coverage ASAP so that it can arrange funding for that policy." Attached hereto and marked as **Exhibit "M"** to this my Affidavit is a true copy of the said email.
16. On April 22, 2020, counsel for the Receiver responded to counsel for the Respondents to advise that it did not yet have instructions regarding this issue and further stated as follows: "My understanding

is that D&O coverage is part of a “global” policy including different types of coverages that extend to the “debtor” entities, and also “non-debtor” entities. To the extent that the Receiver accommodates your client’s request and assists in arranging the D&O tail (at your clients’ cost), it would only be able to do so in respect of the coverage that relates to the “debtor” entities. Non-debtors will have to place their own coverage, separately. Is that also your understanding of what is being requested? I assume that it is the D&O tail in respect of the debtor entities that is of particular interest to your clients.” Attached hereto and marked as **Exhibit “N”** to this my Affidavit is a true copy of the said email.

17. On April 23, 2020, counsel for the Respondents responded to counsel for the Receiver and advised as follows:

“I am afraid your e-mail underscores the fundamental document and knowledge imbalance occasioned by the Receiver being in possession of most, if not all, of the Debtor and Non-Debtor books and records with the Debtors and Non-Debtors not being granted access to any of those documents.

My clients have been provided with an insurance policy (or at least a portion of an insurance policy) issued by AIG (and procured by HUB as broker) that appears to have been purchased by Nygard Enterprises Ltd. The policy appears to provide Directors & Officers insurance through to June 1, 2020. The policy also appears to allow for the purchase of tailing coverage providing that the right to

purchase tailing coverage is exercised at any time up to 30 days before expiry of the policy. Based on the definitions of Subsidiary contained in the policy, it is possible that the policy extends to both Debtor and Non-Debtor entities. We attach the AIG policy (or portion thereof) that we have been provided with.

I note that this insurance policy is caught by the existing Appointment Order. This is but one example of an asset that should not be under the Receiver's control, but would not have been known to the debtors if it had not been provided to the Debtors through other means. If the Appointment Order was more targeted in terms of the Nygard Enterprises assets subject to the Appointment Order, the company and its Directors could have dealt with this matter on their own.

Your e-mail suggests there may be other insurance policies that speak to D&O coverages and we understand that this may in fact be the case. Unfortunately (and as mentioned above), my clients have no way of confirming that given the receiver's restraint on access to books and records. We would be obliged if the Receiver provided us with copies of all insurance policies that they are aware of.

My clients understand that there is a call this afternoon between the Receiver and HUB to discuss these insurance matters. We would be pleased to participate in the call so that we can expedite the process of arranging the tailing coverage.

Finally, and based solely on the policy attached, it appears that your distinction between “debtors” and “non-debtors” is a distinction without a difference. The policy was issued to Nygard Enterprises Ltd. (which, at this point, is a debtor) and the policy requires the Named Entity (defined in the policy as Nygard Enterprises Ltd.) to acquire the tailing coverage. As such, the Receiver would have to provide instructions to both HUB and AIG on behalf of Nygard Enterprises Ltd., irrespective of whether the coverage includes “debtor” and “non-debtor” entities.”

Attached hereto and marked as **Exhibit “O”** to this my Affidavit is a true copy of the said email.

18. On April 24, 2020, counsel for the Receiver wrote to counsels for the Respondents to advise as follows: the Receiver is aware of the attached supplemental D&O policy. If there are other D&O policies (than the AIG policy you circulated yesterday and the attached Trisura policy), the Receiver not aware of them. Please confirm in detail what it is that your clients are requesting the Receiver to do, how your clients will fund premium amounts, and when you consider that it is required to be done by. Attached hereto and marked as **Exhibit “P”** to this my Affidavit is a true copy of the said email.
19. On April 24, 2020, counsel for the Respondents wrote to counsel for the Receiver and advised that the ideal option would be for the Receiver to provide written confirmation to HUB and AIG that they can take instructions directly from certain Directors/Officers regarding

acquiring the tailing coverage in the AIG (and perhaps the Trisura) policy. Further, counsel once again advised as to the urgency of this matter. Attached hereto and marked as **Exhibit "Q"** to this my Affidavit is a true copy of the said email.

20. On April 24, 2020, counsel for the Receiver responded and advised as follows: "I'll discuss your message with the Receiver. I'm not sure you're right about the time period, but you'll need to decide on that." Attached hereto and marked as **Exhibit "R"** to this my Affidavit is a true copy of the said email.

KEY EMPLOYEE RETENTION PLAN

21. On April 8, 2020, counsel for the Respondents wrote to counsel for the Receiver to advise of its concerns regarding Mr. Hudda and Mr. Carkner; he advised that there is a concern that are in the midst of assembling a buyer group to purchase some, or all, of the assets of the receivership companies and are using their engagement with the receiver to obtain an advantage in any sales process. Counsel for the Respondents further advised that there is a concern that non-debtor information could be disseminated to third parties without authorization. Attached hereto and marked as **Exhibit "S"** to this my Affidavit is a true copy of the said email.
22. On April 21, 2020, counsel for the Receiver wrote to counsel for the Respondents and advised that both Mr. Hudda and Mr. Carkner currently have the same access to information in the Nygard Group's

electronic system that they had prior to the receivership. Attached hereto and marked as **Exhibit "T"** to this my Affidavit is a true copy of the said email.

OTHER MATTERS

23. In response to paragraph 87 - 88 of the Receiver's First Report, I am advised by Angela Dyborn, an officer of Edsons, and do verily believe, that she directed Edsons to forward loan money to cover the payroll on March 12, 2020.
24. Edsons did not make a loan to NEL.
25. In response to paragraph 119 sub a of the Receiver's First Report, Mr. Rubinfeld was addressing an employee issue.
26. In response to paragraph 119 sub b of the Receiver's First Report, Mr. Rubinfeld was addressing an ownership issue which is not contradictory to the employment issue he was addressing in 119 sub a.
27. In response to paragraph 119 sub c of the Receiver's First Report MR. Rubinfeld was dealing with the American companies ability to get access to American government assistance which was not contradictory to 119 subparagraphs a and b.

28. It continues to be the position of the Nygard Group of Companies that White Oak was in breach of its agreement when it refused to provide further funding pursuant to its credit facility. The Nygard Group of Companies disputed White Oak's formula calculation. The Nygard Group of Companies' position was that there was still room on the credit facility to meet the payroll on March 12, 2020 and that White Oak had an obligation to fund NIP in that regard.

29. I make this Affidavit *bona fide*.

AFFIRMED before me at the
City of Winnipeg, in the
Province of Manitoba this 24th
day of April, 2020

A Notary Public

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GREG FENSKE

This is Exhibit "A" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano <dmagisano@lernalers.ca>

Sent: April 16, 2020 8:49 AM

To: 'Bruce Taylor' <GBT@tdslaw.com>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Subject: RE: Nygard Receivership - Gardena access [LAW-TDS.FID1853952]

Bruce,

My clients' responses to your proposal below are in red under the relevant section.

Regards

Dom

Domenico Magisano | **Lernalers LLP** | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lernalers.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNALERS



From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 14, 2020 10:07 AM

To: Domenico Magisano <dmagisano@lernalers.ca>; 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>

Subject: Nygard Receivership - Gardena access [LAW-TDS.FID1853952]

Dom/Wayne, as to the matter of landlord access to the leased premises at 14720 South Maple and 14421 S. San Pedro in Gardena (the "Properties"):

There are five leased premises in Gardena, California, all of which are now under the Receiver's control (the "Gardena Properties"). The Gardena Properties have the following municipal addresses:

14702 South Maple Ave., Gardena, California ("14702")

14421 S. San Pedro Street, Gardena, California ("14421")

14401 S. San Pedro Street, Gardena, California

332 E. Rosecrans Ave., Gardena, California

312 E. Rosecrans Ave., Gardena, California

1. Edson's Investments Inc. appears to be landlord of both premises. Please confirm that you act for Edson's.

Edson's Investments Inc. ("Edson's") is the landlord of all five of the Gardena Properties. As we have previously advised your office and the court, Wayne's firm and my firm represent Edson's in the above matter. We also note that while the

Receiver was quick to provide our office with the leases and lease waivers for 14702 and 14421 (presumably because Edson's asserted that the debtors were not tenants of these premises), we are still waiting for copies of the same documents (if they exist) for the balance of the Gardena Properties.

2. Our message to you on March 29, 2020 indicated the following conditions with respect to arrangements for Edson's to access the leased premises:

- (a) any requests for access must be coordinated through the Receiver and its counsel

Edson's is comfortable with this, providing that the Receiver will comply with the terms of the lease regarding landlord access.

- (b) In advance of attending, Edson's would provide to the Receiver copies of

- A. Any policies insuring the Properties (or related to the Properties) held by your clients

Edson's will attempt to provide evidence of applicable insurance, however, as your client is aware, the Receiver has yet to provide Edson's with access to its documents (both electronic and physical documents) that were situated in certain real property now in the control of the receiver. It may prove difficult to provide this information without cooperation from the Receiver.

- B. Reasonable evidence to confirm and support the purpose of the access

The leases, to my client's knowledge, do not require my client to state its reasons for wanting access to the premises. Further, Edson's is not a debtor and its business and affairs are not the concern of the Receiver. In the circumstances we do not believe this is a reasonable request.

- (c) no property is to be removed from the premises

Edson's is comfortable with this providing that the Receiver acknowledges that this provision is without prejudice to Edson's asserting a property claim over assets at the Gardena Properties that it believes belong to them. If that property claim is either admitted by the Receiver, or alternatively, adjudicated by the court to be Edson's property, the Receiver acknowledges that Edson's is entitled to pick up said property from the Gardena Properties.

- (d) a representative of the Receiver will be present during the attendance, and the Receiver reserves the right to record (including by video) the attendance

Edson's is comfortable with the Receiver being present during the attendance. Both parties should have the right to record (including by video) any attendance. We acknowledge that there are trust issues on both sides and thus affording both sides the opportunity to record visits will ensure that there is a record if there are any irregularities.

- (e) the Receiver's costs associated with the attendance are to be borne by Edson's, and

I am not aware of any provision in the lease that requires the landlord to reimburse the tenant for costs associated with attending the Gardena Properties. This seems particularly egregious in an instance where the Receiver is actively restraining the landlord from attending the Gardena Properties and is requiring additional measures for a visit that would not normally be required when a landlord visits a tenanted premises. In any event, the concept of requiring a landlord to pay for the privilege of visiting its own premises in accordance with the terms of the lease seems unreasonable.

- (e) the attendance must not violate "COVID-related" sheltering/business closure orders of the State of California and/or the City of Gardena.

Edson's agrees with this provision, however, Edson's is receiving legal advice on whether California's "COVID-related" regulations would preclude a landlord from attending a premises when it is not operating.

The Receiver considers these conditions to be appropriate and typical in the context of a receivership.

As we indicated in our March 29 message, the Receiver will make itself available to work with your clients regarding attendances to the leased premises as soon as practical.

We have not had a response to our March 29 email in respect of these arrangements. Please get back to me so that we can try to resolve matters as to landlord access.

The last three paragraphs of the e-mail are either argument and/or generic statements regarding the Receiver's willingness to cooperate. I will refrain from comment as I believe the old adage of "the proof is in the pudding" applies (for both sides). Be that as it may, Edson's looks forward to building a reasonable working relationship with the Receiver regarding the Gardena Properties.

Regards,

G. Bruce Taylor
Partner

P 204-934-2566

C 204-295-5241

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T D S **THOMPSON
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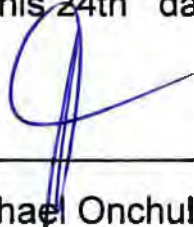
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This is Exhibit "B" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Monday, April 20, 2020 3:03 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lerner.ca>
Subject: 24 hour request

Hi Bruce

I am instructed to make a formal request to enter all buildings in California for a maintenance check. This is the purpose of our entry.

We reserve the right to have the judge determine if we have to pay to enter our own building.

We are prepared to agree to the other terms of entry set out in your email.

Who should we contact to learn when we can gain entry?

Wayne M Onchulenko*

Levene  Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.8402 v
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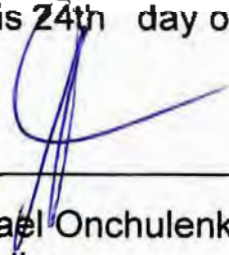
* Services provided through Wayne M. Onchulenko Law Corporation

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This is Exhibit "C" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 21, 2020 3:19 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Wayne/Dom, in response to Wayne's message below and Dom's message of April 16 (which followed on my messages of March 29 and April 14):

1. The 5 properties (the "**Gardena Properties**") below are leased to Nygard, Inc., one of the debtor companies in receivership. Based on the information available to the Receiver, Brause Investments Inc. ("**Brause**") is landlord of the two Rosencrans properties; Edson's Investments Inc. ("**Edson's**") is landlord of the South Maple Ave. and San Pedro Street properties.

14702 South Maple Ave., Gardena, California ("14702")
14421 S. San Pedro Street, Gardena, California ("14421")
14401 S. San Pedro Street, Gardena, California
332 E. Rosecrans Ave., Gardena, California
312 E. Rosecrans Ave., Gardena, California

2. We have previously provided you copies of Landlord Waivers in relation to 14702 and 14421. The focus of the earlier communications was on the 14702 and 14421, and I don't recall a request for copies of Landlord Waivers in relation to the other properties. I may be misremembering. In any event, copies of Landlord Waivers for 14401, 332 and 312 are attached.

3. The Receiver is agreeable to the following terms respecting access by Edson's or Brause, as the case may be, to the Leased Premises:

(a) access to the Gardena Properties will be arranged on 48 hours prior written notice, through legal counsel. The request for access will describe the purpose of the access and the names of the persons who will attend on behalf of the landlord.

(b) In advance of attending, the Receiver will be provided with copies of any policies insuring the Properties (or related to the Properties) held by the landlord. If need be, these can no doubt be obtained by Brause and Edson's from their insurance broker. These are to be provided reasonably in advance of the first attendance in respect of each property, to allow the Receiver the opportunity to review them.

(c) no property is to be removed from the premises at such attendances. This provision is without prejudice to Edson's or Brause asserting a property claim over assets at the Gardena Properties that they believe belong to them. If that property claim is either admitted by the Receiver, or alternatively, adjudicated by the court to be Edson's or Brause's property, the Receiver acknowledges that Edson's or Brause is entitled to pick up said property from the Gardena Properties on the same basis for access to do so as is set out in this message.

(d) access for landlord purposes is not intended as access to review, copy or remove documents or to access correspondence, files or other data from the electronic system.

(d) a representative of the Receiver will be present during the attendance, and the Receiver and the Gardena Landlords reserve the right to record (including by video) the attendance.

(e) the landlord's attendance necessarily involves costs for the Receiver. The cost of the Receiver having a representative present for the purpose of the access will be paid by Brause or Edson's as the case may be. Unless a particular situation requires the attendance of the Receiver, the Receiver will arrange a third party representative or representatives to attend on behalf of the Receiver and, in such case, the cost to be paid by Edson's or Brause, as the case may be, shall be USD250 for attendances up to 3 hours. If the attendance exceeds 3 hours, the landlord will pay an additional USD250 for each additional 3 hours or part thereof. If, in the discretion of the Receiver, the purpose of the attendance requires that the Receiver attend, then costs are as to be agreed between the parties prior to such attendance, or as directed by order of the Manitoba Court.

(f) the attendance must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena, California, including those of the State of California and/or the City of Gardena ("COVID Orders"). All social distancing protocols must be maintained.

As to your request below to enter all Gardena Properties for a maintenance check (subject to confirmation from you of Brause's and Edson's' agreement to the terms set forth above, and providing (i) the names of the persons to attend for the maintenance visit and (ii) copies of insurance), we agree that attendance at the premises for such a purpose does not appear to violate COVID Orders, and the Receiver has arranged for third party representatives of the Receiver to be present at the site at 10 a.m. local time tomorrow morning, who will accompany the landlords' representatives on the maintenance check. Please confirm that 10 a.m. tomorrow morning works for Edson's/Brause.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltg|c.ca>
Sent: Monday, April 20, 2020 3:03 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: 24 hour request

Hi Bruce

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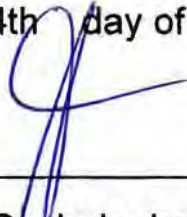
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We are prepared to agree to the other terms of entry set out in your email.

Who should we contact to learn when we can gain entry?

Wayne M Onchulenko*

This is Exhibit "D" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Tuesday, April 21, 2020 5:46 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>; AbeRubinfeld <abe.rubinfeld@att.net>; Leiba Feldman <LFeldman@ltglc.ca>; Debby Prymak <DPrymak@ltglc.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

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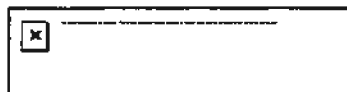
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We want to be able to remove the building plans and records. They are not part of the receivers mandate. They belong to the landlords.

I look forward to your reply.

Wayne M Onchulenko*



700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z6

204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Wayne/Dom, in response to Wayne's message below and Dom's message of April 16 (which followed on my messages of March 29 and April 14):

1. The 5 properties (the "**Gardena Properties**") below are leased to Nygard, Inc., one of the debtor companies in receivership. Based on the information available to the Receiver, Brause Investments Inc. ("**Brause**") is landlord of the two Rosencrans properties; Edson's Investments Inc. ("**Edson's**") is landlord of the South Maple Ave. and San Pedro Street properties.

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3. The Receiver is agreeable to the following terms respecting access by Edson's or Brause, as the case may be, to the Leased Premises:

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(c) no property is to be removed from the premises at such attendances. This provision is without prejudice to Edson's or Brause asserting a property claim over assets at the Gardena Properties that they believe belong to them. If that property claim is either admitted by the Receiver, or alternatively,

adjudicated by the court to be Edson's or Brause's property, the Receiver acknowledges that Edson's or Brause is entitled to pick up said property from the Gardena Properties on the same basis for access to do so as is set out in this message.

(d) access for landlord purposes is not intended as access to review, copy or remove documents or to access correspondence, files or other data from the electronic system.

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(e) the landlord's attendance necessarily involves costs for the Receiver. The cost of the Receiver having a representative present for the purpose of the access will be paid by Brause or Edson's as the case may be. Unless a particular situation requires the attendance of the Receiver, the Receiver will arrange a third party representative or representatives to attend on behalf of the Receiver and, in such case, the cost to be paid by Edson's or Brause, as the case may be, shall be USD250 for attendances up to 3 hours. If the attendance exceeds 3 hours, the landlord will pay an additional USD250 for each additional 3 hours or part thereof. If, in the discretion of the Receiver, the purpose of the attendance requires that the Receiver attend, then costs are as to be agreed between the parties prior to such attendance, or as directed by order of the Manitoba Court.

(f) the attendance must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena, California, including those of the State of California and/or the City of Gardena ("COVID Orders"). All social distancing protocols must be maintained.

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204 957.6402 v

204 957.1896 f

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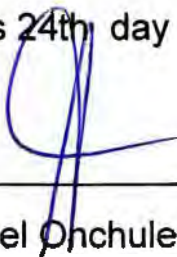
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Wayne Michael Onchulenko
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in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>
Date: April 21, 2020 at 6:06:00 PM CDT
To: "Wayne M. Onchulenko" <WOnchulenko@ltglc.ca>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

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It would also seem unnecessary to remove "building plans and records" if the purpose of the visit is a maintenance check.

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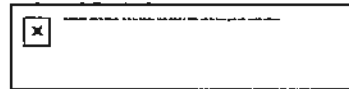
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700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v


204 957.1896 f

Bar Admissions: Manitoba, Ontario and Nunavut

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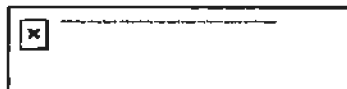
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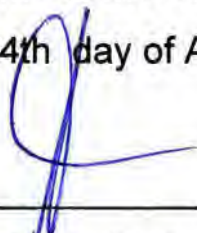
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Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



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A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor
Sent: Tuesday, April 21, 2020 6:40 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>
Subject: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver is agreeable to attendance at the Gardena Properties tomorrow, on the basis of having payment of the Receiver's costs determined by the Court. As noted below, the Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

The Receiver requires your confirmation as to the other terms set out in my April 21 3:19 pm email below, including, without limitation, 3 (c) and (d) below.

Please also advise promptly of the names of the persons attending on behalf of the landlords. Assuming other matters are confirmed, they are to meet the Receiver's representatives at the entrance to the properties tomorrow morning at 10am local time.

Regards

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Bruce Taylor
Sent: Tuesday, April 21, 2020 6:06 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

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(e) the landlord's attendance necessarily involves costs for the Receiver. The cost of the Receiver having a representative present for the purpose of the access will be paid by Brause or Edson's as the case may be. Unless a particular situation requires the attendance of the Receiver, the Receiver will arrange a third party representative or representatives to attend on behalf of the Receiver and, in such case, the cost to be paid by Edson's or Brause, as the case may be, shall be USD250 for attendances up to 3 hours. If the attendance exceeds 3 hours, the landlord will pay an additional USD250 for each additional 3 hours or part thereof. If, in the discretion of the Receiver, the purpose of the attendance requires that the Receiver attend, then costs are as to be agreed between the parties prior to such attendance, or as directed by order of the Manitoba Court.

(f) the attendance must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena, California, including those of the State of California and/or the City of Gardena ("COVID Orders"). All social distancing protocols must be maintained.

As to your request below to enter all Gardena Properties for a maintenance check (subject to confirmation from you of Brause's and Edson's' agreement to the terms set forth above, and providing (i) the names of the persons to attend for the maintenance visit and (ii) copies of insurance), we agree that attendance at the premises for such a purpose does not appear to violate COVID Orders, and the Receiver has arranged for third party representatives of the Receiver to be present at the site at 10 a.m. local time tomorrow morning, who will accompany the landlords' representatives on the maintenance check. Please confirm that 10 a.m. tomorrow morning works for Edson's/Brause.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Monday, April 20, 2020 3:03 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: 24 hour request

Hi Bruce

I am instructed to make a formal request to enter all buildings in California for a maintenance check. This is the purpose of our entry.

We reserve the right to have the judge determine if we have to pay to enter our own building.

We are prepared to agree to the other terms of entry set out in your email.

Who should we contact to learn when we can gain entry?

Wayne M Onchulenko*

Levene  Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v

204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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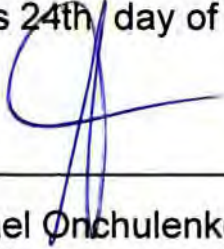
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Click the following links to [unsubscribe](#) or [subscribe](#) to TDS e-communications.

This is Exhibit "G" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 21, 2020 8:00 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>

Subject: FW: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver has sorted out the matter of insurance. Point 3(b) in my email April 21, 2020 3:19 PM below is waived in relation to the attendance contemplated for tomorrow.

Regards,

G. Bruce Taylor

P 204-934-2566

C 204-295-5241

From: Bruce Taylor

Sent: Tuesday, April 21, 2020 6:40 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>

Subject: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver is agreeable to attendance at the Gardena Properties tomorrow, on the basis of having payment of the Receiver's costs determined by the Court. As noted below, the Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

The Receiver requires your confirmation as to the other terms set out in my April 21 3:19 pm email below, including, without limitation, 3 (c) and (d) below.

Please also advise promptly of the names of the persons attending on behalf of the landlords. Assuming other matters are confirmed, they are to meet the Receiver's representatives at the entrance to the properties tomorrow morning at 10am local time.

Regards

G. Bruce Taylor

P 204-934-2566

C 204-295-5241

From: Bruce Taylor

Sent: Tuesday, April 21, 2020 6:06 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Domenico Magisano <dmagisano@lernalers.ca>

Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Wayne, I'll speak with the Receiver about the matter of having payment of the Receiver's costs determined by the Court. The Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

Mr. Magisano's April 16 response included the following in respect to the Receiver's requirement that no property be removed:

"Edson's is comfortable with this providing that the Receiver acknowledges that this provision is without prejudice to Edson's asserting a property claim over assets at the Gardena Properties that it believes belong to them. If that property claim is either admitted by the Receiver, or alternatively, adjudicated by the court to be Edson's property, the Receiver acknowledges that Edson's is entitled to pick up said property from the Gardena Properties."

The terms that I sent to you today incorporate Mr. Magisano's proviso. This applies to the removal of the "building plans and records". I added reference to document access matters to ensure that point was clear.

The Receiver does not agree to the removal of any property, documents etc, as provided in the terms outlined below.

It would also seem unnecessary to remove "building plans and records" if the purpose of the visit is a maintenance check.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Tuesday, April 21, 2020 5:46 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>; AbeRubinfeld <abe.rubinfeld@att.net>; Leiba Feldman <LFeldman@ltglc.ca>; Debby Prymak <DPrymak@ltglc.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Hi Bruce

Thanks for your email.

My client is not prepared to pay the \$250. If a judge tells us we must pay we will. We do not think a judge will tell us we must pay. We can ask on the 29th.

I am advised by Abe that there is a blanket policy that covers all the corporate entities. You have possession of the policy. I have asked Abe if he can get another copy from the broker. Abe is copied on this email.

Our position is the lease says 24 hours but there can be some flexibility in this regard as in this case. Tomorrow at 10 would work.

We want to be able to remove the building plans and records. They are not part of the receivers mandate. They belong to the landlords.

I look forward to your reply.

Wayne M Onchulenko*

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v

204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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 please think green before printing this email

From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 21, 2020 3:19 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Domenico Magisano <dmagisano@lerners.ca>

Subject: RE: 24 hour request [LAW-TDS.FID18S39S2]

Wayne/Dom, in response to Wayne's message below and Dom's message of April 16 (which followed on my messages of March 29 and April 14):

1. The S properties (the "**Gardena Properties**") below are leased to Nygard, Inc., one of the debtor companies in receivership. Based on the information available to the Receiver, Brause Investments Inc. ("**Brause**") is landlord of the two Rosencrans properties; Edson's Investments Inc. ("**Edson's**") is landlord of the South Maple Ave. and San Pedro Street properties.

14702 South Maple Ave., Gardena, California ("14702")

14421 S. San Pedro Street, Gardena, California ("14421")

14401 S. San Pedro Street, Gardena, California

332 E. Rosecrans Ave., Gardena, California

312 E. Rosecrans Ave., Gardena, California

2. We have previously provided you copies of Landlord Waivers in relation to 14702 and 14421. The focus of the earlier communications was on the 14702 and 14421, and I don't recall a request for copies of Landlord Waivers in relation to the other properties. I may be misremembering. In any event, copies of Landlord Waivers for 14401, 332 and 312 are attached.

3. The Receiver is agreeable to the following terms respecting access by Edson's or Brause, as the case may be, to the Leased Premises:

{a} access to the Gardena Properties will be arranged on 48 hours prior written notice, through legal counsel. The request for access will describe the purpose of the access and the names of the persons who will attend on behalf of the landlord.

(b) In advance of attending, the Receiver will be provided with copies of any policies insuring the Properties (or related to the Properties) held by the landlord. If need be, these can no doubt be obtained by Brause and Edson's from their insurance broker. These are to be provided reasonably in advance of the first attendance in respect of each property, to allow the Receiver the opportunity to review them.

(c) no property is to be removed from the premises at such attendances. This provision is without prejudice to Edson's or Brause asserting a property claim over assets at the Gardena Properties that they believe belong to them. If that property claim is either admitted by the Receiver, or alternatively, adjudicated by the court to be Edson's or Brause's property, the Receiver acknowledges that Edson's or Brause is entitled to pick up said property from the Gardena Properties on the same basis for access to do so as is set out in this message.

(d) access for landlord purposes is not intended as access to review, copy or remove documents or to access correspondence, files or other data from the electronic system.

(d) a representative of the Receiver will be present during the attendance, and the Receiver and the Gardena Landlords reserve the right to record (including by video) the attendance.

(e) the landlord's attendance necessarily involves costs for the Receiver. The cost of the Receiver having a representative present for the purpose of the access will be paid by Brause or Edson's as the case may be. Unless a particular situation requires the attendance of the Receiver, the Receiver will arrange a third party representative or representatives to attend on behalf of the Receiver and, in such case, the cost to be paid by Edson's or Brause, as the case may be, shall be USD250 for attendances up to 3 hours. If the attendance exceeds 3 hours, the landlord will pay an additional USD250 for each additional 3 hours or part thereof. If, in the discretion of the Receiver, the purpose of the attendance requires that the Receiver attend, then costs are as to be agreed between the parties prior to such attendance, or as directed by order of the Manitoba Court.

(f) the attendance must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena, California, including those of the State of California and/or the City of Gardena ("COVID Orders"). All social distancing protocols must be maintained.

As to your request below to enter all Gardena Properties for a maintenance check (subject to confirmation from you of Brause's and Edson's' agreement to the terms set forth above, and providing (i) the names of the persons to attend for the maintenance visit and (ii) copies of insurance), we agree that attendance at the premises for such a purpose does not appear to violate COVID Orders, and the Receiver has arranged for third party representatives of the Receiver to be present at the site at 10 a.m. local time tomorrow morning, who will accompany the landlords' representatives on the maintenance check. Please confirm that 10 a.m. tomorrow morning works for Edson's/Brause.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Monday, April 20, 2020 3:03 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: 24 hour request

Hi Bruce

I am instructed to make a formal request to enter all buildings in California for a maintenance check. This is the purpose of our entry.

We reserve the right to have the judge determine if we have to pay to enter our own building.

We are prepared to agree to the other terms of entry set out in your email.

Who should we contact to learn when we can gain entry?

Wayne M Onchulenko*

Levene  Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v

204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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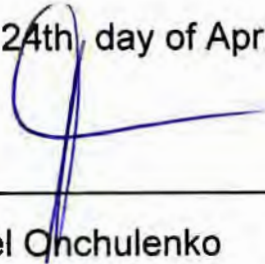
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This is Exhibit "H" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Wayne M. Onchulenko
Sent: April 21, 2020 8:36 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: Gardena Properties Access [LAW-TDS.FID1853952]

Hi Bruce

I have written and called and will get back to you as soon as I have instructions.

Wayne M Onchulenko*

Levene Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v

204 957.1896 f

Bar Admissions: Manitoba, Ontario and Nunavut

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From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 21, 2020 8:00 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>
Subject: FW: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver has sorted out the matter of insurance. Point 3(b) in my email April 21, 2020 3:19 PM below is waived in relation to the attendance contemplated for tomorrow.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Bruce Taylor
Sent: Tuesday, April 21, 2020 6:40 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>
Subject: Gardena Properties Access [LAW-TD5.FID1853952]

Wayne, the Receiver is agreeable to attendance at the Gardena Properties tomorrow, on the basis of having payment of the Receiver's costs determined by the Court. As noted below, the Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

The Receiver requires your confirmation as to the other terms set out in my April 21 3:19 pm email below, including, without limitation, 3 (c) and (d) below.

Please also advise promptly of the names of the persons attending on behalf of the landlords. Assuming other matters are confirmed, they are to meet the Receiver's representatives at the entrance to the properties tomorrow morning at 10am local time.

Regards

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Bruce Taylor
Sent: Tuesday, April 21, 2020 6:06 PM
To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Wayne, I'll speak with the Receiver about the matter of having payment of the Receiver's costs determined by the Court. The Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

Mr. Magisano's April 16 response included the following in respect to the Receiver's requirement that no property be removed:

"Edson's is comfortable with this providing that the Receiver acknowledges that this provision is without prejudice to Edson's asserting a property claim over assets at the Gardena Properties that it believes belong to them. If that property claim is either admitted by the Receiver, or alternatively, adjudicated by the court to be Edson's property, the Receiver acknowledges that Edson's is entitled to pick up said property from the Gardena Properties."

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The Receiver does not agree to the removal of any property, documents etc, as provided in the terms outlined below.

It would also seem unnecessary to remove "building plans and records" if the purpose of the visit is a maintenance check.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: Tuesday, April 21, 2020 5:46 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>; AbeRubinfeld <abe.rubinfeld@att.net>; Leiba Feldman <LFeldman@ltglc.ca>; Debby Prymak <DPrymak@ltglc.ca>
Subject: RE: 24 hour request [LAW-TDS.FID1853952]

Hi Bruce

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My client is not prepared to pay the \$250. If a judge tells us we must pay we will. We do not think a judge will tell us we must pay. We can ask on the 29th.

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I look forward to your reply.

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Levene Tadman Golub


700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v
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Bar Admissions: Manitoba, Ontario and Nunavut

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To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
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1. The 5 properties (the "**Gardena Properties**") below are leased to Nygard, Inc., one of the debtor companies in receivership. Based on the information available to the Receiver, Brause Investments Inc. ("**Brause**") is landlord of the two Rosencrans properties; Edson's Investments Inc. ("**Edson's**") is landlord of the South Maple Ave. and San Pedro Street properties.

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P 204-934-2566
C 204-295-5241

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Wayne M Onchulenko*

Levene  Tadman Colub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5


204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

* Services provided through Wayne M. Onchulenko Law Corporation

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Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Sent: April 22, 2020 9:43 AM
To: 'Bruce Taylor' <GBT@tdslaw.com>
Cc: 'Domenico Magisano' <dmagisano@lernalers.ca>; Leiba Feldman <LFeldman@ltglc.ca>; Debby Prymak <DPrymak@ltglc.ca>
Subject: RE: Gardena Properties Access [LAW-TDS.FID1853952]

Hi Bruce

My instructions are that one of the main reasons to attend today was to get copies of the building plans and records of maintenance so the maintenance can be resumed. We do not see a good reason why the receiver cannot give us copies of our documents. If we can not have these documents we will not be attending today.

Wayne M Onchulenko*

Levene  Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v
204 957.1696 f

Bar Admissions: Manitoba, Ontario and Nunavut

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From: Wayne M. Onchulenko
Sent: April 21, 2020 8:36 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>
Subject: RE: Gardena Properties Access [LAW-TDS.FID1853952]

Hi Bruce

I have written and called and will get back to you as soon as I have instructions.

Wayne M Onchulenko*

Levene Tadman Golub

700- 330 St. Mary Avenue | Winnipeg, MB R3C 3Z5

204 957.6402 v


204 957.1696 f

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From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 21, 2020 8:00 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>

Subject: FW: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver has sorted out the matter of insurance. Point 3(b) in my email April 21, 2020 3:19 PM below is waived in relation to the attendance contemplated for tomorrow.

Regards,

G. Bruce Taylor

P 204-934-2566

C 204-295-5241

From: Bruce Taylor

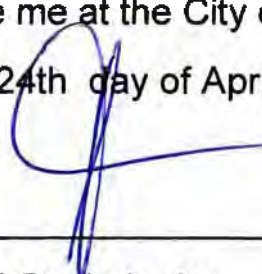
Sent: Tuesday, April 21, 2020 6:40 PM

To: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>; Domenico Magisano <dmagisano@lernalers.ca>

Subject: Gardena Properties Access [LAW-TDS.FID1853952]

Wayne, the Receiver is agreeable to attendance at the Gardena Properties tomorrow, on the basis of having payment of the Receiver's costs determined by the Court. As noted below, the Receiver reserves the right then to request full reimbursement of costs, including the time of the Receiver and its counsel in dealing with these matters.

This is Exhibit "J" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano <dmagisano@lerners.ca>
Sent: Saturday, April 18, 2020 4:58 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: Nygard - D&O Liability Insurance matter

Bruce,

Further to our call on Friday, the Directors and Officers of the companies in receivership (the "Debtor Companies") have reached out to me inquiring about the status of the Directors and Officers insurance policies purchased by some, or all, of the Debtor Companies. Their understanding is that it is a claims made policy that expires in June or July of this year. The Directors and Officers understand that there is an ability to purchase tailing coverage of either three years or six years.

The Directors and Officers would like the Receiver to purchase the tailing coverage option for them, or, failing that, instruct the Debtor Companies' insurance broker (who I believe to be HUB Insurance) to purchase the tailing coverage providing that the Directors and Officers personally pay for said coverage. Accordingly, will the Receiver:

1. Purchase and pay for the tailing coverage for the Directors and Officers so that they maintain coverage for claims that occurred during the policy period but that may not be made until after the policy expires; or in the alternative
2. Advise HUB Insurance that it will purchase the tailing coverage providing that the Directors and Officers pay the premiums for said tailing coverage.

Regards

Dom

Domenico Magisano | Lerners LLP | Partner phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerners.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

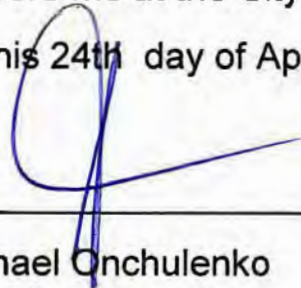
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Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020

A handwritten signature in blue ink, appearing to be 'Wayne Michael Onchulenko', is written over a horizontal line.

Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 20, 2020 11:47 AM
To: Domenico Magisano <dmagisano@lernalers.ca>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID18S3952]

Dom, I have forwarded this to the Receiver and will get back to you.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lernalers.ca>
Sent: Saturday, April 18, 2020 4:58 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
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Regards

Dom

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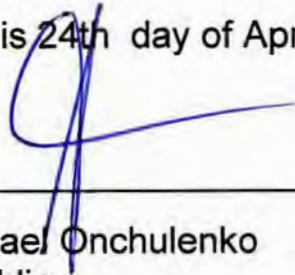
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Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano
Sent: April 20, 2020 4:19 PM
To: 'Bruce Taylor' <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID18S3952]

Thank you Bruce,

The Directors advise that this matter is of some urgency to them so if it is possible to get instructions sooner rather than later, it would be appreciated.

Regards

Dom

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

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From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 20, 2020 11:47 AM
To: Domenico Magisano <dmagisano@lerner.ca>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID18S3952]

Dom, I have forwarded this to the Receiver and will get back to you.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lerner.ca>
Sent: Saturday, April 18, 2020 4:58 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: Nygard - D&O Liability Insurance matter

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Regards

Dom

Domenico Magisano | Lerner LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



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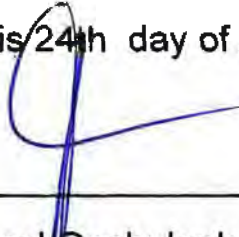
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Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano <dmagisano@lanners.ca>
Sent: Wednesday, April 22, 2020 10:49 AM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]
Importance: High

Bruce,

To provide context on the urgency of this request, the applicable policy expires on June 1, 2020 and the purchase of tailing coverage must be both declared and paid for no later than 30 days before the policy expires (i.e. May 1, 2020). To that end, can you please confirm that the Receiver will assist the Directors and Officers in procuring the tailing coverage ASAP so that it can arrange funding for that policy.

Regards

Dom

Domenico Magisano | Lanners LLP – Partner | phone 416.601.4121 – direct fax 416.361.4124 | dmagisano@lanners.ca | 1-800-387-2222
Adelaide Street West, Suite 2400 – Toronto – Ontario – M5H 3P5

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From: Domenico Magisano
Sent: April 20, 2020 4:19 PM
To: 'Bruce Taylor' <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Thank you Bruce,

The Directors advise that this matter is of some urgency to them so if it is possible to get instructions sooner rather than later, it would be appreciated.

Regards

Dom

LERNERS



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Sent: April 20, 2020 11:47 AM
To: Domenico Magisano <dmagisano@lerner.ca>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Dom, I have forwarded this to the Receiver and will get back to you.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lerner.ca>
Sent: Saturday, April 18, 2020 4:58 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: Nygard - D&O Liability Insurance matter

Bruce,

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Regards

Dom

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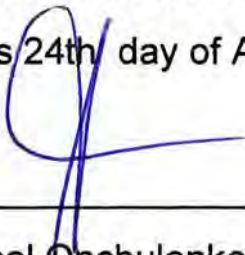
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Affidavit of Greg Fenske

Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 22, 2020 9:22 PM
To: Domenico Magisano <dmagisano@lernalers.ca>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Dom, I don't have instructions on this yet, but to clarify:

My understanding is that D&O coverage is part of a "global" policy including different types of coverages that extend to the "debtor" entities, and also "non-debtor" entities. To the extent that the Receiver accommodates your client's request and assists in arranging the D&O tail (at your clients' cost), it would only be able to do so in respect of the coverage that relates to the "debtor" entities. Non-debtors will have to place their own coverage, separately.

Is that also your understanding of what is being requested?

I assume that it is the D&O tail in respect of the debtor entities that is of particular interest to your clients.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lernalers.ca>
Sent: Wednesday, April 22, 2020 10:49 AM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]
Importance: High

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Regards

Dom

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNERS   

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Dom

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4123 | dmagisano@lerner.ca | 130
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LERNERS   

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To: Bruce Taylor <GBT@tdslaw.com>
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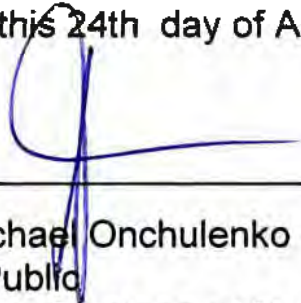
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Cc: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Bruce,

I am afraid your e-mail underscores the fundamental document and knowledge imbalance occasioned by the Receiver being in possession of most, if not all, of the Debtor and Non-Debtor books and records with the Debtors and Non-Debtors not being granted access to any of those documents.

My clients have been provided with an insurance policy (or at least a portion of an insurance policy) issued by AIG (and procured by HUB as broker) that appears to have been purchased by Nygard Enterprises Ltd. The policy appears to provide Directors & Officers insurance through to June 1, 2020. The policy also appears to allow for the purchase of tailing coverage providing that the right to purchase tailing coverage is exercised at any time up to 30 days before expiry of the policy. Based on the definitions of Subsidiary contained in the policy, it is possible that the policy extends to both Debtor and Non-Debtor entities. We attach the AIG policy (or portion thereof) that we have been provided with.

I note that this insurance policy is caught by the existing Appointment Order. This is but one example of an asset that should not be under the Receiver's control, but would not have been known to the debtors if it had not been provided to the Debtors through other means. If the Appointment Order was more targeted in terms of the Nygard Enterprises assets subject to the Appointment Order, the company and its Directors could have dealt with this matter on their own.

Your e-mail suggests there may be other insurance policies that speak to D&O coverages and we understand that this may in fact be the case. Unfortunately (and as mentioned above), my clients have no way of confirming that given the receiver's restraint on access to books and records. We would be obliged if the Receiver provided us with copies of all insurance policies that they are aware of.

My clients understand that there is a call this afternoon between the Receiver and HUB to discuss these insurance matters. We would be pleased to participate in the call so that we can expedite the process of arranging the tailing coverage.

Finally, and based solely on the policy attached, it appears that your distinction between "debtors" and "non-debtors" is a distinction without a difference. The policy was issued to Nygard Enterprises Ltd. (which, at this point, is a debtor) and the policy requires the Named Entity (defined in the policy as Nygard Enterprises Ltd.) to acquire the tailing coverage. As such, the Receiver would have to provide instructions to both HUB and AIG on behalf of Nygard Enterprises Ltd., irrespective of whether the coverage includes "debtor" and "non-debtor" entities.

We are available to discuss at your convenience and reiterate our willingness to participate in the call between Receiver and HUB scheduled for this afternoon.

Regards

Dom

Domenico Magisano | Lerner's LLP | Partner | phone 416.601.4121 | direct fax 416.601.4122 | dmagisano@lerner's.ca | 130
Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNER'S



From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 22, 2020 9:22 PM

To: Domenico Magisano <dmagisano@lerner's.ca>

Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>

Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Dom, I don't have instructions on this yet, but to clarify:

My understanding is that D&O coverage is part of a "global" policy including different types of coverages that extend to the "debtor" entities, and also "non-debtor" entities. To the extent that the Receiver accommodates your client's request and assists in arranging the D&O tail (at your clients' cost), it would only be able to do so in respect of the coverage that relates to the "debtor" entities. Non-debtors will have to place their own coverage, separately.

Is that also your understanding of what is being requested?

I assume that it is the D&O tail in respect of the debtor entities that is of particular interest to your clients.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lerner's.ca>

Sent: Wednesday, April 22, 2020 10:49 AM

To: Bruce Taylor <GBT@tdslaw.com>

Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>

Subject: RE: Nygard - D&O Liability Insurance matter [LAW-TDS.FID1853952]

Importance: High

Bruce,

To provide context on the urgency of this request, the applicable policy expires on June 1, 2020 and the purchase of tailing coverage must be both declared and paid for no later than 30 days before the policy expires (i.e. May 1, 2020). To that end, can you please confirm that the Receiver will assist the Directors and Officers in procuring the tailing coverage ASAP so that it can arrange funding for that policy.

Regards

AIG INSURANCE COMPANY OF CANADA

PRIVACY PRINCIPLES

AIG and Individual Privacy

We at AIG Insurance Company of Canada (referred to as "AIG", "we", "our", or "us") abide by these *Privacy Principles* and want you, our applicants, policyholders, insureds, claimants, and any other individuals who provide us with personal information (referred to as "Customers" or "you"), to be aware of how and why we handle personal information. We work hard to respect and maintain your privacy. However, the very nature of our business is such that the collection, use and disclosure of personal information are fundamental to the products and services we provide.

As a worldwide leader in the delivery of insurance products and other services, the member companies of American International Group, Inc. ("AIG Companies") offer numerous products and services to many types of consumers and clients in many different countries around the world. Therefore, differing AIG Companies may adopt differing privacy practices to fit their own jurisdiction and business requirements. The AIG Companies Privacy Policy, located at www.aig.com, may also be applicable to our Customers as we conduct our business.

For the purposes of these *Privacy Principles* personal information means information about an identifiable individual. For example: an individual's name, birth date, address, age, health and financial information is personal information which AIG may collect, use and in certain circumstances, where necessary, disclose, in the course of providing insurance services and carrying on business.

1. Consent and Personal Information

AIG obtains consent for the collection, use, and disclosure of personal information, except where consent is not required by law. AIG does not obtain your consent for the collection, use and disclosure of business contact information. By applying for or purchasing AIG's products and services, you are providing your consent to our collection, use, and disclosure of your personal information as set out in these *Privacy Principles*. AIG relies on the broker's advice where the insurance broker tells AIG that we have a Customer's consent to collect information.

Consent may be obtained by AIG and its affiliated companies directly or through a broker or agent, an insurance adjuster, claims administrator, investigator, or lawyer when personal information is collected for claims purposes.

An individual may decline to consent, or revoke consent, to the collection and use of personal information for insurance purposes but in that case, insurance products and related services and the assessment of applications, claims or complaints may be limited or terminated.

2. Collecting Personal Information

We may collect information directly from the individual concerned on applications for insurance and through direct interactions with us, including via AIG websites, software applications made available by us for use on or through computers and mobile devices (the "Apps"), our social media pages set forth in the links in the footer on AIG.com and other means (for example, from your application and claim forms, telephone calls, e-mails and other communications with us, as well as from claim investigators, medical professionals, witnesses or other third parties involved in our business dealings with you). We also collect information from various third party sources such as: insurance brokers, adjusters, other insurance intermediaries, third party administrators, government, industry associations, and other entities that have information about you. For instance, we may obtain your driving record, claims history and/or credit history, where permitted by law, to assist us in underwriting your application for insurance. We and our service providers may supplement the personal information we collect with information from other sources, such as publicly available information from social media services, commercially available sources and information from our affiliates or business partners. This information from third parties is subject to the privacy policies under which the information was collected.

3. Using Personal Information

Personal information is typically collected and used by us for insurance purposes such as: assessing risk, processing applications for insurance coverage, establishing rates, administering insurance products, developing and improving insurance products and services and other services, including actuarial and pricing tools and risk engineering, risk management and loss prevention programs for our insurance clients, claim assessment, processing and settlement, and, where applicable, managing claim disputes. AIG also uses personal information to detect and prevent fraud, compile statistics, verify and provide information to insurance industry associations, report to regulatory or industry entities in accordance with laws and prudent insurance industry practices, and conduct market research. This may also include collecting and disclosing personal information about third parties with respect to claims made against AIG Customers.

4. Use of Personal information for Marketing Purposes

AIG may collect and use personal information for marketing purposes, such as identifying and communicating with individuals who are most likely to find AIG products and services of interest. AIG may also disclose personal information to our affiliates to use for marketing purposes to offer you their products and services, which may be of interest to you. You may opt not to have us, or alternatively not to have our affiliates, collect, use or disclose personal information for marketing purposes in which case we and our affiliates will not use or disclose personal information for marketing purposes. Offers of upgraded or additional coverage, special offers and promotional mailings, and offers of additional products and services from our affiliates will not be sent by us or our affiliates. As an AIG customer, if you have not opted out of receiving marketing communications, you may receive marketing emails regarding AIG products and services. Each marketing email will include an unsubscribe mechanism, available for you at any time to remove your consent.

5. Accuracy of Your Personal Information

AIG maintains procedures to ensure that the information we collect and use is accurate, up-to-date, and as complete as possible. However, we rely on individuals to disclose all

material information to us and to inform us of any changes required. With proof of your identity, a request to access or correct your personal information in our possession may be made by contacting the Privacy Officer at the address set out below in the section called *"Contacting the Privacy Officer"*.

6. Safeguarding Your Information

We apply appropriate safeguards to our computer networks and physical files and we restrict access to personal information to those AIG employees, authorized administrators, reinsurers, consultants or insurance representatives who need to know that information in order to underwrite, adjudicate or administer insurance products and services.

7. Disclosure of Personal Information

Personal information is sought and exchanged with both affiliated and unaffiliated insurance companies, reinsurers, insurance and reinsurance brokers and other intermediaries and agents, appointed representatives, distributors, financial institutions and insurance industry organizations at the time of assessing an application for insurance and any renewal, extension, variation or cancellation of any issued policy, as well as in the event of any claim, to the extent necessary for statistical purposes or to assess and rate a specific risk, determine the status of coverage, and investigate, administer and provide updates regarding claims. We also share information to combat fraud; where permitted or required by law; or, at the request of government institutions in accordance with applicable law.

AIG sometimes retains an affiliated company or an independent third party, reinsurer or a technology service provider ("Authorized Administrator") to perform on our behalf, certain functions in support of the products and services we provide. Such functions could include the underwriting, offering or administering of AIG insurance products and services or any related claims. Accordingly, in certain instances these affiliates or third parties require your personal information to the extent that it is necessary in the performance of those specific reinsurance, underwriting, marketing, consulting, administrative, analytical, rehabilitative, claims, investigation, reporting or related services. AIG obligates these affiliates and third parties to use and take steps to protect personal information in accordance with the requirements of these *Privacy Principles*.

Some Authorized Administrators may be located outside of Canada, in the United States of America or another foreign jurisdiction outside of Canada. When this occurs, the collection, use and disclosure of personal information will be subject to the laws of the jurisdiction in which it is situate. By communicating personal information to us, applying for and/or acquiring the products and services of AIG, you hereby consent to the authorized administrators located outside of Canada accessing, processing or storing your personal information (as the case may be) and disclosing such personal information as required by the governing laws of that jurisdiction. If you would like to obtain more information about our use of Authorized Administrators or any other service providers located outside of Canada, please contact the Privacy Officer at the address set out below in the section called *"Contacting the Privacy Officer"*.

AIG may transfer your personal information as an asset in connection with any contemplated or actual sale, merger or other disposal of all or part of our business or

assets, or as part of a corporate reorganization or other change in corporate control, including for the purposes of determining whether to proceed with such transaction or fulfilling any records or other reporting requirements to such parties. In such circumstances, we will ensure that any transfer of personal information is subject to applicable law and reasonable data protection security, confidentiality and usage protocols and restrictions.

8. Retention and Access to Your Personal Information

We retain personal information for the purposes described in these *Privacy Principles* but only for so long as is necessary. Personal information is stored at one of our offices in Canada or at a location of one of our affiliates in the United States or another foreign country, as required and defined under "*Disclosure of Personal Information*" above. Access to your personal information is limited to our employees, agents, insurance intermediaries, Authorized Administrators and service providers who need access in order to perform their job or provide services. Given the nature of insurance and our on-going exposure to potential claims, where necessary, and when legally required, some of the information we collect for insurance purposes is kept indefinitely.

With proof of your identity, a request to access information in our possession may be made by contacting the Privacy Officer at the address set out below in the section called "*Contacting the Privacy Officer*". The right to access information is not absolute. Therefore AIG may decline access to information that we have under our control, subject to any legal restrictions or rights of refusal by AIG. Such instances may be as follows:

- the information is subject to solicitor/client privilege;
- the information would reveal personal information about a third party;
- the information could compromise the investigation of a claim; or
- the information is confidential commercial information.

We may charge a reasonable fee in advance for copying and sending information you have requested and to which you have a right of access.

9. Contacting the Privacy Officer

Request for further information, personal information access or any concerns about how we handle your information with AIG should be referred to our Privacy Officer, as follows:

Privacy Officer
AIG Insurance Company of Canada
120 Bremner Blvd.
Suite 2200
Toronto, ON
Canada M5J 0A8
Or at the following e-mail address: AIGCanadaOmbudsman@aig.com
Or you may call us toll free: 1-800-387-4481

10. Internet Privacy Practices

We may collect your information through AIG websites or mobile applications. All personal

information collected through our websites and mobile applications are subject to these *Privacy Principles*.

We may collect other information ("**Other Information**") through our websites or mobile applications that does not reveal your specific identity. Other Information includes but is not limited to:

- browser information;
- information collected through cookies, pixel tags, and other technologies;
- demographic information and other similar information provided by you
- information about your physical location; and
- aggregated information.

We and our third party service providers may collect Other Information in a variety of ways, including the following:

- **Through your internet browser:** Certain information is collected by most websites, such as your IP address (that is, your computer's address on the internet), screen resolution, operating system type (Windows or Mac) and version, internet browser type and version, time of the visit and the page or pages visited. We use this information for purposes such as calculating our website usage levels, helping diagnose server problems, and administering our website.
- **Using cookies:** Cookies are pieces of information stored directly on the computer you are using. Cookies allow us to recognize your computer and to collect information such as internet browser type, time spent on our website, pages visited, and language preferences. We may use the information for security purposes, to facilitate navigation, to display information more effectively, to personalize your experience while visiting our website, or to gather statistical information about the usage of our website. Cookies further allow us to present to you the advertisements or offers that are most likely to appeal to you. We may also use cookies to track your responses to our advertisements and we may use cookies or other files to track your use of other websites.

One of the advertisement companies that we use is Google, Inc., trading as DoubleClick. To opt out of the DoubleClick advertisement cookie please visit: <http://www.google.com/intl/en/policies/privacy/#infochoices>. You can refuse to accept other cookies we use by adjusting your browser settings. However, if you do not accept these cookies, you may experience some inconvenience in your use of our website and some online products.

- **Using pixel tags, web beacons, clear GIFs or other similar technologies:** These may be used in connection with some of our website pages and HTML-formatted e-mail messages to, among other things, track the actions of our website users and e-mail recipients, measure the success of our marketing campaigns, and compile statistics about our website usage and response rates.

We use Adobe's Omniture analytics service, which uses cookies and web beacons, to help us understand more about how our website is used by consumers so we can continue to improve it. Adobe does not have the right to use the information we

provide to it beyond what is necessary to assist us. For more information on Adobe's Omniture service, including how to opt-out of it, please visit: <http://www.adobe.com/privacy/policy.html#info-manage>.

- **From you:** Some information (for example, your location or preferred means of communication) is collected when you voluntarily provide it. Unless combined with personal information, this information does not identify you personally.
- **Using your physical location:** We may collect the physical location of your device by, for example, using satellite, cell phone tower or WiFi signals. We may use your device's physical location to provide you with personalized location-based services and content, for example, to provide location based reminders or offers when using Apps. We may also share your device's physical location, combined with information about what advertisements you viewed and other information we collect, with our marketing partners to enable them to provide you with more personalized content and to study the effectiveness of advertising campaigns. In some instances, you may be permitted to allow or deny such uses and/or sharing of your device's location, but if you choose to deny such uses and/or sharing, we and/or our marketing partners may not be able to provide you with the applicable personalized services and content. In addition, we may obtain the precise geolocation of your device when you use our mobile applications for purposes of providing travel or other assistance services to our clients who are enrolled in such services. In connection with providing travel or other assistance services, we may share your device's precise geolocation information with our clients and other entities with whom we work. You may opt-out of our collection and sharing of precise geolocation information by deleting the mobile application from your device, by disallowing the mobile application to access location services through the permission system used by your device's operating system, or by following any additional opt-out instructions provided in the privacy notice available within the mobile application.
- **By aggregating information:** We may share non-personally identifiable information collected from you and from through the use of our Apps with our third party service providers in an anonymous and aggregate form for data analytics use and to ensure you receive a better consumer experience, in order to improve and modify our products and services.

Please note that we may use and disclose Other Information for any purpose, except where we are required to do otherwise under applicable law. If we are required to treat Other Information as personal information under applicable law, then, in addition to the uses listed in this "*Website Privacy Practices*" section, we may use and disclose Other Information for all the purposes for which we use and disclose personal information.

11. Third Party Websites

These *Privacy Principles* do not address, and we are not responsible for, the privacy, information or other practices of any third parties, including any third party operating any website to which our website contains a link. The inclusion of a link on our website does not imply endorsement of the linked site by us or by our group companies.

12. Use of Site by Minors

Our website is not directed to individuals under the age of 18, and we request that these individuals do not provide Personal Information through our website.

13. Changes to these Privacy Principles

AIG Canada reserves the right to modify these *Privacy Principles* from time to time. If these *Privacy Principles* change materially, we will take reasonable measures to notify you, including posting a copy of the revised *Privacy Principles* to our website. Accordingly, we recommend that you review our current Privacy *Principles* from time to time at Aig.ca.

LA COMPAGNIE D'ASSURANCE AIG DU CANADA

PRINCIPES DE PROTECTION DES RENSEIGNEMENTS PERSONNELS

AIG et la protection des renseignements personnels

Nous, chez La Compagnie d'assurance AIG du Canada (désignée sous le nom d'« AIG », « nous », « notre » ou « nos »), nous conformons aux présents *Principes de protection des renseignements personnels* et nous voulons que nos proposants, nos titulaires de polices, nos assurés, nos demandeurs et toute autre personne nous ayant fourni des renseignements personnels (désignés sous le nom de « Clients » ou « vous »), soient au courant non seulement de la façon dont nous traitons les renseignements personnels, mais aussi des raisons pour lesquelles nous recueillons lesdits renseignements. Nous consacrons beaucoup d'efforts au respect et au maintien de la confidentialité de vos renseignements personnels. Cependant, en raison de la nature même de notre entreprise, le processus de cueillette, d'utilisation et de divulgation de renseignements personnels est fondamental aux produits et services que nous fournissons.

Nous sommes un chef de file mondial dans la fourniture de produits d'assurance et autres services et, à ce titre, les compagnies membres de l'American International Group, Inc. (les « sociétés AIG ») offrent de nombreux produits et services à plusieurs types de consommateurs et clients dans différents pays partout dans le monde. En conséquence, les différentes sociétés AIG peuvent adopter différentes pratiques en matière de protection des renseignements personnels pour s'adapter à leur propre juridiction et aux exigences de leurs entreprises. Les *Principes de protection des renseignements personnels* des sociétés AIG, disponibles sur notre site, www.aig.com, peuvent également s'appliquer à nos Clients dans l'exercice de nos activités d'entreprise.

Pour les fins des présents *Principes de protection des renseignements personnels*, l'expression « renseignements personnels » signifie des renseignements concernant une personne identifiable. Par exemple, le nom d'un particulier, sa date de naissance, son adresse, son âge, son état de santé et ses renseignements financiers constituent des renseignements personnels qu'AIG peut recueillir, utiliser et dans certaines circonstances, si nécessaire, divulguer, dans le cadre de la fourniture de services d'assurance et dans le cours normal de ses affaires.

1. Consentement et renseignements personnels

AIG obtient le consentement pour la cueillette, l'utilisation et la divulgation de renseignements personnels, sauf dans les cas où le consentement n'est pas requis par la loi. Par exemple, AIG n'obtient pas votre consentement pour la cueillette, l'utilisation et la divulgation de vos coordonnées d'affaires. En présentant une proposition ou en faisant l'acquisition de produits et services d'AIG, vous nous donnez votre consentement à la cueillette, à l'utilisation et à la divulgation de vos renseignements personnels, tel que décrit aux présents *Principes de protection des renseignements personnels*. AIG se fie à l'avis du courtier lorsque le courtier d'assurance indique à AIG que le Client nous a donné son consentement pour la cueillette des renseignements.

Le consentement peut être obtenu par AIG et par ses sociétés affiliées directement ou par

l'entremise du courtier ou mandataire, d'un expert en sinistres, d'un rédacteur sinistre, d'un enquêteur ou d'un avocat, lorsque les renseignements personnels sont recueillis aux fins d'une réclamation.

Un particulier peut refuser de consentir à la cueillette et à l'utilisation de renseignements personnels à des fins d'assurance ou retirer son consentement, mais dans de tels cas, les produits d'assurance et les services connexes, ainsi que l'étude des propositions, des réclamations ou des plaintes peuvent être limités ou terminés.

2. La cueillette des renseignements personnels

Nous pourrions recueillir les renseignements directement du particulier concerné, sur les propositions d'assurance et par l'entremise d'interactions directes avec nous, y compris par l'entremise de sites Web d'AIG, d'applications logicielles que nous mettons à votre disposition à des fins d'utilisation sur des ordinateurs et des appareils mobiles (les « applications »), de nos pages de médias sociaux dont les liens figurent dans le pied de page du site AIG.com et par l'entremise de tout autre moyen (comme par exemple, dans le cadre de votre proposition d'assurance ou de vos formulaires de demande d'indemnisation, de vos appels téléphoniques, de vos courriels et autres communications avec nous, ainsi que par l'entremise des enquêteurs, des professionnels de la santé, des témoins ou d'autres tiers avec qui nous transigeons pour faire affaires avec vous). Nous recueillons également des renseignements de diverses autres sources, tels les courtiers d'assurance, les experts en sinistres ou autres intermédiaires, les tiers administrateurs, le gouvernement, les associations de l'industrie et autres entités qui détiennent des renseignements à propos de vous. Par exemple, lorsque cela est permis par la loi et afin de nous aider dans la souscription de votre proposition d'assurance, nous pouvons obtenir votre dossier de conduite, l'historique de vos réclamations et vos antécédents en matière de crédit. Nous, et nos fournisseurs de services pouvons compléter les renseignements personnels que nous recueillons avec des renseignements provenant d'autres sources, tels que les renseignements accessibles au public des services de médias sociaux, des sources commerciales disponibles et des renseignements provenant de nos filiales ou partenaires commerciaux. Lesdits renseignements provenant de tierces parties sont assujettis aux politiques de protection de la vie privée en vertu desquelles les renseignements ont été recueillis.

3. L'utilisation des renseignements personnels

En règle générale, nous recueillons et utilisons les renseignements personnels à des fins d'assurance, telles que : l'évaluation des risques, le traitement des propositions d'assurance, la tarification, l'administration des produits d'assurance, l'élaboration et l'amélioration des produits et services d'assurance et autres services, y compris les outils actuariels et de fixation des prix et les programmes d'ingénierie des risques, de gestion des risques et de prévention des sinistres pour nos clients, l'évaluation, le traitement et le règlement des réclamations, et, le cas échéant, la gestion des litiges liés aux réclamations. AIG utilise également les renseignements personnels afin de détecter et de prévenir la fraude, de compiler des statistiques, de vérifier et de fournir des renseignements aux associations de l'industrie de l'assurance, de faire rapport aux entités de réglementation ou aux entités de l'industrie conformément aux lois et aux pratiques de prudence de l'industrie de l'assurance, et pour effectuer des études de marché. Cela peut également inclure la cueillette et la divulgation de renseignements personnels à propos de tierces parties

relativement à des réclamations présentées contre des Clients d'AIG.

4. L'utilisation des renseignements personnels à des fins de commercialisation

AIG peut recueillir et utiliser des renseignements personnels à des fins de commercialisation, telles que l'identification des particuliers qui sont les plus susceptibles de porter un intérêt aux produits et services d'AIG et la communication avec ces derniers. AIG peut aussi divulguer des renseignements personnels à ses filiales qui les utiliseront à des fins de commercialisation, pour vous offrir certains de leurs produits et services qui pourraient vous intéresser. Vous pouvez choisir de ne pas nous permettre ou, dans l'alternative, de ne pas permettre à nos filiales de recueillir, d'utiliser ou de divulguer des renseignements personnels à des fins de commercialisation, et dans ce cas, nous, ainsi que nos filiales n'utiliserons ni ne divulguons les renseignements personnels à des fins de commercialisation. Ni nous, ni nos filiales, ne vous enverrons d'offres de garanties améliorées ou complémentaires, d'offres spéciales ou d'offres promotionnelles par publipostage, ni d'offres de produits et services supplémentaires de nos filiales. En tant que Client d'AIG, si vous n'avez pas choisi de recevoir des communications commerciales, vous pourriez recevoir des courriels promotionnels concernant des produits et des services offerts par AIG. Vous trouverez une option de désabonnement au bas de chacun de nos courriels, laquelle vous permet de révoquer votre consentement en tout temps.

5. Exactitude de vos renseignements personnels

AIG maintient des procédures afin de s'assurer que les renseignements que nous recueillons et utilisons soient exacts, à jour, et aussi complets que possible. Cependant, nous nous fions aux particuliers pour qu'ils nous dévoilent tous les renseignements significatifs et nous informant de toute modification nécessaire. Sur présentation d'une preuve de votre identité, une demande d'accès à, ou de correction de vos renseignements personnels en notre possession peut être présentée en communiquant avec le Responsable de la protection des renseignements personnels à l'adresse indiquée ci-après à la rubrique « *Communiquer avec le Responsable de la protection des renseignements personnels* ».

6. La protection de vos renseignements personnels

Nous appliquons les dispositifs de sécurité appropriés à nos réseaux informatiques et à nos dossiers physiques et nous limitons l'accès aux renseignements personnels aux employés d'AIG, aux administrateurs autorisés, aux réassureurs, aux conseillers ou aux conseillers d'assurance qui ont besoin desdits renseignements pour leur permettre de souscrire ou d'administrer des produits et des services d'assurance ou de statuer sur une réclamation.

7. Divulgaration de renseignements personnels

Les renseignements personnels sont obtenus et échangés tant avec les compagnies d'assurance affiliées qu'indépendantes, qu'avec les réassureurs, les courtiers en assurance et en réassurance et autres intermédiaires et mandataires, les distributeurs et représentants nommés, les institutions financières et les organisations de l'industrie de l'assurance au moment d'évaluer une proposition d'assurance et tout renouvellement, toute prolongation, toute modification ou toute résiliation d'un contrat déjà établi, ainsi que dans l'éventualité d'une réclamation, dans la mesure nécessaire aux fins des statistiques ou de l'évaluation et de la tarification d'un risque particulier, de la détermination du statut

de l'assurance, et de l'étude, de l'administration et de la fourniture de mises à jour concernant les réclamations. Nous divulguons également des renseignements afin de lutter contre la fraude, là où la loi l'autorise ou l'exige ou encore, à la demande d'institutions gouvernementales conformément à la loi applicable.

Il arrive parfois qu'AIG retienne les services d'une compagnie affiliée, d'un réassureur indépendant ou d'un fournisseur de services technologiques (« administrateur autorisé ») pour accomplir certaines fonctions en notre nom à l'appui des produits et services que nous offrons. Ces fonctions pourraient inclure la souscription, l'offre ou l'administration des produits et services d'assurance d'AIG ou de toute réclamation connexe. En conséquence, dans certains cas, ces compagnies affiliées ou tiers demandent vos renseignements personnels dans la mesure nécessaire pour la prestation de ces services spécifiques de réassurance, de souscription, de commercialisation, de consultation, d'administration, d'analyse, de réadaptation, de réclamations, d'investigation, de rapport ou de tout autre service connexe. AIG oblige ces compagnies affiliées et ces tiers à utiliser et à prendre des mesures afin de protéger les renseignements personnels conformément aux exigences des présents *Principes de protection des renseignements personnels*.

Certains administrateurs autorisés peuvent se trouver hors du Canada, aux États-Unis d'Amérique ou dans un autre pays étranger à l'extérieur du Canada. Dans ce cas, la cueillette, l'utilisation et la divulgation de renseignements personnels seront assujetties aux lois de la juridiction en question. En nous communiquant des renseignements personnels, en présentant une proposition ou en souscrivant des produits et des services d'AIG, vous consentez par les présentes à ce que les administrateurs autorisés se trouvant à l'extérieur du Canada accèdent à vos renseignements personnels, les traitent ou les conservent (selon le cas) et les divulguent tel que requis par les lois applicables à leur juridiction. Si vous souhaitez obtenir de plus amples renseignements sur notre utilisation des administrateurs autorisés ou de tout autre fournisseur de services situé à l'extérieur du Canada, veuillez communiquer avec l'agent de la protection des renseignements personnels à l'adresse ci-dessous, dans la section intitulée « *Communiquer avec l'agent de protection de la vie privée* ».

AIG pourrait transférer vos renseignements personnels en tant qu'actif dans le cadre de toute vente, de toute fusion ou de toute autre disposition, envisagée ou en cours, de la totalité ou d'une partie de notre clientèle ou de nos biens, ou encore dans le cadre d'une réorganisation de l'entreprise ou de tout autre changement associé au contrôle de l'entreprise, dans le but de déterminer si l'on doit conclure ladite transaction avec les parties en question ou donner suite à toute exigence de leur part en matière de dossiers ou d'autres déclarations. En pareil cas, nous veillerons à ce que le transfert de renseignements personnels soit conforme aux lois en vigueur et aux protocoles raisonnables de protection, de confidentialité et d'utilisation des données et aux restrictions.

8. Conservation et accès à vos renseignements personnels

Nous conservons vos renseignements personnels aux fins décrites aux présents *Principes de protection des renseignements personnels*, mais seulement pour la période de temps nécessaire. Les renseignements personnels sont stockés à l'un de nos bureaux au Canada ou à l'emplacement de l'une de nos sociétés affiliées aux États-Unis ou dans un autre pays, tel que requis et défini aux termes de la rubrique « *Divulgation de renseignements* ».

personnels » précédente. L'accès à vos renseignements personnels est limité à nos employés, mandataires, intermédiaires d'assurance, administrateurs autorisés et fournisseurs de services qui ont besoin d'y accéder afin de faire leur travail ou de nous fournir des services. Compte tenu de la nature de l'assurance et de notre exposition constante aux risques de réclamations potentielles, lorsque cela s'avère nécessaire et que la loi l'exige, certains renseignements que nous recueillons à des fins d'assurance sont conservés indéfiniment.

Sur présentation d'une preuve de votre identité, une demande d'accès aux renseignements en notre possession peut être présentée en communiquant avec le Responsable de la protection des renseignements personnels à l'adresse indiquée ci-après à la rubrique « *Communiquer avec le Responsable de la protection des renseignements personnels* ». Le droit d'accès aux renseignements n'est pas absolu. Par conséquent, AIG peut refuser une demande d'accès si les renseignements qui sont sous notre contrôle font l'objet de restrictions juridiques ou de droits de refus par AIG, tels que :

- des renseignements qui sont assujettis à un privilège avocat/client;
- des renseignements qui révéleraient des renseignements personnels au sujet d'une tierce partie;
- des renseignements qui pourraient compromettre l'étude d'une réclamation; ou
- des renseignements confidentiels de nature commerciale.

Nous pouvons vous facturer à l'avance des frais raisonnables pour copier et transmettre les renseignements que vous avez demandés et auxquels vous avez un droit d'accès.

9. Communiquer avec le Responsable de la protection des renseignements personnels

Les demandes de renseignements supplémentaires, les demandes d'accès aux renseignements personnels ou les questions portant sur la façon dont nous traitons vos renseignements chez AIG devraient être adressées à notre Responsable de la protection des renseignements personnels comme suit :

Responsable de la protection des renseignements personnels

La Compagnie d'assurance AIG du Canada
120 Bremner Blvd.
Bureau 2200
Toronto, Ontario
Canada M5J 0A8

Vous pouvez aussi communiquer avec nous par courriel à l'adresse suivante:
AIGCanadaOmbudsman@aig.com

Ou nous téléphoner sans frais au numéro suivant : 1-800-387-4481.

10. Principes de protection des renseignements personnels liés à l'Internet

Nous pourrions recueillir des renseignements à votre sujet par l'entremise de sites Web ou d'applications pour appareils mobiles d'AIG. Tous les renseignements personnels recueillis par l'entremise de nos sites Web et de nos applications pour appareils mobiles sont

assujettis aux présents *Principes de protection des renseignements personnels*.

Nous pourrions recueillir d'autres renseignements (« autres renseignements ») qui ne dévoilent pas l'identité du particulier par l'entremise de nos sites Web ou de nos applications pour appareils mobiles. Les autres renseignements englobent sans s'y limiter :

- les renseignements recueillis au moyen du navigateur Web;
- les renseignements recueillis par l'entremise de fichiers témoins, de balises Web (pixels invisibles) et d'autres technologies;
- les renseignements démographiques et autres renseignements semblables que vous nous avez fournis;
- les renseignements sur votre emplacement physique; et
- le cumul des renseignements.

Nous et nos fournisseurs de services de tierce partie pourrions recueillir d'autres renseignements par divers moyens, dont les suivants.

- **Par l'entremise de votre navigateur Internet :** La plupart des sites Internet recueillent certains renseignements, notamment votre adresse IP (c'est-à-dire, l'adresse Internet de votre ordinateur), la résolution de votre écran, le type de votre système d'exploitation (Windows ou Mac) et sa version, le type et la version de votre navigateur Internet, l'heure de votre visite, ainsi que la ou les pages consultées. Nous utilisons ces renseignements pour calculer les niveaux d'utilisation de notre site Internet, pour nous aider à diagnostiquer les problèmes de serveur et pour gérer notre site Internet.
- **Utilisation de fichiers témoins :** Les fichiers témoins sont des données stockées directement sur l'ordinateur que vous utilisez. Les fichiers témoins nous permettent de reconnaître votre ordinateur et de recueillir certains renseignements, notamment le type de navigateur que vous utilisez, le temps passé sur notre site Internet, les pages consultées et les préférences linguistiques. Nous pourrions utiliser ces renseignements à des fins de sécurité, pour faciliter la navigation, afficher des renseignements de façon plus efficace, personnaliser votre expérience pendant que vous visitez notre site Internet ou encore pour recueillir des renseignements sur l'utilisation de notre site à des fins de statistiques. Les fichiers témoins nous permettent également de vous présenter des messages publicitaires ou des offres qui sont les plus susceptibles de vous intéresser. Nous pourrions aussi utiliser des fichiers témoins pour effectuer un suivi de vos réponses à nos publicités, et nous pourrions nous servir des fichiers témoins ou d'autres fichiers pour nous enquérir de votre fréquentation d'autres sites Internet.

L'une des sociétés publicitaires à laquelle nous faisons appel est Google Inc., qui offre des services sous la bannière de DoubleClick. Pour refuser les fichiers témoins publicitaires DoubleClick, suivez le lien suivant : <http://www.google.com/intl/en/policies/privacy/#infochoices> . Vous pouvez régler les paramètres de votre navigateur pour refuser d'accepter d'autres fichiers témoins que nous utilisons. Toutefois, si vous n'acceptez pas ces fichiers témoins, vous pourriez connaître certaines difficultés au moment d'utiliser notre site Internet ou d'accéder à certains de nos produits en ligne.

- **Utilisation de pixels invisibles, de balises Web, de GIF clairs et autres technologies semblables** : Ces balises pourraient être utilisées dans le cadre de certaines de nos pages Web et de messages par courriel en format HTML pour, entre autres, suivre les habitudes des usagers de notre site Web et des destinataires de nos courriels, évaluer le succès de nos campagnes publicitaires et compiler des statistiques relativement à l'utilisation de notre site Internet et aux taux de réponse.

Nous utilisons le service Adobe Analytics, lequel se sert de fichiers témoins et de balises Web, pour nous aider à mieux comprendre de quelle façon les consommateurs utilisent notre site Internet et continuer à l'améliorer. Adobe n'est pas autorisé à utiliser les renseignements que nous leur fournissons au-delà du strict nécessaire pour nous aider. Pour de plus amples renseignements sur le service Adobe Analytics, y compris comment vous désabonner du service, cliquez sur le lien suivant : <http://www.adobe.com/privacy/policy.html#info-manage>.
<http://www.adobe.com/privacy/policy.html#info-manage>.

- **Renseignements de votre part** : Certains renseignements (par exemple, votre emplacement ou votre méthode de communication préférée) sont recueillis lorsque vous nous les fournissez de plein gré. Sauf dans les cas où ils sont jumelés à des renseignements personnels, ces renseignements ne vous identifient pas en particulier.

Utilisation de votre emplacement personnel : Nous pourrions recueillir des renseignements relatifs à votre emplacement, notamment à l'aide de signaux par satellite, par tour de transmission cellulaire ou par WiFi. Nous pourrions utiliser l'emplacement physique de votre appareil pour vous offrir des services et du contenu personnalisés en fonction de votre emplacement, notamment pour vous transmettre des rappels liés à l'emplacement ou des offres lorsque vous utilisez des applications. Nous pourrions également divulguer l'emplacement physique de votre appareil, ainsi que des renseignements sur les publicités visionnées qui, jumelés aux autres renseignements que nous recueillons conjointement avec nos partenaires de commercialisation, leur permettent de vous fournir du contenu plus personnalisé et d'évaluer l'efficacité de nos campagnes publicitaires. Dans certains cas, vous pourriez avoir le choix de permettre ou de refuser de telles utilisations et la divulgation de l'emplacement de votre appareil, mais si vous refusez de consentir à de telles utilisations et divulgations, nos partenaires de commercialisation et nous pourrions être incapables de vous fournir les services et le contenu personnalisés en question. En outre, nous pourrions obtenir la géolocalisation précise de votre appareil lorsque vous utilisez nos applications pour appareils mobiles, et ce, afin de fournir des services d'assistance voyage ou autres à ceux de nos clients qui souscrivent à de tels services. Dans le cadre de la prestation de services d'assistance voyage ou autres, nous pourrions divulguer les renseignements liés à la géolocalisation précise de votre appareil à nos clients et à d'autres entités avec qui nous travaillons. Vous pouvez refuser de consentir à la cueillette et la divulgation de renseignements liés à la géolocalisation précise en supprimant l'application de votre appareil mobile, en refusant de permettre à l'application pour appareil mobile d'accéder aux services de localisation à l'aide du système d'autorisation qu'utilise le système d'exploitation de votre appareil ou en suivant toutes directives supplémentaires de retrait figurant à l'avis de protection de la vie privée qui est

affiché dans l'application pour appareils mobiles.

- **Cumul des renseignements** : Nous pourrions divulguer à nos fournisseurs de services de tierce partie des renseignements qui n'identifient aucune personne en particulier et que nous avons recueillis auprès de vous et par l'entremise de votre utilisation de nos applications, dans un format cumulé et anonyme propice à l'analyse de données et pour faire en sorte de vous offrir une meilleure expérience client, tout en nous permettant d'apporter des améliorations et des modifications à nos produits et services.

Veillez noter que nous pourrions utiliser et divulguer d'autres renseignements à toute autre fin, sauf lorsque nous sommes tenus d'agir autrement en vertu des lois applicables. Si nous sommes dans l'obligation de traiter d'autres renseignements à titre de renseignements personnels en vertu des lois applicables, alors, en plus des utilisations énumérées à la présente rubrique « *Principes de protection des renseignements personnels à l'égard de l'Internet* », nous pourrions utiliser et divulguer d'autres renseignements à toutes les fins auxquelles nous utilisons et divulguons lesdits renseignements personnels.

11. Sites Internet de tierces parties

Les présents *Principes de protection des renseignements personnels* n'abordent pas les pratiques de confidentialité et de protection des renseignements personnels ou toute autre pratique à cet égard adoptée par de tierces parties, y compris toute tierce partie exploitant tout site Internet visé par un lien figurant sur notre site Internet, et nous n'assumons aucune responsabilité à ce chapitre. L'affichage d'un lien sur notre site Internet ne signifie aucunement que nous approuvons le site visé par ledit lien figurant à notre site Internet ou à celui d'autres sociétés membres de notre groupe.

12. Utilisation du site par des mineurs

Notre site Internet n'est pas destiné à des personnes âgées de moins de 18 ans et nous demandons à ces personnes de ne fournir aucun renseignement personnel par l'entremise de notre site Internet.

13. Modifications apportées aux présents Principes de protection des renseignements personnels

AIG Canada se réserve le droit d'apporter, de temps à autre, des modifications aux présents *Principes de protection des renseignements personnels*. Si lesdits *Principes de protection des renseignements personnels* sont modifiés de façon importante, nous prendrons des mesures raisonnables pour vous en aviser en affichant notamment une version à jour des *Principes de protection des renseignements personnels* sur notre site Internet. Nous vous recommandons donc de passer en revue notre version la plus récente des *Principes de protection des renseignements personnels* de temps à autre en accédant à Aig.ca.



Canadian Head Office
120 Bremner Boulevard Suite 2200
Toronto, ON M5J 0A8

AIG Insurance Company of Canada
(herein called the Insurer)

PrivateEdge Plus

POLICY NUMBER: 01-173-52-10

REPLACEMENT OF POLICY#: 01-277-25-66

**Management Liability, Professional Liability, Crime Coverage and
Kidnap And Ransom/Extortion Coverage for Private Companies**

DECLARATIONS

NOTICES

[THESE NOTICES ARE APPLICABLE TO ALL COVERAGE SECTIONS OTHER THAN THE CRIME
COVERAGE SECTION AND KIDNAP AND RANSOM/EXTORTION COVERAGE SECTION]

COVERAGE WITHIN THIS POLICY IS GENERALLY LIMITED TO LOSS FROM CLAIMS FIRST MADE
AGAINST INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER AS THE
POLICY REQUIRES. DEFENCE COSTS REDUCE THE LIMITS OF LIABILITY (AND, THEREFORE,
AMOUNTS AVAILABLE TO RESPOND TO SETTLEMENTS AND JUDGMENTS) AND ARE APPLIED
AGAINST APPLICABLE RETENTIONS.

THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND UNLESS SUCH COVERAGE IS
EXPRESSLY PROVIDED WITHIN A COVERAGE SECTION. WHERE THE INSURER HAS NO DUTY TO
DEFEND, IT WILL ADVANCE DEFENCE COSTS, EXCESS OF THE APPLICABLE RETENTION,
PURSUANT TO THE TERMS OF THIS POLICY PRIOR TO THE FINAL DISPOSITION OF A CLAIM.
PLEASE REFER TO THE COVERAGE SECTIONS PURCHASED FOR DEFENCE RELATED DETAILS.

PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR
INSURANCE AGENT OR BROKER TO DETERMINE WHAT IS AND WHAT IS NOT COVERED.

ITEMS

1	NAMED ENTITY:	(the "Named Entity")	NYGARD ENTERPRISES LTD.	
		MAILING ADDRESS:	1771 INKSTER BLVD WINNIPEG, MB R2X 1R3	
		JURISDICTION OF INCORPORATION/FORMATION:	Manitoba	
2	POLICY PERIOD:	Inception Date:	March 7, 2019	Expiration Date: June 1, 2020
12:01 A.M. at the address stated in Item 1				

1673081

ITEMS (continued)

3 COVERAGE SUMMARY

Liability Coverage Section		Separate Limit of Liability	Shared Limit of Liability	Retention/Deductible*	Continuity/Retroactive Date	Premium
D&O	D&O Coverage Section	\$5,000,000 US	Inapplicable	\$50,000 US	Continuity: 12/12/2013	\$28,428 US
EPL	Employment Practices Coverage Section	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased
FLI	Fiduciary Liability Coverage Section	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased
MPL	Miscellaneous Professional Liability Coverage Section	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased
Professional Services:						
CCP	Employed Lawyers Coverage Section	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased	Coverage Section Not Purchased
Crime	Crime Coverage Section	See Section 5:	None	See Section 5:	N/A	Coverage Section Not Purchased
KRE	Kidnap And Ransom/Extortion Coverage Section	See Section 6:	None	See Section 6:	N/A	Coverage Section Not Purchased
*With respect to the D&O, EPL, FLI and CCP Coverage Sections only, no Retention amount is applicable to Non-Indemnifiable Loss. *No Retention amount is applicable to Costs of Investigation for Company Shareholder Derivative Investigation, Crisis Management Events, Voluntary Compliance Loss and HIPAA Penalties.						N/A

4 TOTAL PREMIUM \$28,428 US

1673081

ITEMS (continued)

5 CRIME LIMITS OF LIABILITY AND DEDUCTIBLES

Insuring Agreement	Per Occurrence Limit of Liability	Deductible
Insuring Agreement 1.A.: "Employee Theft" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.B.: "Forgery or Alteration" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.C.: "Inside the Premises - Theft of Money or Securities" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.D.: "Inside the Premises - Robbery or Safe Burglary of Other Property" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.E.: "Outside the Premises" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.F.: "Computer Fraud" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.G.: "Funds Transfer Fraud" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.H.: "Money Orders and Counterfeit Paper Currency" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased

If "Not Covered" is inserted above opposite any specific Insuring Agreement, such Insuring Agreement in the Crime Coverage Section and any other reference thereto in this policy is hereby deleted.

CANCELLATION OF PRIOR CRIME INSURANCE: By acceptance of the Crime Coverage Section of this Policy, you give us notice of cancellation for the prior Policy Nos: *Not Applicable*. Such cancellation shall be effective at the time the Crime Coverage Section of this Policy becomes effective.

6 KRE LIMITS OF INSURANCE \ INSURED PERSON(S)

Loss Component:	Each Loss Component Limit	Annual Aggregate Limit
A. Ransom Monies:	Coverage Section Not Purchased	Coverage Section Not Purchased
B. In- Transit/Delivery:	Coverage Section Not Purchased	Coverage Section Not Purchased
C. Expenses:	Coverage Section Not Purchased	Coverage Section Not Purchased
D. Consultant Expenses:	Coverage Section Not Purchased	Coverage Section Not Purchased
E. Judgments, Settlements and Defence Costs:	Coverage Section Not Purchased	Coverage Section Not Purchased
F. Death or Dismemberment:	Coverage Section Not Purchased	Coverage Section Not Purchased
Each Insured Event Limit:		Coverage Section Not Purchased
Coverage Section Aggregate:		Coverage Section Not Purchased
Deductible (Each Loss):		Coverage Section Not Purchased
Insured Person(s): Coverage Section Not Purchased		

1673081

ITEMS (continued)

7 OTHER LIMITS OF LIABILITY

(a) POLICY AGGREGATE LIMIT OF LIABILITY (For all coverages combined other than the Crime and the KRE Coverage Sections:	\$5,000,000 US
(b) Crisis Management Fund For D&O:	\$25,000 US
(c) Punitive Damages Sublimit of Liability for D&O and/or EPL Coverage Sections:	
<input type="checkbox"/> D&O Punitive Damages Sublimit of Liability:	\$0 US
<input type="checkbox"/> EPL Punitive Damages Sublimit of Liability:	\$0 US
<input type="checkbox"/> Shared Punitive Damages Sublimit of Liability (D&O and EPL):	\$0 US
<input checked="" type="checkbox"/> No Punitive Damages Sublimit of Liability for D&O or EPL	Full Limit
(d) Costs of Investigation Coverage Sublimit for D&O:	\$150,000 US
(e) Voluntary Compliance Loss Sublimit of Liability for FLI:	Coverage Section Not Purchased
(f) HIPAA Penalties Sublimit of Liability for FLI:	Coverage Section Not Purchased

8 DISCOVERY PROVISIONS (Inapplicable to Crime and KRE Coverage Sections)

(a) Percentage of Full Annual Premium for; 1 Year:	125%
(b) 2 Years:	150%
(c) 3 Years:	175%
(d) 4 Years:	190%
(e) 5 Years:	200%
(f) 6 Years:	210%
(g) Percentage of Full Annual Premium for unlimited duration:	220%

9(a) NAME AND ADDRESS OF INSURER

AIG Insurance Company of Canada
120 Bremner Boulevard Suite 2200
Toronto, ON M5J 0A8

This policy is issued only by the insurance company indicated in this Item 9(a).

9(b) NOTICE OF CLAIMS AND CIRCUMSTANCES SEND TO:

Claims Management, Canada
120 Bremner Boulevard Suite 2200
Toronto, ON M5J 0A8

Attention: "Financial Lines Claims"
Reference: 01-173-52-10

PRODUCER: **HUB INTERNATIONAL HKMB LIMITED**

PRODUCER LICENSE NO.: *On File with Carrier*

ADDRESS: **595 BAY ST
STE 900
TORONTO, ON M5G 2E3**

All limits of insurance, premiums and other sums of money as expressed in this policy are in Canadian currency unless otherwise stated in writing

1673081

ITEMS (continued)

By signing below, the President and Chief Executive Officer of the Insurer agrees on behalf of the Insurer to all the terms of this Policy.



President and Chief Executive Officer
AIG Insurance Company of Canada

TORONTO

SIGNED AT

April 9, 2019

DATE

1673081



Canadian Head Office
120 Bremner Boulevard Suite 2200
Toronto, ON M5J 0A8

AIG Insurance Company of Canada
(herein called the Insurer)

PrivateEdge Plus
General Terms and Conditions

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by Application, which forms a part of this policy, the Insurer agrees as follows:

1. TERMS AND CONDITIONS

These **General Terms and Conditions** shall be applicable to all **Coverage Sections** except: (i) the **KRE Coverage Section**; and (ii) the **Crime Coverage Section**. Terms appearing in these **General Terms and Conditions** which are defined in a **Coverage Section** shall have the meaning provided for such terms in such **Coverage Section** for purposes of coverage provided under such **Coverage Section**. Any reference in these **General Terms and Conditions** to "all **Coverage Sections**" shall not refer to the **KRE Coverage Section** or the **Crime Coverage Section**. The terms and conditions set forth in each **Coverage Section** shall only apply to that particular **Coverage Section** and shall in no way be construed to apply to any other **Coverage Section** of this policy.

2. DEFINITIONS

- (a) "**Application**" means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy, employment practices liability policy, professional liability policy, employed lawyers policy or crime policy issued by the Insurer, or any of its affiliates, of which this policy is in whole or part a renewal or replacement or which it succeeds in time.
- (b) "**Company**" means the **Named Entity** and any **Subsidiary** thereof. In the event a bankruptcy proceeding shall be instituted by or against a **Company**, the term "**Company**" shall also mean the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.
- (c) "**Continuity Date**" means the date set forth in Item 3 of the Declarations with respect to each **Coverage Section**.
- (d) "**Coverage Section**" means each **Coverage Section** that is purchased by the Insured as indicated in Item 3 of the Declarations.
- (e) "**Discovery Period**" means **Discovery Period**, as that term is defined in Clause 8 of these **General Terms and Conditions**.
- (f) "**Domestic Partner**" means any natural person legally recognized as a domestic or civil union partner under: (i) the provisions of any applicable federal, state, provincial, territorial or local law; or (ii) the provisions of any formal program established by the **Company**.
- (g) "**Insurer**" means the insurance company indicated in the Declarations.
- (h) "**Management Control**" means: (i) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of: the board of directors of a corporation, the management committee of a joint venture or partnership, or the management board of a limited liability company.

GENERAL TERMS AND CONDITIONS

- (i) **"Named Entity"** means the entity listed in Item 1 of the Declarations.
- (j) **"Policy Aggregate Limit of Liability"** means the **Policy Aggregate Limit of Liability** stated in Item 7(a) of the Declarations.
- (k) **"Policy Period"** means the period of time from the inception date stated in Item 2 of the Declarations to the earlier of the expiration date stated in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (l) **"Related Wrongful Act(s)"** means **Wrongful Act(s)** which are the same, related or continuous, or **Wrongful Act(s)** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Act(s)** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- (m) **"Separate Limit of Liability"** means the applicable **Separate Limit of Liability**, if any, stated in Item 3 of the Declarations.
- (n) **"Shared Limit of Liability"** means the applicable **Shared Limit of Liability**, if any, stated in Item 3 of the Declarations, which limit of liability shall be shared between all of the **Coverage Sections** which are listed below such **Shared Limit of Liability** in the Declarations.
- (o) **"Subsidiary"** means:
 - (i) any for-profit entity, whose securities are not publicly traded, of which the **Named Entity** has or had **Management Control** ("**Controlled Entity**") on or before the inception date of the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**;
 - (ii) any for-profit entity, whose securities are not publicly traded, of which the **Named Entity** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**; and
 - (iii) any not-for-profit entity under section 501(c)(3) of the Internal Revenue Code of 1986 or the Income Tax Act, R.S.C. (5th Supp) (as amended) sponsored exclusively by a **Company**.

Notwithstanding the foregoing, coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary** or any **Individual Insureds** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that the **Named Entity** obtained **Management Control** of such **Subsidiary** and prior to the time that such **Named Entity** ceased to have **Management Control** of such **Subsidiary**.

3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover **Loss** arising from any **Claim** made against: (i) the estates, heirs, or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of incompetency, insolvency or bankruptcy, who were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; or (ii) the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her status as the spouse or **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or **Domestic Partner**, or property transferred from the **Individual Insured** to the spouse or **Domestic Partner**; provided, however, this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

4. LIMITS OF LIABILITY (FOR ALL LOSS IN THE AGGREGATE UNDER THIS POLICY AND UNDER EACH INDIVIDUAL COVERAGE SECTION - INCLUDING DEFENCE COSTS)

The **Policy Aggregate Limit of Liability** is the maximum limit of the **Insurer's liability** for all **Loss** under all **Coverage Sections** combined arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable); provided, however, the **Policy Aggregate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for the **Policy Period**.

If **Separate Limits of Liability** are stated in Item 3 of the **Declarations**, then each such **Separate Limit of Liability** shall be the maximum limit of the **Insurer's liability** for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Coverage Section** as stated on the **Declarations**; provided, however, the **Separate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Separate Limit of Liability** for the **Policy Period**. Each **Separate Limit of Liability** shall be part of and not in addition to the **Policy Aggregate Limit of Liability** for all **Loss** under this policy and shall in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** as therein stated.

If **Shared Limits of Liability** are stated in Item 3 of the **Declarations**, then each such **Shared Limit of Liability** shall be the maximum limit of the **Insurer's liability** for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all **Coverage Sections** for which such **Shared Limit of Liability** is applicable, as indicated on the **Declarations**; provided, however, with respect to all **Coverage Sections** that have a **Shared Limit of Liability**, the **Shared Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Shared Limit of Liability** for the **Policy Period**. Each **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate Limit of Liability** as therein stated.

Further, a **Claim** which is made subsequent to the **Policy Period** or **Discovery Period** (if applicable) which pursuant to Clause 6(b) or 6(c) of these **General Terms and Conditions** is considered made during the **Policy Period** or **Discovery Period**, shall also be subject to the **Policy Aggregate Limit of Liability** and subject to any applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

Defence Costs are not payable by the **Insurer** in addition to the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability**. **Defence Costs** are part of **Loss** and as such are subject to the **Policy Aggregate Limit of Liability** for **Loss** and any applicable **Separate Limit of Liability** or **Shared Limit of Liability**. Amounts incurred for **Defence Costs** shall be applied against the **Retention**.

5. RETENTION CLAUSE

The **Retentions** stated in the **Declarations** are separate **Retentions** pertaining only to the **Coverage Section** for which they are stated in the **Declarations**. The application of a **Retention** to **Loss** under one **Coverage Section** shall not reduce the **Retention** under any other **Coverage Section**.

In the event a **Claim** triggers a **Retention** in multiple **Coverage Sections**, then the following shall apply:

- (a) with regard to **Loss** which is payable under any **Coverage Section** which is subject to a **Separate Limit of Liability**, the **Retention** applicable to such **Loss** pursuant to the **Retention Clause** of such **Coverage Section** (or pursuant to any applicable endorsement) shall apply separately to such **Loss**, and the applicable **Retention** for such **Coverage Section** shall not be reduced by payments of **Loss** made towards the **Retention** required under any other **Coverage Section**; and

- (b) with regard to **Loss** which is payable under any **Coverage Sections** which are subject to a **Shared Limit of Liability**, the highest applicable Retention shall be deemed the Retention applicable to **Loss** arising from such **Claim**.

6. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to the addressee and at the address identified in Item 9(b) of the Declarations. Notice shall include and reference this policy number as indicated in the Declarations, as well as the **Coverage Sections** under which the **Claim** is being noticed. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

The following shall apply:

- (a) The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** or a **Crisis Management Event** as soon as practicable after: (i) the **Company's Risk Manager** or **General Counsel** (or equivalent position) first becomes aware of the **Claim**; or (ii) the **Crisis Management Event** commences, but in all events a **Claim** must be reported no later than either:
- (i) anytime during the **Policy Period** or during the **Discovery Period** (if applicable); or
 - (ii) within ninety (90) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).
- (b) If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause 6(a) above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged in the **Claim** of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the **Policy Period** or during the **Discovery Period** (if applicable) the **Insureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.
- (d) Any matter which could involve the payment of **Voluntary Compliance Loss** under the **FLI Coverage Section** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause 6(a)(1) and 6(a)(2) above.

7. CANCELLATION CLAUSE

This policy or any individual **Coverage Section** may be cancelled by the **Named Entity** at any time by mailing prior written notice to the **Insurer** stating which **Coverage Sections** are to be cancelled or that the entire policy is to be cancelled and when thereafter such cancellation shall be effective, or by surrender thereof to the **Insurer** or its authorized agent. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the policy or applicable **Coverage Sections**.

This policy may be cancelled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by

the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified or other first class mail, at the **Named Entity's** address as stated in Item 1 of the Declarations, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect.

If this policy or any **Coverage Section** shall be cancelled by the **Named Entity**, the **Insurer** shall retain the pro rata proportion of the applicable premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation.

If the period of limitation relating to the giving of notice as set forth above is also set forth in any law controlling the construction thereof, the period set forth above shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

8. DISCOVERY CLAUSE

If the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this policy or any **Coverage Section**, then, solely with regard to the policy or **Coverage Section** which was cancelled or nonrenewed, the **Named Entity** shall have the right, upon payment of the applicable "**Additional Premium Amount**" described below, to a period of up to six (6) years or of unlimited duration following the effective date of such cancellation or nonrenewal (herein referred to as the "**Discovery Period**"), in which to give the **Insurer** written notice of **Claims** first made against any **Insured** during said **Discovery Period** for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by the cancelled or nonrenewed policy or **Coverage Section**, as applicable. The rights contained in this Clause 8 shall terminate, however, unless written notice of such election together with the **Additional Premium Amount** due is received by the **Insurer** within thirty (30) days of the effective date of cancellation or nonrenewal.

The **Additional Premium Amount** for the elected **Discovery Period** shall be the "**Full Annual Premium**" (as defined below) multiplied by the applicable percentage amount indicated in Item 8 of the Declarations for the length time of elected for the **Discovery Period**. If the applicable subsection of Item 8 of the Declaration states "to be determined", then the **Additional Premium Amount** for such **Discovery Period** shall be an amount determined by the **Insurer** in its sole and absolute discretion.

As used herein, "**Full Annual Premium**" means:

- (a) with regard to a cancelled or nonrenewed policy, the total annual premium charged for this policy; or
- (b) with regard to a cancelled or nonrenewed **Coverage Section**, the total annual premium charged for such **Coverage Section**.

In the event of a **Transaction**, as defined in Clause 9 of these **General Terms and Conditions**, the **Named Entity** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of up to six (6) years or for such longer or shorter period as the **Named Entity** may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

The **Discovery Period** is not cancellable, except that the **Insurer** may cancel the **Discovery**

Period for non-payment of premium. This Clause 8 and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

9. CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

- (a) the **Named Entity** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (b) any person or entity or group of persons or entities acting in concert shall acquire **Management Control** of the **Named Entity**;

(either of the above events herein referred to as the "**Transaction**"),

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Transaction**.

This policy and any purchased **Coverage Section** may not be cancelled after the effective time of the **Transaction**. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 8 of these **General Terms and Conditions**.

The **Named Entity** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

10. SUBROGATION

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to each **Insured's** rights of recovery thereof, and each **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured**. In no event, however, shall subrogation be had against any **Individual Insured** under this policy, unless such **Individual Insured** has been convicted of a criminal act, or been determined by a final adjudication to have committed a dishonest, fraudulent act or wilful violation of any statute, rule or law, or determined by a final adjudication to have obtained any profit or advantage to which such **Individual Insured** was not legally entitled.

In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Individual Insured**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the **Retention**, the **Insurer** shall have a direct contractual right under this policy to recover from the **Company**, or in the event of the bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid within the **Retention**. Such direct contractual right of recovery against the **Company** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause 10 and any other rights the **Insurer** may have under applicable law.

11. OTHER INSURANCE

With respect to all **Coverage Sections**, other than the **EPL Coverage Section**, such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this policy. This policy specifically shall be excess of any other policy pursuant to which any other **Insurer** has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

Such insurance as is provided by the **EPL Coverage Section** shall be primary unless expressly written to be excess over other applicable insurance.

With respect to all **Coverage Sections**, in the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the definition of "**Employee**" in the applicable **Coverage Section**, coverage as is afforded by this policy shall be specifically excess of any: (i) indemnification provided by such **Outside Entity** or leasing company; and (ii) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

Further, in the event other insurance is provided to the **Outside Entity**, leasing company or independent contractor referenced in the above paragraph, or is provided under any pension trust or employee benefit plan fiduciary liability insurance policy, and such other insurance is provided by the **Insurer** or any member company of **AIG Property Casualty, Inc. ("AIG")** (or would be provided but for the application of the Retention, exhaustion of the limit of liability or failure to submit a notice of a **Claim**), then the **Insurer's** maximum aggregate limit of liability for all **Loss** combined in connection with a **Claim** covered, in part or in whole, by this policy and such other insurance policy issued by **AIG**, shall not exceed the greater of (i) the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** of this policy, or (ii) the limit of liability of such other **AIG** insurance policy.

12. NOTICE AND AUTHORITY

Except for the giving of a notice of **Claim**, which shall be governed by the provisions of Clause 6 of these **General Terms and Conditions**, all notices required under this policy to be given by the **Insured** to the **Insurer** shall be given in writing to the **Insurer** at the address stated in Item 9(a) of the **Declarations**. It is agreed that the **Named Entity** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving of notice of a **Claim**, the giving and receiving of notice of cancellation and nonrenewal, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defence of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.

13. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

14. DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, must first be submitted to the non-binding mediation process as set forth in this Clause.

Either the **Insurer** or an **Insured** may elect the type of ADR process discussed below; provided, however, that such **Insured** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, in which case such **Insured's** choice of ADR process shall control.

The **Insurer** and each and every **Insured** agree that there shall be two choices of ADR process: (1) non-binding mediation administered by any mediator to which the **Insurer** and **Insured** mutually agree, in which the **Insurer** and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing commercial mediation rules; or (2) arbitration submitted to an arbitration panel of three (3) arbitrators. The

Insureds shall select one (1) arbitrator, the Insurer shall select one (1) arbitrator and said arbitrators shall mutually agree upon the selection of the third arbitrator. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

The dispute or differences considered by the mediator or arbitrators shall be governed by the Ontario *Arbitration Act* 1991, S.O.1991, c. 17. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include legal fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 90 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR process.

Either choice of ADR process may be commenced in Toronto, Ontario; or in the province indicated in Item 1(a) of the Declarations as the mailing address for the **Named Entity**. The **Named Entity** shall act on behalf of each and every Insured in deciding to proceed with an ADR process under this clause.

15. ACTION AGAINST INSURER

Except as provided in Clause 14 above, no action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insured or the Company to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or the Company or their legal representatives. Bankruptcy or insolvency of the Company or any Insured or of their estates shall not relieve the Insurer of any of its obligations hereunder.

16. WORLDWIDE TERRITORY

Where legally permissible, this policy shall apply to any Claim made against any Insured anywhere in the world.

17. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

All limits of insurance, premiums and other sums of money as expressed in this policy are in Canadian currency unless otherwise stated in writing

By signing below, the President and Chief Executive Officer of the Insurer agrees on behalf of the Insurer to all the terms of this Policy.



President and Chief Executive Officer
AIG Insurance Company of Canada

This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.

Insureds shall select one (1) arbitrator, the Insurer shall select one (1) arbitrator and said arbitrators shall mutually agree upon the selection of the third arbitrator. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

The dispute or differences considered by the mediator or arbitrators shall be governed by the Ontario *Arbitration Act* 1991, S.O.1991, c. 17. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include legal fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 90 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR process.

Either choice of ADR process may be commenced in Toronto, Ontario; or in the province indicated in Item 1(a) of the Declarations as the mailing address for the **Named Entity**. The **Named Entity** shall act on behalf of each and every Insured in deciding to proceed with an ADR process under this clause.

15. ACTION AGAINST INSURER

Except as provided in Clause 14 above, no action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insured or the Company to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or the Company or their legal representatives. Bankruptcy or insolvency of the Company or any Insured or of their estates shall not relieve the Insurer of any of its obligations hereunder.

16. WORLDWIDE TERRITORY

Where legally permissible, this policy shall apply to any Claim made against any Insured anywhere in the world.

17. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

All limits of insurance, premiums and other sums of money as expressed in this policy are in Canadian currency unless otherwise stated in writing

By signing below, the President and Chief Executive Officer of the Insurer agrees on behalf of the Insurer to all the terms of this Policy.



President and Chief Executive Officer
AIG Insurance Company of Canada

This Policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.

COVERAGE D: COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND

This **D&O Coverage Section** shall pay the **Costs of Investigation** of the **Company** arising from a **Company Shareholder Derivative Investigation** in response to a **Derivative Demand**, up to the amount set forth in Item 7(d) of the **Declarations**. Payment of **Costs of Investigation** to a **Company** shall be made in accordance with and subject to Clause 8 of this **D&O Coverage Section**.

DEFENCE PROVISIONS

The **Insurer** does not assume any duty to defend; provided, however, the **Named Entity** may at its sole option tender to the **Insurer** the defence of a **Claim** for which coverage is provided by this **D&O Coverage Section** in accordance with and subject to Clause 7 of this **D&O Coverage Section**. Regardless of whether the defence is so tendered, the **Insurer** shall advance **Defence Costs** of such **Claim**, excess of the applicable **Retention** amount, prior to its final disposition. Selection of counsel to defend a **Securities Claim** shall be made in accordance with Clause 9 of this **D&O Coverage Section**.

With respect to Coverage D above, it shall be the duty of the **Company** and not the duty of the **Insurer** to conduct, investigate and evaluate any **Company Shareholder Derivative Investigation** against its own **Executives**; provided, however, that the **Insurer** shall be entitled to effectively associate in the investigation and evaluation of, and the negotiation of any settlement of, any such **Company Shareholder Derivative Investigation**.

2. DEFINITIONS

- (a) **"Affiliate"** means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.
- (b) **"Claim"** means:
 - (i) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations);
 - (ii) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (1) issuance of a notice of action, statement of claim, writ of summons, complaint or similar pleading;
 - (2) return of an indictment, laying of an information, the filing of a notice of charges or the issuance or filing of a similar legal document (in the case of a criminal proceeding); or
 - (3) receipt or filing of a notice of charges; or
 - (iii) a civil, criminal, administrative or regulatory investigation of an **Individual Insured**:
 - (1) once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in Definition 2(b)(ii) may be commenced; or
 - (2) in the case of an investigation by the Securities Exchange Commission ("**SEC**"), a provincial or territorial securities commission, a securities regulatory authority, a self-regulatory organization, an exchange or by any similar federal, state, provincial, territorial or foreign government authority, regulatory authority or body after:
 - (a) the issuance of a subpoena or filing of a notice of charges upon such **Individual Insured**; or

- (b) the **Individual Insured** is identified in a written "Wells" or other notice from the **SEC** or a formal investigative order or any similar federal, state, provincial, territorial or foreign government authority that describes actual or alleged violations of laws by such **Individual Insured**.

The term "**Claim**" shall also include any **Securities Claim** and any **Derivative Demand**.

- (c) "**Cleanup Costs**" means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- (d) "**Company Shareholder Derivative Investigation**" means the investigation by the **Company** or, on behalf of the **Company** by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), as to whether or not the **Company** should bring the civil proceeding demanded in a **Derivative Demand**.
- (e) "**Costs of Investigation**" means the reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** (including but not limited to attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Company** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with a **Company Shareholder Derivative Investigation**.
- (f) "**Crisis Management Event**" means **Crisis Management Event**, as that term is defined in Appendix D attached to this policy.
- (g) "**Crisis Management Fund**" means the dollar amount set forth in Item 7(b) of the **Declarations**.
- (h) "**Crisis Management Loss**" means **Crisis Management Loss**, as that term is defined in Appendix D attached to this policy.
- (i) "**Crisis Management Services**" means **Crisis Management Services**, as that term is defined in Appendix D attached to this policy.
- (j) "**D&O Punitive Damages Sublimit of Liability**" means the **D&O Punitive Damages Sublimit of Liability**, if any, stated in Item 7(c) of the **Declarations**.
- (k) "**Defence Costs**" means the reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defence and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defence Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- (l) "**Derivative Demand**" means a written demand by shareholders upon the board of directors (or equivalent management body) of a **Company** requesting that it file, on behalf of the **Company**, a civil proceeding in a court of law against any **Executive** of the **Company** for a **Wrongful Act** of such **Executive** in order to obtain relief from damages arising out of such **Wrongful Acts**.
- (m) "**Employee**" means any past, present or future employee, other than an **Executive** of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, volunteer, seasonal and temporary employee. An individual who is leased to the **Company** shall also be an **Employee**, but only if the **Company** provides indemnification to such leased individual in the same manner as is provided to the **Company's** employees. Any other individual who is contracted to perform

work for the **Company**, or who is an independent contractor for the **Company** shall also be an **Employee**, but only if the **Company** provides indemnification to such individual in the same manner as that provided to the **Company's** employees, pursuant to a written contract.

(n) **"Executive"** means:

- (i) any past, present or future duly elected or appointed director, officer, management committee member or member of the Board of Managers;
- (ii) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in Definition (n)(i); or
- (iii) any past, present or future General Counsel and Risk Manager (or equivalent position) of the **Named Entity**.

(o) **"Financial Insolvency"** means the: (i) appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Company**; (ii) the filing of a petition under the bankruptcy laws of Canada; or (iii) as to both (i) or (ii), any equivalent events outside Canada.

(p) **"Foreign Jurisdiction"** means any jurisdiction, other than Canada or any of their territories or possessions.

(q) **"Foreign Policy"** means the Insurer's or any other company of AIG Property Casualty, Inc.'s ("AIG") standard executive managerial liability policy (including all mandatory endorsements, if any) approved by AIG to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **D&O Coverage Section**. If more than one such policy exists, then **"Foreign Policy"** means the standard basic policy form typically offered for sale in that **Foreign Jurisdiction** for comparable risks by the Insurer or any other company of AIG. The term **"Foreign Policy"** shall not include any partnership managerial, pension trust or professional liability coverage.

(r) **"Indemnifiable Loss"** means Loss for which a **Company** has indemnified or is permitted or required to indemnify an **Individual Insured** pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

(s) **"Individual Insured"** means any:

- (i) **Executive of a Company**;
- (ii) **Employee of a Company**; or
- (iii) **Outside Entity Executive**.

(t) **"Insured"** means:

- (i) an **Individual Insured**; or
- (ii) a **Company**.

(u) **"Loss"** means damages, judgments, settlements, pre-judgment and post-judgment interest, **Crisis Management Loss** and **Defence Costs**; provided, however, **Loss** shall not include: (i) civil or criminal fines or penalties imposed by law; (ii) taxes; (iii) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or (iv) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. **Defence Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (u)(i) through (u)(iv) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

Loss shall specifically include, subject to the other terms, conditions and exclusions of this **D&O Coverage Section**, including, but not limited to, exclusions 4(a), 4(b) and 4(c) of this **D&O Coverage Section**, punitive, exemplary and multiple damages. As more fully set forth in Clause 5. "LIMIT OF LIABILITY" of this **D&O Coverage Section**, coverage under this **D&O Coverage Section** for punitive, exemplary and multiple damages is subject to any applicable **D&O Punitive Damages Sublimit of Liability** or **Shared Punitive Damages Sublimit of Liability**. The enforceability of the first sentence of this paragraph shall be governed by such applicable law which most favours coverage for punitive, exemplary and multiple damages.

(v) **"Non-Indemnifiable Loss"** means **Loss** for which a **Company** has neither indemnified nor is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, bylaws, operating agreement or similar document of a **Company**.

(w) **"Outside Entity"** means:

- (i) any not-for-profit organization; or
- (ii) any other corporation, partnership, joint venture or other organization listed as an **"Outside Entity"** in an endorsement to this **D&O Coverage Section**.

(x) **"Outside Entity Executive"** means any: (i) **Executive** of the **Company** serving in the capacity as director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the specific request or direction of the **Company**; or (ii) any other person listed as an **Outside Entity Executive** in an endorsement to this **D&O Coverage Section**. It is understood and agreed that, in the event of a disagreement between the **Company** and an individual as to whether such individual was acting "at the specific request or direction of the **Company**," this **D&O Coverage Section** shall abide by the determination of the **Company** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **D&O Coverage Section** shall apply as if the **Company** determined that such **Individual Insured** was not acting at the **Company's** specific request or direction.

(y) **"Pollutants"** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapour, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and **Waste**. **"Waste"** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

(z) **"Securities Claim"** means a **Claim** made against any **Insured**:

- (i) alleging a violation of any federal, state, provincial, territorial, local or foreign regulation, rule, instrument, policy, blanket order, notice, ruling or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:

- (1) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of a **Company**; or

- (2) brought by a security holder of a **Company** with respect to such security holder's interest in securities of such **Company**; or

- (ii) brought derivatively on the behalf of a **Company** by a security holder of such **Company**.

(aa) **"Shared Punitive Damages Sublimit of Liability"** means the **Shared Punitive Damages Sublimit of Liability**, if any, stated in Item 7(c) of the **Declarations**.

(bb) **"Third Party Violation"** means any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise) or unlawful

discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or applicant for employment with the **Company** or an **Outside Entity**.

(cc) **"Wrongful Act"** means:

- (i) with respect to any **Executive** or **Employee** of a **Company**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Executive** or **Employee** in their respective capacities as such, or any matter claimed against such **Executive** or **Employee** of a **Company** solely by reason of his or her status as an **Executive** or **Employee** of a **Company**;
- (ii) with respect to a **Company**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Company**; or
- (iii) with respect to service on an **Outside Entity**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Outside Entity Executive** in his or her capacity as such.

3. **WORLDWIDE EXTENSION**

For **Claims** made and maintained in a **Foreign Jurisdiction** for **Wrongful Acts** committed in such **Foreign Jurisdiction**, the **Insurer** shall apply to such **Claims** the provisions of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favourable to such **Insured** in the **Foreign Jurisdiction**; provided however, that this paragraph shall apply only to provisions more favourable by virtue of insuring clauses, extensions, definitions, exclusions, pre-authorized securities or other defence counsel, discovery or extended reporting period, notice and authority, dispute resolution process or order of payments provisions, if any, of the **Foreign Policy** when compared to the same or similar clauses of this **D&O Coverage Section**. This paragraph shall not apply to excess provisions or policy provisions that address non-renewal, duty to defend, defence within or without limits, taxes, claims made and reported provisions or any other provision of this policy intended to govern coverage worldwide.

All premiums, limits, retentions, **Loss** and other amounts under this **D&O Coverage Section** are expressed and payable in the currency of Canada. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than Canadian dollars, payment of covered **Loss** due under this **D&O Coverage Section** (subject to the terms, conditions and limitations of this **D&O Coverage Section**) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in Canada dollars, at the rate of exchange published in *The National Post* on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of *The National Post*).

4. **EXCLUSIONS**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled;
- (b) arising out of, based upon or attributable to: (i) the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 76 of the *Ontario Securities Act*, R.S.O. 1990, c. S. 5, Section 131(4) of the *Canada Business Corporation Act*, R.S.C. 1985, c. C-44, or Section 16(b) of the *Securities Exchange Act of 1934* (or amendments to such statutes), or similar provisions of any provincial, state, or foreign statutory if any final adjudication establishes that such violation occurred; or (ii) the payment to any **Insured** of any remuneration without the previous approval of the stockholders of the **Company**, if any final adjudication establishes such payment was illegal;

- (c) arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent or dishonest act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such deliberate criminal, deliberate fraudulent or dishonest act or willful violation of statute, rule or law was committed;
- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Act(s)** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this **D&O Coverage Section** is a renewal or replacement of in whole or in part or which it may succeed in time;
- (e) alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging any **Wrongful Act** which is the same or **Related Wrongful Act(s)** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **D&O Coverage Section**.
- (g) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Individual Insured** serving in any capacity, other than as an **Executive** or **Employee** of a **Company**, or as an **Outside Entity Executive** of an **Outside Entity**;
- (h) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive** of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or any **Executive** thereof; or which is brought by any security holder of the **Outside Entity**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of the **Outside Entity**, the **Company**, or any **Executive** of the **Outside Entity** or the **Company**; provided, however, this exclusion shall not apply to:
 - (i) any **Claim** brought by an **Executive** of an **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this **D&O Coverage Section**;
 - (ii) in any bankruptcy proceeding by or against an **Outside Entity**, any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Outside Entity**;
 - (iii) any **Claim** brought by any past **Executive** of an **Outside Entity** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for an **Outside Entity** for at least four (4) years prior to such **Claim** being first made against any person; or
 - (iv) any **Claim** brought by an **Executive** of an **Outside Entity** formed and operating in a **Foreign Jurisdiction** against any **Outside Entity Executive** of such **Outside Entity**, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
- (i) which is brought by or on behalf of a **Company** or any **Individual Insured**, other than an **Employee** of a **Company**; or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Company** or any **Executive** of a **Company**; provided, however, this exclusion shall not apply to:

- (i) any **Claim** brought by an **Individual Insured** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered by this policy;
 - (ii) in any bankruptcy proceeding by or against a **Company**, any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Company**;
 - (iii) any **Claim** brought by any past **Executive** of a **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for a **Company** for at least four (4) years prior to such **Claim** being first made against any person; or
 - (iv) any **Claim** brought by an **Executive** of a **Company** formed and operating in a **Foreign Jurisdiction** against such **Company** or any **Executive** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
- (j) alleging, arising out of, based upon or attributable to any public offering of securities by a **Company**, an **Outside Entity** or an **Affiliate** or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, this exclusion will not apply to:
- (i) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; provided, however, the **Named Entity** shall give the **Insurer** written notice of any public offering exempted pursuant to Section 3(b), or any public offering occurring in Canada together with full particulars and as soon as practicable, but not later than thirty (30) days after the effective date of the public offering;
 - (ii) any public offering of securities (other than a public offering described in subparagraph 4(j)(i) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (1) the **Named Entity** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto; and (2) the **Named Entity** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Named Entity** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to subpart 4(j)(ii)(1) above, then the **Insurer** must offer a quote for coverage under this paragraph; or
 - (iii) any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparations to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01 a.m. on the date the initial public offering commences ("**IPO Effective Time**"), including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however that the coverage otherwise afforded under this subparagraph (iii) shall be deemed to be void *ab initio* effective the **IPO Effective Time**; provided further, however, that coverage shall not be deemed void *ab initio* if (1) the **Claim** is first made and reported pursuant to Clause 6(a) of the **General Terms and Conditions** prior to the **IPO Effective Time**, and (2) a public company D&O policy is not applicable to such **Claim**;
- (k) alleging, arising out of, based upon or attributable to the purchase by a **Company** of securities of a "**Publicly Traded Entity**" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or a **Subsidiary** of a **Company**; provided, however, this exclusion shall not apply in the event that within thirty (30) days prior to it becoming an **Affiliate** or **Subsidiary**, the **Named Entity** gives written notice of the transaction to

the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this **D&O Coverage Section** required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a **Publicly Traded Entity** if any securities of such entity have previously been subject to a public offering;

- (l) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; provided, however, this exclusion shall not apply to **Securities Claims**;
- (m) for emotional distress or mental anguish, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any **Securities Claim**;
- (n) for:
 - (i) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or
 - (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply to:
 - (1) **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or
 - (2) **Loss** in connection with a **Securities Claim**, other than **Loss** constituting **Clean-up Costs**;
- (o) for violation(s) of any of the responsibilities, obligations or duties imposed by the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32, the *Ontario Pension Benefits Act*, R.S.O., c. P.8 (or any equivalent provincial or territorial legislation), the *Ontario Employment Standards Act*, 2000 S.O. 2000, c. 41 (or any equivalent provincial or territorial legislation), the *Canada Labour Code*, R.S.C. 1985, c. L.2 (or any equivalent provincial or territorial legislation), the *Labour Adjustments Benefits Act*, R.S. 1995, c.L-1 (or any equivalent provincial or territorial legislation), the *Labor Relations Act* 1995 S.O. 1995, Sched. A (or any equivalent provincial or territorial legislation), the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 (or any equivalent provincial or territorial legislation), the *Employee Retirement Income Security Act of 1974*, the *Fair Labor Standards Act*, the *National Labor Relations Act*, the *Worker Adjustment and Retraining Notification Act*, the *Consolidated Omnibus Budget Reconciliation Act*, the *Occupational Safety and Health Act*, or any violation of any federal, provincial, territorial, state, municipal or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto;
- (p) alleging, arising out of, based upon or attributable to the ownership, management, maintenance or control by the **Company** of any captive insurance company or entity, including, but not limited, to any **Claim** alleging the insolvency or bankruptcy of the **Named Entity** as a result of such ownership, operation, management or control;
- (q) alleging, arising out of, based upon, or attributable to the employment of any individual or any employment practice, including, but not limited to, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim;
- (r) alleging, arising out of, based upon, or attributable to a **Third Party Violation**; provided, however, this exclusion shall not apply to a **Securities Claim**;
- (s) alleging, arising out of, based upon, or attributable to:
 - (i) payments, commissions, gratuities, benefits or any other favours to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;

- (ii) payments, commissions, gratuities, benefits or any other favours to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of the Company or any members of their family or any entity with which they are affiliated; or
- (iii) political contributions, whether domestic or foreign; or
- (t) with respect to Coverage B(i) only:
 - (i) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
 - (ii) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
 - (iii) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express contract or agreement; provided, however, this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement; or
 - (iv) seeking fines or penalties or non-monetary relief against the Company; provided, however, that this exclusion shall not apply to any Securities Claim.

For the purpose of determining the applicability of the foregoing Exclusions, other than exclusions 4(d), 4(e), 4(h), 4(i) and 4(t): (1) the facts pertaining to and knowledge possessed by any Insured shall not be imputed to any other Individual Insured; and (2) only facts pertaining to and knowledge possessed by any past, present or future chief executive officer, chief operating officer or chief financial officer (or equivalent positions) of the Company shall be imputed to the Company.

5. LIMIT OF LIABILITY

The following provisions shall apply in addition to the provisions of Clause 4. of the General Terms and Conditions:

CRISISFUND® INSURANCE

The maximum limit of the Insurer's liability for all Crisis Management Loss arising from all Crisis Management Events occurring during the Policy Period or the Discovery Period (if applicable), in the aggregate, shall be the amount set forth in Item 7(b) of the Declarations as the Crisis Management Fund. This Crisis Management Fund shall be the maximum limit of the Insurer under this D&O Coverage Section for Crisis Management Loss, regardless of the number of Crisis Management Events occurring during the Policy Period; provided, however, the Crisis Management Fund shall be part of and not in addition to the Policy Aggregate Limit of Liability stated in the Item 7(a) of the Declarations and any Separate Limit of Liability or Shared Limit of Liability applicable to this D&O Coverage Section as set forth in Item 3 of the Declarations.

COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND

The maximum limit of the Insurer's liability for Costs of Investigation arising from all Company Shareholder Derivative Investigations occurring during the Policy Period or the Discovery Period (if applicable), in the aggregate, shall be the amount set forth in Item 7(d) of the Declarations (the "Costs of Investigation Sublimit of Liability"). The Costs of Investigation Sublimit of Liability is the maximum limit of the Insurer under this D&O Coverage Section for Costs of Investigation regardless of the number of such Company Shareholder Derivative Investigations occurring during the Policy Period or the Discovery

Period (if applicable), or the number of Executives subject to such Company Shareholder Derivative Investigations; provided, however, that the Costs of Investigation Sublimit of Liability shall be part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 7(a) of the Declarations and any Separate Limit of Liability or Shared Limit of Liability applicable to this D&O Coverage Section as set forth in Item 3 of the Declarations.

PUNITIVE DAMAGES SUBLIMIT OF LIABILITY

If Item 7(c) of the Declarations indicates that the D&O Punitive Damages Sublimit of Liability was elected, then the D&O Punitive Damages Sublimit of Liability is the limit of the Insurer's liability for punitive, exemplary and multiple damages under this D&O Coverage Section. If Item 7(c) of the Declarations indicates that a Shared Punitive Damages Sublimit of Liability was elected, then the Shared Punitive Damages Sublimit of Liability is the limit of the Insurer's liability under both this D&O Coverage Section and the EPL Coverage Section combined for punitive, exemplary and multiple damages. If Item 7(c) of the Declarations indicates that no sublimit of liability is applicable to punitive damages, then neither the D&O Punitive Damages Sublimit of Liability nor the Shared Punitive Damages Sublimit of Liability is applicable to punitive, exemplary and multiple damages under this D&O Coverage Section. The D&O Punitive Damages Sublimit of Liability and the Shared Punitive Damages Sublimit of Liability, if applicable, shall be a part of and not in addition to Policy Aggregate Limit of Liability stated in the Item 7(a) of the Declarations and any Separate Limit of Liability or Shared Limit of Liability applicable to this D&O Coverage Section as set forth in Item 3 of the Declarations.

6. RETENTION CLAUSE

The following provision shall apply in addition to the provisions of Clause 5. RETENTION of the General Terms and Conditions:

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the applicable Retention amount stated in Item 3 of the Declarations for this D&O Coverage Section, such Retention amount to be borne by the Company and/or the Insureds and shall remain uninsured, with regard to: (i) all Indemnifiable Loss; and (ii) Loss of the Company. A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or Related Wrongful Act(s).

It is further understood and agreed that in the event the Company is unable to pay an applicable Retention amount due to Financial Insolvency, then the Insurer shall commence advancing Loss within the Retention; provided, however, that the Insurer shall be entitled to recover the amount of Loss advanced within the Retention from the Company pursuant to Clause 10. SUBROGATION of the General Terms and Conditions.

No Retention amount is applicable to Crisis Management Loss or Non-Indemnifiable Loss.

7. DEFENCE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENCE COSTS)

The Insurer does not assume any duty to defend. The Insureds shall defend and contest any Claim made against them.

Notwithstanding the foregoing, the Insureds shall have the right to tender the defence of the Claim to the Insurer, which right shall be exercised in writing by the Named Entity on behalf of all Insureds to the Insurer pursuant to the notice provisions of Clause 12 of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the Claim is first made against an Insured. Further, from the date the Claim is first made against an Insured to the date when the Insurer accepts the tender of the defence of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of any Insured or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defence of the Claim, even if such Claim is groundless, false or fraudulent. The assumption

of the defence of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Entity**. Once the defence has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defence and the negotiation of any settlement of any **Claim**, subject to the provisions of this **Clause 7**; provided, however, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** have been exhausted.

When the **Insurer** has not assumed the defence of a **Claim** pursuant to this **Clause 7**, the **Insurer** nevertheless shall advance, at the written request of the **Insured**, **Defence Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured** or the **Company**, severally according to their respective interests, in the event and to the extent that any such **Insured** or the **Company** shall not be entitled under the terms and conditions of this **D&O Coverage Section** to payment of such **Loss**.

The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defence of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation, including:

(a) cooperating with and helping the **Insurer**:

(i) in making settlements, subject to subparagraph 7(b) below;

(ii) in enforcing any legal rights the **Insured** may have against anyone who may be liable to the **Insured**;

(iii) by attending depositions, hearings and trials; and

(iv) by securing and giving evidence, and obtaining the attendance of witnesses; and

(b) taking such actions which, in such **Insured's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

Additionally, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defence Costs** without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments and **Defence Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **D&O Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **D&O Coverage Section**, provided that the **Insurer**, when it has not assumed the defence of a **Claim** pursuant to this **Clause 7**, shall be entitled to effectively associate in the defence and the negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defence Costs**, or any portion thereof, to the extent such **Loss** is not covered under the terms of this **D&O Coverage Section**. In addition, the **Insured** shall not take any action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this **D&O Coverage Section**.

This **Clause 7** shall not be applicable to **Crisis Management Loss**.

8. COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND COVERAGE PROVISION

It is understood and agreed that the **Company** shall be entitled to payment under Coverage D of this **D&O Coverage Section** for reimbursement of its covered **Costs of Investigation** ninety (90) days after: (i) the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**, and (ii) such decision has been communicated to the shareholders who made the **Derivative Demand** upon the **Company**.

However, such payment shall be subject to an undertaking by the Company, in a form acceptable to the Insurer, that the Company shall return to the Insurer such payment in the event any Company or any shareholder of the Company brings a Claim alleging, arising out of, based upon or attributable to any Wrongful Acts which were the subject of the Derivative Demand.

Nothing in this D&O Coverage Section, including Coverage D, shall be construed to afford coverage under this D&O Coverage Section for any Claim brought by the Company against one or more of its own Executives, other than Costs of Investigation incurred in a covered Company Shareholder Derivative Investigation. Payment of any Costs of Investigation under this D&O Coverage Section shall not waive any of the Insurer's rights under this policy or at law.

9. PRE-AUTHORIZED DEFENCE ATTORNEYS FOR SECURITIES CLAIMS

This Clause 9 applies only to Securities Claims.

Affixed as Appendix A hereto and made a part of this D&O Coverage Section is a list of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defence of any Securities Claim against an Insured pursuant to the terms set forth in this Clause.

In the event the Insurer has assumed the defence pursuant to Clause 7. of this D&O Coverage Section, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Securities Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Securities Claim is brought. In the event a Securities Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the Securities Claim is maintained or where the corporate headquarters or state of formation of the Named Entity is located. In such instance, however, the Insurer shall, at the written request of the Named Entity, assign a non-Panel Counsel Firm of the Insurer's choice in the jurisdiction in which the Securities Claim is brought to function as "local counsel" on the Securities Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defence of the Securities Claim.

With the express prior written consent of the Insurer, an Insured may select (in the case of the Insured defending the Claim), or cause the Insurer to select (in the case of the Insurer defending the Claim), a Panel Counsel Firm different from that selected by other Insured defendants if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made during the Policy Period to the Panel Counsel Firms listed in Appendix A without the consent of the Named Entity.

10. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this D&O Coverage Section, it is agreed that the Insurer has relied upon the statements and representations contained in the Application for this D&O Coverage Section as being accurate and complete. All such statements and representations are the basis of this D&O Coverage Section and are to be considered as incorporated into this D&O Coverage Section.

The Insureds agree that in the event that the particulars and statements contained in the Application are not accurate and complete and materially affect either the acceptance of the

risk or the hazard assumed by the Insurer under the policy, then this D&O Coverage Section shall be void *ab initio* as to any Insured who knew as of the inception date of the Policy Period of the facts that were not accurately and completely disclosed in the Application (whether or not such Insured knew that such facts were not accurately and completely disclosed in the Application). Solely for purposes of determining whether this D&O Coverage Section shall be void *ab initio* as to an Insured, such aforesaid knowledge possessed by any Insured shall not be imputed to any other Insured.

11. ORDER OF PAYMENTS

In the event of Loss arising from any Claim for which payment is due under the provisions of this D&O Coverage Section but which Loss, in the aggregate, exceeds the remaining available Separate Limit of Liability or Shared Limit of Liability applicable to this D&O Coverage Section, then the Insurer shall:

- (a) first pay such Loss for which coverage is provided under Coverage A of this D&O Coverage Section, then with respect to whatever remaining amount of the applicable Separate Limit of Liability or Shared Limit of Liability is available after payment of such Loss,
- (b) then pay such Loss for which coverage is provided under Coverage B(ii) of this D&O Coverage Section, and
- (c) then pay such Loss for which coverage is provided under Coverage B(i), C or D of this D&O Coverage Section.

In the event of Loss arising from a Claim for which payment is due under the provisions of this D&O Coverage Section (including those circumstances described in the first paragraph of this Clause 11), the Insurer shall at the written request of the Named Entity:

- (a) first pay such Loss for which coverage is provided under Coverage A of this D&O Coverage Section, then
- (b) either pay or hold payment for such Loss for which coverage is provided under Coverage B, C or D of this D&O Coverage Section.

In the event that the Insurer withholds payment under Coverage B, C or D of this D&O Coverage Section pursuant to the above request, then the Insurer, shall at any time in the future, at the request of the Named Entity release such Loss payment to the Company, or make such Loss payment directly to the Individual Insured in the event of covered Loss under any Claim covered under this D&O Coverage Section pursuant to Coverage A of this D&O Coverage Section.

The Financial Insolvency of any Company or any Individual Insured shall not relieve the Insurer of any of its obligations to prioritize payment of covered Loss under this D&O Coverage Section pursuant to this Clause 11.

APPENDIX A
SECURITIES CLAIMS PANEL COUNSEL LIST

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is accessible through our online Panel Counsel Directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website and click on the "Directors & Officers (Securities Claims)" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

APPENDIX D
CRISIS MANAGEMENT COVERAGE FOR D&O COVERAGE SECTION

I. DEFINITIONS

(a) **"Crisis Management Event"** means one of the following events which, in the good faith opinion of the **Company**, did cause or is reasonably likely to cause a **Material Effect**:

1. **Management Crisis:**
The death, incapacity or criminal indictment of any **Executive** of the **Company**, or any **Employee** on whom the **Company** maintains key person life insurance.
2. **Employee Layoffs:**
The public announcement of layoffs of **Employees** of the **Company**.
3. **Debt Default:**
The public announcement that the **Company** had defaulted or intends to default on its debt.
4. **Bankruptcy:**
The public announcement that the **Company** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Company**; or the imminence of bankruptcy proceedings, whether voluntary or involuntary.
5. **Mass Tort:**
The public announcement or accusation that a **Company** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof.
6. **Regulatory Crisis:**
The public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against a **Company**.

The descriptions in the headings of the **Crisis Management Events** are solely for convenience and form no part of the terms and conditions of coverage.

A **Crisis Management Event** shall first commence when the **Company** or any of its **Executives** shall first become aware of the event during the **Policy Period** and shall conclude at the earliest of the time when the **Crisis Management Firm** advises the **Company** that the crisis no longer exists or when the **Crisis Management Fund** has been exhausted.

- (b) **"Crisis Management Firm"** means any public relations firm, crisis management firm or law firm listed below in Section III of this Appendix D. Any **"Crisis Management Firm"** may be hired by the **Company** or its **Executives** or **Employees** to perform **Crisis Management Services** without further approval by the Insurer.
- (c) **"Crisis Management Loss"** means the following amounts incurred during the pendency of or within 90 days prior to and in anticipation of, the **Crisis Management Event**, regardless of whether a **Claim** is ever made against an Insured arising from the **Crisis Management Event** and, in the case where a

Claim is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:

- (1) amounts for which the **Company** is legally liable for the reasonable and necessary fees and expenses incurred by a **Crisis Management Firm** in the performance of **Crisis Management Services** for the **Company** arising from a **Crisis Management Event**; and
 - (2) amounts for which the **Company** is legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by **Executives**, **Employees** or agents of the **Company** or the **Crisis Management Firm**, in connection with the **Crisis Management Event**.
- (d) **"Crisis Management Services"** means those services performed by a **Crisis Management Firm** in advising the **Company** or any of its **Executives** or **Employees** on minimizing potential harm to the **Company** arising from the **Crisis Management Event**, including but not limited to maintaining and restoring public confidence in the **Company**.
- (e) **"Material Effect"** means the publication of unfavorable information regarding the **Company** which can reasonably be considered to lessen public confidence in the competence of the **Company**. Such publication must in occur in either:
- (1) a daily newspaper of general circulation in the geographic area of the **Company**, or
 - (2) a radio or television news report on a **Company** received in the geographic area of the **Company**.

II. EXCLUSIONS

The term **Crisis Management Event** shall not include any event relating to:

- 1. any pending or prior litigation as of the **Continuity Date** for the **D&O Coverage Section** indicated in Item 3 of the Declarations;
- 2. any **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- 3. the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
- 4. the hazardous properties of nuclear materials.

III. PRE-APPROVED CRISIS FIRMS

For all **Crisis Management Events**, **Crisis Management Firm(s)** means any public relations firm listed in (1) - (8) below:

- 1. **Abernathy MacGregor Group, Inc.**
501 Madison Avenue
New York, New York 10022
(212) 371-5999
Contacts: James T. MacGregor (jtm@abmac.com)
Rhoda Barnat (rb@abmac.com)

2. **Burson- Marsteller**
230 Park Avenue South
New York, New York 10003- 1566
(212) 614- 5236
Contact: Michael Claes (Michael.Claes@bm.com)
3. **Kekst and Company**
437 Madison Avenue
New York, New York 10022
(212) 521- 4800
Contacts: Jim Fingerioth (Jim- Fingerioth@kekst.com)
Lissa Perlman (Lissa- Perlman@kekst.com)
4. **Patton Boggs, LLP**
2550 M Street, N.W.
Washington D.C. 20037
(202) 457- 8040
Contact: Thomas Boggs, Esq. (tboggs@pattonboggs.com)
5. **Reputation Partners, LLC**
105 West Adams Street, Suite 2220
Chicago, IL 80603- 6265
(312) 222- 9887
Contacts: Nick Kalm (nick@reputationpartners.com)
Jane Devron (jane@reputationpartners.com)
6. **Robinson Lerer & Montgomery**
1345 Avenue of The Americas, 4th Floor
New York, New York 10105
646- 805- 2000
Contact: Michael Gross (mgross@rlmnet.com)
7. **Sard Verbinnen & Co.**
630 Third Avenue, 9th Floor
New York, New York 10017
(212) 687- 8080
Contacts: George Sard (gsard@sardverb.com)
Paul Verbinnen (pverbinnen@sardverb.com)
8. **Sitrick And Company**
1840 Century Park East, Suite 800
Los Angeles, CA 90067
(310) 788- 2850
Contact: Michael Sitrick (mike sitrick@sitrick.com)

ENDORSEMENT# 1

This endorsement, effective at *12:01 am March 7, 2019* forms a part of
Policy number *01-173-52-10*
Issued to: *NYGARD ENTERPRISES LTD.*

By: *AIG Insurance Company of Canada*

PRIVATE EDGE PLUS PREFERRED ENDORSEMENT

I. NUCLEAR ENERGY LIABILITY EXCLUSION (D&O)	2
II. CANADIAN CORPORATE TAX EXTENSION FOR INDIVIDUAL INSURED (O&O)	3
III. STATUTORY CLAIM COVERAGE FOR INDIVIDUAL INSURED (SIDE A COVERAGE ONLY) (D&O)	4
IV. SEVERABILITY OF THE APPLICATION PROVISIONS AMENDED (NON-RESCINDABLE - FULL INDIVIDUAL SEVERABILITY; TOP 2 COMPANY POSITIONS IMPUTED TO COMPANY) (D&O & EPL)	6
V. INSURED V. INSURED EXCLUSION AMENDED (CARVEBACK ADDED FOR CREDITOR'S COMMITTEE; PAST DIRECTORS 2 YRS & WHISTLEBLOWERS) (D&O)	8
VI. CANCELLATION CLAUSE AMENDED: 30 DAY NOTICE (GTC)	9
VII. EXTRADITION COVERAGE (D&O)	9
VIII. SIDE A EXCESS LIMIT OF LIABILITY APPLICABLE TO NON- INDEMNIFIABLE LOSS (D&O)	10
IX. PREDETERMINED ALLOCATION FOR DEFENCE COSTS (D&O & EPL)	12
X. ADVANCEMENT OF LOSS IN EVENT OF COMPANY FAILURE TO INDEMNIFY (D&O)	13
XI. CANADIAN CRIMINAL CODE 217.1 (BILL C-45) DEFENCE COSTS COVERAGE FOR INSURED (D&O) INDIVIDUAL INSURED (D&O)	14
XII. ADDITIONAL LIMIT OF LIABILITY FOR DEFENCE COSTS (ALL)	15

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END 001

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

I.
NUCLEAR ENERGY LIABILITY EXCLUSION
(D&O Coverage Section)

1. Clause 4. "EXCLUSIONS" of the **D&O Coverage Section** is amended by adding the following exclusions at the end thereof:

(NE-1) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the **Hazardous Properties of Nuclear Material**, including but not limited to:

- (1) **Nuclear Material** located at any **Nuclear Facility** owned by, or operated by or on behalf of, the **Company**, or discharged or dispersed therefrom; or
- (2) **Nuclear Material** contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the **Company**; or
- (3) the furnishing by an **Insured** or the **Company** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **Nuclear Facility**; or
- (4) **Claims** for damage or other injury to the **Company** or its shareholders which allege, arise from, are based upon, are attributed to or in any way involve, directly or indirectly, the **Hazardous Properties of Nuclear Material**.

(NE-2) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or

(NE-3) with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **Insured** is, or had this policy not been issued would be, entitled to indemnity from Canada or the United States of America, or any agency thereof, under any agreement entered into by Canada or the United States of America, or any agency thereof, with any person or organization.

2. As used in this endorsement:

"**Hazardous Properties**" include radioactive, toxic or explosive properties.

"**Nuclear Facility**" means:

- (a) any nuclear reactor;

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END 001

ENDORSEMENT# 1 (continued)

- (b) any equipment or device designed or used for
 - (1) separating the isotopes of uranium or plutonium,
 - (2) processing or utilizing spent fuel, or
 - (3) handling, processing or packaging wastes;
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material 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; and
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear Material" means source material, special nuclear material or byproduct material.

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Source Material," "Special Nuclear Material," and "Byproduct Material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

"Waste" means any waste material (1) containing by product material and (2) resulting from the operation by any person or organization of any **Nuclear Facility** included within the definition of nuclear facility under paragraph (a) or (b) thereof.

II.

**CANADIAN CORPORATE TAX EXTENSION FOR INDIVIDUAL INSURED
(D&O COVERAGE SECTION)**

1. Solely with respect to coverage as is afforded to **Individual Insureds** under Coverage A of the **D&O Coverage Section**, the definition of **"Loss"** in the **D&O Coverage Section** is amended by adding the following at the end thereof:

Notwithstanding the foregoing, **Loss** shall include, subject to the other terms, conditions and exclusions of the policy:

- (1) taxes actually assessed against an **Individual Insured** pursuant to section 227.1 of the Canadian Income Tax Act, section 323 of the Canadian Excise Tax Act or any comparable Canadian Provincial Retail Sales Tax legislation (hereinafter such sections collectively referred to as the "**Sections**"); and

- (2) any related penalties and interest actually assessed against such **Individual Insured**

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END 001

pursuant to the **Sections**.

2. Solely with respect to the coverage provided under this Section II. "CANADIAN CORPORATE TAX EXTENSION FOR INDIVIDUAL INSUREDS" of this endorsement, the **D&O Coverage Section** is further amended as follows:
 - (a) In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Claim**" is amended to include any action, proceeding or investigation against an **Individual Insured** commenced by Revenue Canada or any Canadian provincial tax authority pursuant to the **Sections** that is commenced by a notice of investigation or similar document. **Loss** shall include **Defence Costs** incurred in connection with such a **Claim** subject to the other terms, conditions and exclusions of the policy.
 - (b) As a condition precedent to the coverage provided to **Individual Insureds** under this Section II. "CANADIAN CORPORATE TAX EXTENSION FOR INDIVIDUAL INSUREDS" of this endorsement, an event identified in Sections 227.1(2) (a)-(c) of the Canadian Income Tax Act shall have occurred prior to the **Claim** being made against the **Individual Insured**.
 - (c) The **Company** hereby agrees to indemnify and hold the **Insurer** harmless from any payment made to or on the behalf of an **Individual Insured** pursuant to the coverage granted under this Section II. "CANADIAN CORPORATE TAX EXTENSION FOR INDIVIDUAL INSUREDS" of this endorsement.

III.

**STATUTORY CLAIM COVERAGE FOR INDIVIDUAL INSURED'S
(SIDE A COVERAGE ONLY)
(D&O COVERAGE SECTION)**

1. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Claim**" is amended by adding the following at the end thereof:

Notwithstanding the foregoing, as used in **COVERAGE B: PRIVATE COMPANY INSURANCE** of Clause 1. **INSURING AGREEMENTS** of the **D&O Coverage Section**, the definition of "**Claim**" shall not mean or include any **Statutory Claim**.
2. In Clause 2. **DEFINITIONS** of the **General Terms and Conditions**, the definition of "**Continuity Date**" is amended by adding the following at the end thereof:

Notwithstanding the foregoing, with respect to any **Statutory Claim**, the term "**Continuity Date**" means.
3. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Employee**" is amended by adding the following at the end thereof:

Notwithstanding the foregoing, with respect to any **Statutory Claim**, the definition of "**Employee**" shall not mean or include any independent contractor or any employee who is on probation.

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END 001

ENDORSEMENT# 1 (continued)

4. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Executive**" is amended by adding the following at the end thereof:

The term "**Executive**" shall also include any *de facto* directors and officers of the Company.

5. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Loss**" is amended by adding the following at the end thereof:

Notwithstanding the foregoing, solely with respect to any **Statutory Claim** made against an **Individual Insured**, **Loss** shall also include taxes assessed against such **Individual Insured** that has not been indemnified by any **Company** pursuant to Section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act, Section 43 of the Ontario Retail Sales Tax Act, or similar provisions of any other Canadian provincial or territorial income tax or retail sales tax statute.

6. Solely with respect to **COVERAGE A: INDIVIDUAL INSURED INSURANCE** of Clause 1. **INSURING AGREEMENTS** of the **D&O Coverage Section**, in Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Wrongful Act**" is amended by adding the following at the end thereof:

(iv) solely with respect to a **Claim** made by any Canadian governmental authority against an **Individual Insured**, any violation by such **Individual Insured** of any Canadian federal, provincial or territorial law arising out of, based upon or attributable to:

- (1) the failure to deduct, withhold or remit tax from a payment of salary or wages of an **Employee** of a **Company**;
- (2) the failure to deduct, withhold or remit employment insurance contributions from a payment of salary or wages of an **Employee** of a **Company**;
- (3) the failure to deduct, withhold or remit pension plan contributions from a payment of salary or wages of an **Employee** of a **Company**;
- (4) the failure to pay wages of an **Employee** of a **Company** properly due and owing; or
- (5) the failure to collect or to remit taxes in accordance with Section 227.1 of the Canadian Income Tax Act, Section 323 of the Canadian Excise Tax Act, Section 43 of the Ontario Retail Sales Tax Act, or similar provisions of any other Canadian provincial or territorial income tax or retail sales tax statute.

7. Clause 2. **DEFINITIONS** of the **D&O Coverage Section** is amended by adding the following definition to the end thereof:

(xy) "**Statutory Claim**" means any **Claim** alleging a **Wrongful Act** as defined in subparagraph (iv) of the definition of **Wrongful Act**.

8. Clause 4. **EXCLUSIONS** of the **D&O Coverage Section**, Exclusions (o) and (q) are each

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END 001

amended by adding the following at the end thereof:

Notwithstanding the foregoing, this exclusion shall not apply to the extent a **Claim** is a **Statutory Claim** made against an **Individual Insured**.

9. Clause 10 **SUBROGATION** of the General Terms and Conditions is amended by inserting the following at the end thereof:

In the event of any payment of **Loss** by the **Insurer** under the **D&O Coverage Section** in connection with a **Statutory Claim**, the **Insurer** shall be subrogated to the extent of such payment to the **Insured's** rights of recovery thereof, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured**.

It is understood and agreed that each **Insured** expressly grants the **Insurer** the right of subrogation to bring suit against a **Company** for any payment of **Loss** that the **Insurer** has made under the **D&O Coverage Section** in connection with a **Statutory Claim**.

IV.

**SEVERABILITY OF THE APPLICATION
(NON-RESCINDABLE - FULL INDIVIDUAL SEVERABILITY;
TOP 2 COMPANY POSITIONS IMPUTED TO COMPANY)
(D&O AND EPL COVERAGE SECTIONS)**

1. Clause 10. "**REPRESENTATIONS AND SEVERABILITY**" of the **D&O Coverage Section** is deleted in its entirety and replaced with the following:

10. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this **D&O Coverage Section**, it is agreed that the **Insurer** has relied upon the statements, warranties and representations contained in the **Application** for this **D&O Coverage Section** as being accurate and complete. All such statements and representations are the basis of this **D&O Coverage Section** and are to be considered as incorporated into this **D&O Coverage Section**.

With respect to any statements, warranties and representations contained in the **Application**, and solely with respect to the issue of whether coverage shall be excluded under this endorsement pursuant to subparagraphs (1), (2) and (3) below, no knowledge possessed by an **Individual Insured** shall be imputed to any other **Individual Insured**. However, in the event that any of the statements, warranties or representations is not accurately and completely disclosed in the **Application** and materially affects either the acceptance of the risk or the hazard assumed by the **Insurer**, no coverage shall be afforded for any **Claim** alleging, arising out of, based upon, attributable to or in consequence of the subject matter of any incomplete or inaccurate statements, warranties or representations under :

- (1) Clause 1. **INSURING AGREEMENTS, COVERAGE A**, with respect to any **Individual Insured** who knew of such inaccurate or incomplete statements,

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END 001

ENDORSEMENT# 1 (continued)

warranties or representations;

- (2) Clause 1. **INSURING AGREEMENTS**, Coverage B(ii), with respect to any **Company** to the extent it indemnifies any **Individual Insured** referenced in (1), above; and
- (3) Clause 1. **INSURING AGREEMENTS**, Coverage B(i), with respect to any **Company** if any past or present chief executive officer or chief financial officer of the **Company** knew of such inaccurate or incomplete statements, warranties or representations,

whether or not such **Individual Insured** knew that such facts were not accurately and completely disclosed in the **Application**.

The **Insurer** shall not be entitled under any circumstances to rescind coverage under the Policy with respect to any **Insured**, but such coverage will be subject to all other terms, conditions and exclusions of the policy.

- 2. Clause 8. **"REPRESENTATIONS AND SEVERABILITY"** of the **EPL Coverage Section** is deleted in its entirety and replaced with the following:

8. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application** for this **EPL Coverage Section** as being accurate and complete. All such statements and representations are the basis of this **EPL Coverage Section** and are to be considered as incorporated into this **EPL Coverage Section**.

With respect to any statements, warranties and representations contained in the **Application**, and solely with respect to the issue of whether coverage shall be excluded under this endorsement pursuant to subparagraphs (1), (2) and (3) below, no knowledge possessed by an **Individual Insured** shall be imputed to any other **Individual Insured**. However, in the event that any of the statements, warranties or representations is not accurately and completely disclosed in the **Application** and materially affects either the acceptance of the risk or the hazard assumed by the **Insurer**, no coverage shall be afforded for any **Claim** alleging, arising out of, based upon, attributable to or in consequence of subject matter of any incomplete or inaccurate statements, warranties or representations with respect to :

- (1) any **Individual Insured** who knew as of the inception date of the **Policy Period** the facts that were not accurately and completely disclosed in the application;
- (2) any **Company** to the extent it indemnifies any **Individual Insured** referenced in subparagraph (1) above; and
- (3) any **Company** if any past or present chief executive officer or chief financial officer of the **Company** knew of such inaccurate or incomplete statements, warranties or representations,

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END 001

whether or not such **Individual Insured** knew that such facts were not accurately and completely disclosed in the **Application**.

The **Insurer** shall not be entitled under any circumstances to rescind coverage under the Policy with respect to any **Insured**, but such coverage will be subject to all other terms, conditions and exclusions of the policy.

V.

**INSURED V. INSURED EXCLUSION AMENDED
(CARVEBACKS ADDED FOR CREDITOR'S COMMITTEE;
PAST DIRECTORS & WHISTLEBLOWERS)
(D&O COVERAGE SECTION)**

Clause 4. **EXCLUSIONS** of the **D&O Coverage Section** is amended by deleting paragraph (i) thereof in its entirety and replacing it with the following:

- (i) which is brought by or on behalf of a **Company** or any **Individual Insured**, other than an **Employee** of a **Company**; or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of any **Company** or any **Executive** of a **Company**; provided, however, this exclusion shall not apply to:
 - (i) any **Claim** brought by an **Individual Insured** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this policy;
 - (ii) in any bankruptcy proceeding by or against a **Company**, any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of such **Company**;
 - (iii) any **Claim** brought by any past **Executive** of a **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for a **Company** for at least (3) years prior to such **Claim** being first made against any person; or
 - (iv) any **Claim** brought by an **Executive** of a **Company** formed and operating in a **Foreign Jurisdiction** against such **Organization** or any **Executive** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
 - (v) any **Executive** engaging in any protected "whistleblower" activity specified in 18 U.S.C. 1514A(a) or any other similar "whistleblower" protection provided under any state, local or foreign securities laws.

The foregoing subparagraph (v) shall not apply where the actions of any **Executive** includes the filing of any proceeding or voluntarily testifying, voluntarily participating in or voluntarily assisting (other than de minimus assistance) in the

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END 001

filing or prosecution of any proceeding against an **Insured** relating to any violation of any rule or regulation of the Securities and Exchange Commission or any similar provision of any federal, state, local or foreign rule or law relating to fraud against shareholders, other than such actions in connection with a proceeding that is brought by the Securities and Exchange Commission, any similar state, local or foreign regulatory body that regulates securities, or any state, local or foreign law enforcement authority.

**VI.
CANCELLATION CLAUSE AMENDED
(30 Day Notice)**

Clause 7. **CANCELLATION CLAUSE** of the General Terms and Conditions is amended by deleting the second paragraph thereof and replacing it with the following:

This policy may be canceled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified or other first class mail, at the **Named Entity's** address as stated in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect.

**VII.
EXTRADITION COVERAGE ENDORSEMENT
(D&O Coverage Section)**

1. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Claim**" is amended by inserting the following at the end thereof:

Claim also means an official request for **Extradition** of any **Individual Insured**, or the execution of a warrant for the arrest of an **Individual Insured** where such execution is an element of **Extradition**.

2. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Defence Costs**" is amended by inserting the following at the end thereof:

"**Defence Costs**" also means reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the **Insurer** resulting from an **Individual Insured** lawfully:

- (a) opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of that **Individual Insured**; or
- (b) appealing any order or other grant of **Extradition** of that **Individual Insured**.

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END 001

3. Clause 2. **DEFINITIONS** is amended by inserting the following at the end thereof:

"**Extradition**" means any formal process by which an **Individual Insured** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

4. Clause 9. **PRE-AUTHORIZED DEFENCE ATTORNEYS FOR SECURITIES CLAIMS** does not apply to **Defence Costs** solely relating to **Extradition** even if the underlying **Wrongful Acts** relate to a **Securities Claim**.

**VIII.
SIDE A EXCESS LIMIT OF LIABILITY APPLICABLE
TO NON-INDEMNIFIABLE LOSS
(D&O COVERAGE SECTION)**

1. Item 7. of the Declarations is amended to include the following at the end thereof:

(g) **SIDE A EXCESS LIMIT OF LIABILITY: \$1,000,000**, excess aggregate limit of liability for all **Non-Indemnifiable Loss** solely for **Executives** of a **Company** (including **Defence Costs**) under the **D&O Coverage Section** (herein the "**Side A Excess Limit of Liability**").

2. Clause 4. **LIMITS OF LIABILITY (FOR ALL LOSS IN THE AGGREGATE UNDER THIS POLICY AND UNDER EACH INDIVIDUAL COVERAGE SECTION - INCLUDING DEFENCE COSTS)** of the **General Terms And Conditions** is deleted in its entirety and replaced with the following:

4. **LIMITS OF LIABILITY (FOR ALL LOSS IN THE AGGREGATE UNDER THIS POLICY AND UNDER EACH INDIVIDUAL COVERAGE SECTION - INCLUDING DEFENCE COSTS)**

The **Policy Aggregate Limit of Liability** is the maximum limit of the **Insurer's** liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**) under all **Coverage Sections** combined arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable); provided, however, the **Policy Aggregate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for the **Policy Period**.

If **Separate Limits of Liability** are stated in Item 3 of the Declarations, then each such **Separate Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**) arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Coverage Section** as stated on the Declarations; provided, however, the **Separate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Separate Limit of Liability** for the **Policy Period**. Each **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy and shall in no way serve to increase the **Insurer's Policy**

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END 001

Aggregate Limit of Liability as therein stated.

If **Shared Limits of Liability** are stated in Item 3 of the Declarations, then each such **Shared Limit of Liability** shall be the maximum limit of the Insurer's liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**) arising out of all **Claims** first made against the Insureds during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all **Coverage Sections** for which such **Shared Limit of Liability** is applicable, as indicated on the Declarations; provided, however, with respect to all **Coverage Sections** that have a **Shared Limit of Liability**, the **Shared Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Shared Limit of Liability** for the **Policy Period**. Each **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate Limit of Liability** as therein stated.

The **Side A Excess Limit of Liability** stated in Item 7(g) of the Declarations is the aggregate limit of the Insurer's liability under the **D&O Coverage Section** excess of: (i) any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section**; and (ii) any coverage for **Loss** (whether or not **Non-Indemnifiable Loss**) under any policy of insurance specifically written as excess over any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section**, for all **Non-Indemnifiable Loss** under the **D&O Coverage Section** arising out of all **Claims** first made against an **Executive** of a **Company** during the **Policy Period** or the **Discovery Period** (if applicable). The **Side A Excess Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Side A Excess Limit of Liability** for the **Policy Period**. The **Side A Excess Limit of Liability** shall be in addition to the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section**.

It is agreed that the Insurer's liability to pay **Non-Indemnifiable Loss** shall only attach to the **Side A Excess Limit of Liability** after:

- (a) the full amount of any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section** has been exhausted due to **Loss** paid thereunder; and
- (b) any coverage for **Loss** (whether or not **Non-Indemnifiable Loss**) under any policy of insurance specifically written as excess over any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section** has been exhausted by reason of loss paid thereunder.

The **Side A Excess Limit of Liability** provided by this endorsement shall "drop down" (continue in force as primary insurance) only in the event of (a) and (b) above and shall not drop down for any other reason.

Further, a **Claim** which is made subsequent to the **Policy Period** or **Discovery Period** (if applicable) which pursuant to Clause 6(b) or 6(c) of these **General Terms and Conditions** is considered made during the **Policy Period** or **Discovery Period**, shall also be subject to the **Policy Aggregate Limit of Liability** and subject to any

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END 001

applicable **Separate Limit of Liability, Shared Limit of Liability or Side A Excess Limit of Liability.**

Defence Costs are not payable by the Insurer in addition to the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability, Shared Limit of Liability or Side A Excess Limit of Liability.** **Defence Costs** are part of **Loss** and as such are subject to the **Policy Aggregate Limit of Liability for Loss** and any applicable **Separate Limit of Liability, Shared Limit of Liability or Side A Excess Limit of Liability.** Amounts incurred for **Defence Costs** shall be applied against the **Retention.**

**IX.
PREDETERMINED ALLOCATION FOR DEFENCE COSTS
(D&O and EPL Coverage Sections)**

1. Clause 7. **DEFENCE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENCE COSTS** of the **D&O Coverage Section** is amended by inserting the following at the end thereof:

Defence Cost Allocation for Covered an Uncovered Matters:

In the event that any **Claim** made involves both covered and uncovered allegations or matters, then the **Insureds, the Insurer and the Company** shall allocate **Defence Costs** relating to any such **Claim** in the manner set forth below.

The preceding paragraph pertains only to **Defence Costs** for **Claims** which contain both covered and uncovered allegations or matters, and, accordingly, nothing in the preceding paragraph shall be construed to provide coverage for (i) **Loss** arising out of a **Claim** in which no allegations or matters are covered; or (ii) **Loss, other than Defence Costs, for uncovered allegations or matters in Claims** involving both covered and uncovered allegations or matters.

With regard to **Defence Costs** incurred in connection with a **Claim** described in the first paragraph above, the Insurer shall pay 100% of such **Defence Costs** up to the applicable **Separate Limit of Liability or Shared Limit of Liability, and the remaining 0% shall be deemed the obligation of the Insureds and not insured under this policy.** The **Insurer's liability for payment of the 100% of such Defence Costs** shall be subject to all other terms, conditions and limitations of the policy and all endorsements thereto (whether any such endorsement precedes or follows this endorsement), including without limitation all terms and conditions of Clause 7 and Clause 9 of the **D&O Coverage Section.** This **Defence Costs** allocation shall not apply to or create any presumption with respect to the allocation of any damages, judgments, settlements or any other aspect of **Loss** other than **Defence Costs.**

2. Clause 6. **DEFENCE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENCE COSTS** of the **EPL Coverage Section** is hereby amended by appending the following to the end thereof:

Defence Cost Allocation for Covered an Uncovered Matters:

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END 001

ENDORSEMENT# 1 (continued)

In the event that any **Claim** made involves both covered and uncovered allegations or matters, then the **Insureds**, the **Insurer** and the **Company** shall allocate **Defence Costs** relating to any such **Claim** in the manner set forth below.

The preceding paragraph pertains only to **Defence Costs** for **Claims** which contain both covered and uncovered allegations or matters, and, accordingly, nothing in the preceding paragraph shall be construed to provide coverage for (i) **Loss** arising out of a **Claim** in which no allegations or matters are covered; or (ii) **Loss**, other than **Defence Costs**, for uncovered allegations or matters in **Claims** involving both covered and uncovered allegations or matters.

With regard to **Defence Costs** incurred in connection with a **Claim** described in the first paragraph above, The **Insurer** shall pay 100% of such **Defence Costs** up to the applicable **Separate Limit of Liability** or **Shared Limit of Liability**, and the remaining 0% shall be deemed the obligation of the **Insureds** and not insured under this policy. The **Insurer's** liability for payment of the 100% of such **Defence Costs** shall be subject to all other terms, conditions and limitations of the policy and all endorsements thereto (whether any such endorsement precedes or follows this endorsement), including without limitation all terms and conditions of Clause 6 and Clause 7 of the **EPL Coverage Section**. This **Defence Costs** allocation shall not apply to or create any presumption with respect to the allocation of any damages, judgments, settlements or any other aspect of **Loss** other than **Defence Costs**.

X.

**ADVANCEMENT OF LOSS IN EVENT OF COMPANY FAILURE TO INDEMNIFY
(D&O Coverage Section)**

1. Clause 6. "**RETENTION CLAUSE**" of the **D&O Coverage Section** is deleted in its entirety and replaced with the following:

6. RETENTION CLAUSE

The following provision shall apply in addition to the provisions of Clause 5. **RETENTION** of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount stated in Item 3 of the Declarations for this **D&O Coverage Section**, such Retention amount to be borne by the **Company** and/or the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of the **Company**. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.

If for any reason (including but not limited to **Financial Insolvency**) a **Company** fails or refuses to advance, pay or indemnify covered **Loss** of an **Individual Insured** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Individual Insured** until either (i) a **Company** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Company** of any duty it may have to provide advancement, payment or indemnification to any **Individual Insured**.

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END 001

Advancement, payment or indemnification of an **Individual Insured** by a **Company** is deemed "failed" if it has been requested by an **Individual Insured** in writing and has not been provided by, agreed to be provided by or acknowledged as an obligation by a **Company** within 60 days of such request; and advancement, payment or indemnification by a **Company** is deemed "refused" if a **Company** gives a written notice of the refusal to the **Individual Insured**. Advancement, payment or indemnification of an **Individual Insured** by a **Company** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not provided, or agreed to be provided, or acknowledged by and collectible from a **Company**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply towards the exhaustion of the **Policy Aggregate Limits of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the **D&O Coverage Section**.

The **Company** agrees to indemnify the **Individual Insureds** and/or advance **Defence Costs** to the fullest extent permitted by law. If the **Insurer** pays under this policy any indemnification or advancement owed to any **Individual Insureds** by any **Company** within an applicable Retention, then that **Company** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the **Insurer**. The failure of a **Company** to perform any of its obligations to indemnify the **Individual Insureds** and/or advance **Defence Costs** under this policy shall not impair the rights of any **Individual Insured** under this policy.

2. Clause 10. "**SUBROGATION**" of the **General Terms and Conditions** is amended by deleting the last paragraph thereof in its entirety.

XI .

**CANADIAN CRIME CODE SECTION 217.1 (BILL C-45) DEFENCE COSTS
COVERAGE FOR INDIVIDUAL INSUREDS**

1. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "Loss" is amended by adding the following at the end thereof:

Loss shall also mean **Canadian Criminal Code 217.1 Defence Costs**, provided they arise out of a **Claim**.

2. In Clause 4. **EXCLUSIONS** of the **D&O Coverage Section**, Exclusion (I) is deleted in its entirety and replaced with the following:

(I) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; provided, however, this exclusion shall not apply to **Securities Claims** or **Canadian Criminal Code 217.1 Defence Costs**;

3. As used in this endorsement, "**Canadian Criminal Code 217.1 Defence Costs**" means **Defence Costs** incurred by an **Individual Insured** that result solely from the investigation, adjustment, defence and/or appeal of a **Claim** against an **Organization** for violation of Section 217.1 in the Criminal Code of Canada or of any similar provision of any criminal code in any jurisdiction.

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**XII.
ADDITIONAL LIMIT OF LIABILITY FOR DEFENCE COSTS**

1. Item 7. of the Declarations is amended to include the following at the end thereof:

(h) ADDITIONAL LIMIT OF LIABILITY FOR DEFENCE COSTS FOR CANADIAN OPERATIONS: \$UNLIMITED

ADDITIONAL LIMIT OF LIABILITY FOR DEFENCE COSTS FOR UNITED STATES OPERATIONS: \$2,000,000

2. Clause 4. **LIMITS OF LIABILITY (FOR ALL LOSS IN THE AGGREGATE UNDER THIS POLICY AND UNDER EACH INDIVIDUAL COVERAGE SECTION - INCLUDING DEFENCE COSTS)** of the General Terms And Conditions is amended by inserting the following at the end thereof:

Additional Limit of Liability For Defence Costs:

Notwithstanding the foregoing, the **Additional Limit of Liability for Defence Costs** is an additional limit of liability available only for covered **Defence Costs** incurred in connection with any **Claim** first made against an **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) under any **Purchased Coverage Section**. The **Additional Limit of Liability for Defence Costs** for the **Discovery Period** shall be part of and not in addition to the **Additional Limit of Liability for Defence Costs** for the **Policy Period**. There is only one **Additional Limit of Liability for Defence Costs** under the policy and it applies all **Defence Costs** in the aggregate under all **Purchased Coverage Sections**. The **Additional Limit of Liability for Defence Costs** shall be in addition to and not part of any **Separate Limit of Liability** or **Shared Limit of Liability** stated in item 3 of the declarations for the **Purchased Coverage Sections**. Loss constituting **Defence Costs** shall first reduce the **Additional Limit of Liability for Defence Costs**. Should the **Additional Limit of Liability for Defence Costs** become exhausted, then subsequent **Defence Costs** will reduce the other applicable **Separate Limit of Liability** or **Shared Limit of Liability**. In no event shall the **Additional Limit of Liability for Defence Costs** be available once the applicable **Separate Limit of Liability** or **Shared Limit of Liability** set forth in Item 3 of the Declarations for such **Claim** has been completely exhausted.

3. As used in this endorsement:

"**Additional Limit of Liability for Defence Costs**" means the amount stated in Item 7(h) of the Declarations.

"**Purchased Coverage Section(s)**" means any **Coverage Section** purchased under this policy other than the **Crime Coverage Section** or the **KRE Coverage Section**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

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ENDORSEMENT# 2

This endorsement, effective at *12:01 am March 7, 2019* forms a part of
Policy number *01-173-52-10*
Issued to: *NYGARD ENTERPRISES LTD.*

By: *AIG Insurance Company of Canada*

**SETTLEMENT CLAUSE AMENDATORY ENDORSEMENT
(EPL COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that in Clause 6. "**DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**" of the **EPL Coverage Section**, the last paragraph thereof is deleted in its entirety.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

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END 002

ENDORSEMENT# 3

This endorsement, effective at *12:01 am March 7, 2019* forms a part of
Policy number *01-173-52-10*
Issued to: *NYGARD ENTERPRISES LTD.*

By: *AIG Insurance Company of Canada*

**CONDUCT EXCLUSIONS AMENDED
(FINAL NON-APPEALABLE ADJUDICATION)
(D&O and EPL COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

1. In Clause 4. **EXCLUSIONS** of the **D&O Coverage Section** (if purchased), paragraphs (a), (b) and (c) are deleted in their entirety and replaced with the following:
 - (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final non-appealable adjudication establishes that the **Insured** was not legally entitled;
 - (b) arising out of, based upon or attributable to: (1) the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 76 of the Ontario Securities Act, R.S.O 1990, C.S.5, Section 131 (4) of the Canada Business Corporations Act, R.S.C 1985, C. C-44, or Section 16(b) of the Securities Exchange Act of 1934 (or amendments to such statutes, or similar provisions or any provincial, state or foreign statutory if any final **non-appealable adjudication** establishes that such violation occurred; or (2) the payment to any **Insured** of any remuneration without the previous approval of the stockholders of the **Company**, once any final non-appealable adjudication establishes that such payment was illegal;
 - (c) arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent or dishonest act, or any willful violation of any statute, rule or law, if any final non-appealable adjudication establishes that such deliberate criminal, deliberate fraudulent or dishonest act or willful violation of statute, rule or law was committed;
2. In Clause 3. **EXCLUSIONS** of the **EPL Coverage Section** (if purchased), paragraph (a) is deleted in its entirety and replaced with the following:
 - (a) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act if any final non-appealable adjudication establishes that such criminal or deliberate fraudulent act was committed;
3. In Clause 5. **EXCLUSIONS** of the **FLI Coverage Section** (if purchased), paragraphs (a) and (b) are deleted in their entirety and replaced with the following:
 - (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final non-appealable adjudication establishes the **Insured** was not

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END 003

ENDORSEMENT# 3 (continued)

legally entitled;

- (b) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law** by the **Insured** if any final non-appealable adjudication establishes that such criminal or deliberate fraudulent act was committed;

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

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END 003

ENDORSEMENT# 4

This endorsement, effective 12:01 am March 7, 2019 forms a part of
policy number 01-173-52-10
issued to NYGARD ENTERPRISES LTD.

by AIG Insurance Company of Canada

**EMPLOYED LAWYERS PROFESSIONAL LIABILITY EXTENSION ENDORSEMENT
(WITH SUBLIMIT)**

In consideration of the premium charged, it is hereby understood and agreed that the General Terms & Conditions and the D&O Coverage Section are amended as follows:

1. Clause 2. **DEFINITIONS** of the **D&O Coverage Section** is amended as follows:
 - (a) Paragraph (s), "**Individual Insured**," is amended to include the following paragraph at the end of that definition:

"Individual Insured" also means any **Employed Lawyer(s)** of a **Company**, but only for a **Claim(s)** alleging a **Wrongful Act** in such **Employed Lawyer's(s)** capacity as such, subject to the terms, conditions and exclusions of this policy and this endorsement.
 - (b) For purposes of the coverage afforded under this endorsement, paragraph (cc), "**Wrongful Act**," is deleted in its entirety and replaced with the following:

(cc) "**Wrongful Act**" means any act, error or omission of an **Employed Lawyer(s)**, in the rendering or failure to render professional legal services for a **Company**, but solely in his or her capacity as such; provided, however, the term "**Wrongful Act**" shall not mean, and this endorsement does not provide coverage for, any act, error or omission in connection with any activities by such **Employed Lawyer(s)**: (1) which are not related to such **Employed Lawyer's(s)** employment with a **Company**; (2) which are not rendered on the behalf of a **Company** at the **Company's** written request; or (3) which are performed by the **Employed Lawyer(s)** for others for a fee.
 - (c) Clause 2. **DEFINITIONS** of the **D&O Coverage Section** is further amended to include the following definition at the end thereof:

(dd) "**Employed Lawyer**" means any **Employee** of a **Company**, in their capacity as such, who is admitted to practice law and who is or was employed as a lawyer full time and salaried by a **Company**.
2. Clause 4. **EXCLUSIONS** of the **D&O Coverage Section** is amended to include the following paragraph at the end of that Clause:

It is understood and agreed that solely with respect to the coverage afforded by this endorsement, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Employed Lawyer(s)**:

 - (aa) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring at a time when the **Employed Lawyer(s)** was not employed as a lawyer by a **Company**;
 - (bb) alleging, arising out of, based upon or attributable to as of , any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or

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END 004

alleging any **Wrongful Act** which is the same or **Related Wrongful Act** to that alleged insuch pending or prior litigation or administrative or regulatory proceeding or investigation;

- (cc) alleging, arising out of, based upon or attributable to any **Wrongful Act**, if as of , an **Employed Lawyer(s)** knew or could have reasonably foreseen that such **Wrongful Act** could give rise to a **Claim**; or
- (dd) alleging, arising out of, based upon or attributable to any activities by an **Employed Lawyer(s)** as an officer or director of any entity, other than a **Company**.

3. Clause 5. **LIMIT OF LIABILITY** of the **D&O Coverage Section** is amended to include the following provision at the end thereof:

EMPLOYED LAWYERS SUBLIMIT OF LIABILITY

The maximum limit of the **Insurer's** liability for all **Loss** arising from coverage as is afforded by this endorsement for **Claim(s)** alleging a **Wrongful Act** by an **Employed Lawyer(s)** shall be **\$1,000,000** (hereinafter the "**Employed Lawyer Coverage Sublimit of Liability**"). This **Employed Lawyer Coverage Sublimit of Liability** shall be part of and not in addition to the **Policy Aggregate Limit of Liability** stated in the Item 7(a) of the **Declarations** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **D&O Coverage Section** as set forth in Item 3 of the **Declarations**.

4. The **D&O Coverage Section** is further amended to include the following provision at the end thereof:

EL- 1. EMPLOYED LAWYERS COVERAGE PROVISIONS

It is understood and agreed that with respect to the coverage afforded under this endorsement, a **Company** will be conclusively deemed to have indemnified the **Employed Lawyer(s)** to the extent that the **Company** is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Company**. The **Company** hereby agrees to indemnify the **Employed Lawyer(s)** to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

It is further understood and agreed that coverage as is afforded under this endorsement shall apply to a **Wrongful Act(s)** only if one or more **Insured(s)** (other than an **Employed Lawyer(s)**) are and remain co-defendants in the action along with an **Employed Lawyer(s)**.

5. Clause 11. **OTHER INSURANCE** is amended to include the following paragraph at the end thereof:

11. OTHER INSURANCE

Notwithstanding the foregoing, it is understood and agreed that the coverage provided by this endorsement is specifically excess over any other valid or collectible lawyers' professional insurance, legal malpractice or errors and omissions insurance and shall only drop down and be primary insurance only in the event of exhaustion of such other insurance due to losses paid thereunder.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 004

ENDORSEMENT# 5

This endorsement, effective at *12:01 am March 7, 2019* forms a part of
Policy number *01-173-52-10*
Issued to: *NYGARD ENTERPRISES LTD.*

By: *AIG Insurance Company of Canada*
Product Name: *PrivateEdge Plus*

**NON-RENEWAL AMENDATORY ENDORSEMENT
(ALL COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that if the **Insured** submits a completed renewal application and the **Insurer** decides not to offer any renewal terms for this policy, the **Insurer** shall provide written notice to the **Insured's** broker and the **Policy Period** will be extended, if necessary, to ensure that the policy expiration date is at least ninety (90) days subsequent to the date of such notice of non-renewal. If an extension of the **Policy Period** is required, the additional premium shall be computed on a pro rata basis.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 005

ENDORSEMENT# 6

This endorsement, effective at **12:01 am March 7, 2019** forms a part of
Policy number **01-173-52-10**
Issued to: **NYGARD ENTERPRISES LTD.**

By: **AIG Insurance Company of Canada**

**INDIVIDUAL INSURED(S) DEFINITION AMENDED ENDORSEMENT
(SPECIFIED CAPACITY)
(D&O COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that coverage as is provided under the **D&O Coverage Section** is extended and the Definition of "**Individual Insured**" in the **D&O Coverage Section** is amended to include any individual(s) serving in the below listed capacity(ies) and subject to the specified **Continuity Date(s)**:

CAPACITY	CONTINUITY DATE
any de facto director of any Company serving in his or her capacity as such. Coverage will apply automatically to any new de facto director of any management committee or board of managers or directors of any Company.	<i>March 7, 2018</i>

Furthermore, provided that for the purpose of the applicability of the coverage provided by this endorsement, the **Company** will be conclusively deemed to have indemnified the persons afforded coverage by this endorsement to the extent that the **Company** is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Company**. The **Company** hereby agrees to indemnify such persons to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

It is further understood and agreed that only as respects any additional coverage granted by virtue of this endorsement the **Insurer** shall not be liable for any **Loss** in connection with any **Claim** made against an **Insured**:

- (1) alleging, arising out of, based upon or attributable to, as of such **Individual Insured's** respective **Continuity Date**, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation, or alleging or derived from a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation; and
- (2) alleging any **Wrongful Act** occurring prior to each individual's respective **Continuity Date** if the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 006

ENDORSEMENT# 7

This endorsement, effective *12:01 am March 7, 2019* forms a part of
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

by *AIG Insurance Company of Canada*

**ADMINISTRATION COVERAGE FOR EMPLOYEE BENEFIT PLANS
(D&O Coverage Section)**

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

1. Clause 4. "**EXCLUSIONS**" is amended by inserting the following at the end of Exclusion (o):

Notwithstanding the foregoing, this exclusion shall not apply to any **Administration Claim**.

2. In Clause 2. "**DEFINITIONS**" of the **D&O Coverage Section**, the definition of "**Wrongful Act**" is amended by adding the following at the end thereof:

(iv) with respect to any **Individual Insured** or **Company**, any act, error or omission solely in the **Administration** of any **Employee Benefit Plan**.

3. Clause 5. "**LIMIT OF LIABILITY**" of the **D&O Coverage Section** is amended by inserting the following at the end thereof:

ADMINISTRATIVE CLAIM SUBLIMIT OF LIABILITY

The maximum limit of the Insurer's liability for all **Loss** under the **D&O Coverage Section** arising from all **Administration Claims** is **\$1,000,000** (the "**Administration Claim Sublimit of Liability**"). The **Administration Claim Sublimit of Liability** shall be part of and not in addition to the **Policy Aggregate Limit of Liability** set forth in Item 7(a) of the **Declarations** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **D&O Coverage Section**.

4. As used in the endorsement:

"**Administration**" means the performance of one or more of the following administrative duties or activities:

- (i) counseling employees, participants and beneficiaries;
- (ii) providing interpretations;

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END 007

ENDORSEMENT# 7 (continued)

(iii) handling of records; or

(iv) activities effecting enrollment, termination or cancellation of employees, participants and beneficiaries under an **Employee Benefit Plan**.

"Administration Claim" means any **Claim** alleging a **Wrongful Act** as described in subparagraph (iv) of the definition of **Wrongful Act**, as amended above.

"Employee Benefit Plan" means any of the following plans, but only if sponsored exclusively by the **Company**: Group Sickness or Accident Insurance Plans, Private Health Services Plans, Supplementary Unemployment Benefit Plans, Employees' Profit Sharing Plans, Deferred Profit-Sharing Plans, Sickness or Accident Insurance Plans, Disability Insurance Plans, Income Maintenance Insurance Plans, Vacation Pay Trusts, Employee Trusts, Retirement Compensation Agreements or Salary Deferral Arrangements.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 8

This endorsement, effective at **12:01 am March 7, 2019** forms a part of
Policy number **01-173-52-10**
Issued to: **NYGARD ENTERPRISES LTD.**

By: **AIG Insurance Company of Canada**

**BODILY INJURY AND PROPERTY DAMAGE EXCLUSION AMENDED
(D&O COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that in Clause 4. **EXCLUSIONS**, of the **D&O Coverage Section**, paragraph (l) is deleted in its entirety and replaced with the following:

- (l) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; provided, however, this exclusion shall not apply to **Ontario Occupational Health and Safety Act Costs** or **Securities Claims**;

It is further understood and agreed that, solely with respect to this endorsement, **Ontario Occupational Health and Safety Act Costs** means **Defence Costs** incurred by an **Insured Person** in connection with a **Claim** brought pursuant to Section 32 of the Ontario Occupational Health and Safety Act; provided, however, any coverage under this policy for **Ontario Occupational Health and Safety Act Costs** shall specifically be excess of any other valid and collectible commercial general liability insurance and worker's compensation insurance.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 008

ENDORSEMENT# 9

This endorsement, effective *12:01 am March 7, 2019* forms a part of
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

by *AIG Insurance Company of Canada*

**ADDITIONAL INSUREDS - LISTED AFFILIATES
(D&O COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that coverage as is provided under the **D&O Coverage Section**, Clause 2. Definition of "Company" of the **General Terms and Conditions**, shall include the following entity(ies), which is an (are) "Affiliate(s)" as defined in Clause 2. **DEFINITIONS**, paragraph (a) of the **D&O Coverage Section**, subject to each such Affiliate's(s') **Continuity Date**:

<u>AFFILIATE</u>	<u>CONTINUITY DATE</u>
<i>Nygard Holdings USA</i>	<i>March 7, 2018</i>
<i>Nygard Properties USA Ltd</i>	<i>March 7, 2018</i>

Furthermore, provided that for the purpose of the applicability of the coverage provided by this endorsement, the **Affiliates** listed above and the **Company** will be conclusively deemed to have indemnified the persons afforded coverage by this endorsement to the extent that such **Affiliates** or the **Company** is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Company**. The **Affiliates** and the **Company** hereby agree to indemnify such persons to the fullest extent permitted by law, including the making in good faith of any required application for court approval.

It is further understood and agreed that only as respects any additional coverage granted by virtue of this endorsement the **Insurer** shall not be liable for any **Loss** in connection with any **Claim** made against the **Affiliates** listed above or any **Claims** made against any **Individual Insured** of such **Affiliate** listed above:

- (1) alleging, arising out of, based upon or attributable to, as of such **Affiliate's** respective **Continuity Date**, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation, or alleging or derived from a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation; and
- (2) alleging any **Wrongful Act** occurring prior to such **Affiliate's** respective **Continuity Date** if the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy.

In all events, coverage as is afforded under this endorsement with respect to a **Claim** made against each respective **Affiliate(s)** listed above or any **Individual Insureds** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the respective

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END 009

ENDORSEMENT# 9

time such **Affiliate** became an **Affiliate** and prior to the time that the such **Affiliate** ceased to be an **Affiliate**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 10

This endorsement, effective 12:01 am March 7, 2019 forms a part of
policy number 01-173-52-10
issued to NYGARD ENTERPRISES LTD.

by AIG Insurance Company of Canada

**SPECIFIC ENTITY EXCLUSION
(D&O COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that, solely with respect to Loss as may otherwise be covered under the D&O Coverage Section, the Insurer shall not be liable to make any payment for Loss in connection with any Claim(s) brought by or on behalf of or against the following entity(ies):

1. *Nygard Biotech Corporation including any subsidiary or affiliate thereof*
2. *Nygard Ventures Inc including any subsidiary or affiliate thereof*
3. *Enterprise Aviation Bermuda Ltd including any subsidiary or affiliate thereof*

and/or any director, officer, partner, management committee members or members of the Board of Managers or employees thereof; or by any security holder of the entity whether directly or derivatively.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 11

This endorsement, effective *12:01 am March 7, 2019* forms a part of
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

by *AIG Insurance Company of Canada*

CURRENCY ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that all dollar amounts referenced on the Declarations page and any amendments thereto shall be subject to United States currency.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 12

This endorsement, effective *12:01 am March 7, 2019* forms a part of
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

by *AIG Insurance Company of Canada*

**PENDING AND PRIOR LITIGATION/KNOWN WRONGFUL ACTS
EXCLUSION FOR EXCESS LIMITS ENDORSEMENT
(D&O COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed that with respect to **\$2,500,000** excess of the first **\$2,500,000** of the **Separate Limit of Liability** stated in Item 3 of the Declarations with respect to the **DO Coverage Section**, the **Insurer** shall not be liable for any **Loss** in connection with any **Claim** made against any **Insured**:

- (a) alleging, arising out of, based upon or attributable to, as of *March 7, 2018*, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging any **Wrongful Act** which is the same or **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation; or
- (b) alleging any **Wrongful Act** occurring prior to *March 7, 2018* if an **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 13

This endorsement, effective *12:01 am March 7, 2019* forms a part of
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

by *AIG Insurance Company of Canada*

**NOTICE OF CLAIM
(REPORTING BY E-MAIL)**

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. *Email Reporting of Claims:* In addition to the postal address set forth for any Notice of Claim Reporting under this policy, such notice may also be given in writing pursuant to the policy's other terms and conditions to the Insurer by email at the following email address:

financialclaimsCA@aig.com

Your email must reference the policy number for this policy. The date of the Insurer's receipt of the emailed notice shall constitute the date of notice.

In addition to Notice of Claim Reporting via email, notice may also be given to the Insurer by mailing such notice to: Claims Management, Canada, 120 Bremner Boulevard, Suite 2200, Toronto, ON M5J 0A8 or faxing such notice to (416) 596-4197.

2. *Definitions:* For this endorsement only, the following definitions shall apply:
 - (a) "Insurer" means the "Insurer," "Underwriter" or "Company" or other name specifically ascribed in this policy as the insurance company or underwriter for this policy.
 - (b) "Notice of Claim Reporting" means "notice of claim/circumstance," "notice of loss" or other reference in the policy designated for reporting of claims, loss or occurrences or situations that may give rise or result in loss under this policy.
 - (c) "Policy" means the policy, bond or other insurance product to which this endorsement is attached.
3. This endorsement does not apply to any Kidnap & Ransom/Extortion Coverage Section, if any, provided by this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 14

This endorsement, effective at *12:01 am March 7, 2019* forms a part of
Policy number *01-173-52-10*
Issued to: *NYGARD ENTERPRISES LTD.*

By: *AIG Insurance Company of Canada*

STATUTORY CONDITIONS AMENDATORY

Wherever used in this endorsement: (1) "Insurer" means the insurance company which issued this policy; (2) "Policyholder" means the Named Corporation, Named Entity, Named Insured, Named Organization, Named Sponsor or Insured that is named on the declarations page of this policy; and (3) "Insured" means all other persons or entities afforded coverage under this policy.

In consideration of the premium charged, it is hereby understood and agreed that if this policy is made or deemed to be made in the provinces of Alberta or British Columbia pursuant to the provisions of the Insurance Acts of Alberta or British Columbia, this endorsement shall apply to any Insured solely to the extent that this endorsement provides terms that are more favourable to the Insured than the other terms of this policy and any endorsements to this policy:

Change of Interest

The Insurer is liable for covered loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

Property of Others

The Insurer is not liable for loss or damage to property owned by a person other than the Insured unless:

- (a) otherwise specifically stated in the policy, or
- (b) the interest of the Insured in that property is stated in the policy.

Material Change in Risk

- (1) The Insured must promptly give notice in writing to the Insurer or its agent of a change that is:
 - (a) material to the risk, and
 - (b) within the control and knowledge of the Insured.
- (2) If an Insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the policy is void as to the part affected by the change.
- (3) If an Insurer or its agent is notified of a change under subparagraph (1) of this condition, the Insurer may:
 - (a) terminate the policy in accordance with the Termination of Insurance condition set forth below, or
 - (b) notify the Insured in writing that, if the Insured desires the policy to

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END 014

ENDORSEMENT# 14 (continued)

continue in force, the Insured must, within 15 days after receipt of the notice, pay to the Insurer an additional premium specified in the notice.

- (4) If the Insured fails to pay an additional premium when required to do so under subparagraph (3)(b) of this condition, the policy is terminated at that time and Termination of Insurance condition (2)(a) applies in respect of the unearned portion of the premium.

Termination of Insurance

- (1) The policy may be terminated:

- (a) by the Insurer giving to the Policyholder 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
- (b) by the Policyholder at any time on request.

- (2) If the policy is terminated by the Insurer:

- (a) the Insurer must refund the excess of premium actually paid by the Policyholder over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the policy, and
- (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.

- (3) If the policy is terminated by the Policyholder, the Insurer must refund as soon as practicable the excess of premium actually paid by the Insured over the short rate premium for the expired time specified in the policy, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the policy.

- (4) The 15 day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the Policyholder's postal address.

Notice

- (1) Written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the Insurer in the province.
- (2) Written notice to the Insured may be personally delivered at, or sent by registered mail addressed to, the Insured's last known address as provided to the Insurer by the Insured.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 014

Page 2 of 2

ENDORSEMENT# 15

This endorsement, effective *12:01 am March 7, 2019*
 policy number *01-173-52-10*
 issued to *NYGARD ENTERPRISES LTD.*

forms a part of

by *AIG Insurance Company of Canada*

FORMS INDEX ENDORSEMENT

The contents of the Policy is comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
95862 CAN	09/07	PRIVATEEDGE PLUS - CANADA DEC
95726 CAN	09/07	PRIVATEEDGE PLUS - GENERAL TERMS & CONDITION
95727 CAN	09/07	D&O PrivateEdge Plus Coverage Section
	06/08	SECURITIES CLAIM PANEL COUNSEL LIST
96311	02/08	APPENDIX O - CRISIS MANAGEMENT COVERAGE FOR D&O COVERAGE SECTION
C9017 CAN	02/13	PRIVATE EDGE PLUS PREFERRED ENDORSEMENT
C9018 CAN	02/13	SETTLEMENT CLAUSE AMENDATORY ENDORSEMENT (EPL COVERAGE SECTION)
C9014 CAN	02/13	CONDUCT EXCLUSION AMENDED (FINAL NON-APPEALABLE ADJUDICATION) (D&O AND EPL COVERAGE SECTIONS)
97651	03/08	EMPLOYED LAWYERS PROFESSIONAL LIABILITY EXTENSION ENDORSEMENT (WITH SUBLIMIT)
116904 CAN	04/15	NON-RENEWAL AMENDATORY ENDORSEMENT (ALL COVERAGE SECTIONS)
C9016 CAN	02/13	INDIVIDUAL INSURED(S) DEFINITION AMENDED ENDORSEMENT (SPECIFIED CAPACITY) (D&O COVERAGE SECTION)
110052 CAN	10/11	ADMINISTRATION COVERAGE FOR EMPLOYEE BENEFIT PLANS (D&O COVERAGE SECTION)
119649 CAN	08/15	BODILY INJURY AND PROPERTY DAMAGE EXCLUSION AMENDED (D&O COVERAGE SECTION)
97733	03/08	ADDITIONAL INSUREDS - LISTED AFFILIATES (D&O COVERAGE SECTION)
C0029 CAN	01/08	SPECIFIC ENTITY EXCLUSION (D&O COVERAGE SECTION)
C0055 CAN	03/09	CURRENCY ENDORSEMENT
95749	09/07	PENDING AND PRIOR LITIGATION/KNOWN WRONGFUL ACTS EXCLUSION FOR EXCESS LIMITS (D&O COVERAGE SECTION)
99758 CAN	08/08	NOTICE OF CLAIM (REPORTING BY E-MAIL)
115642	07/12	STATUTORY CONDITIONS AMENDATORY FOR NON-PROPERTY
78859	10/01	FORMS INDEX ENDORSEMENT

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ENDORSEMENT# 15

This endorsement, effective *12:01 am March 7, 2019*
policy number *01-173-52-10*
issued to *NYGARD ENTERPRISES LTD.*

forms a part of

by *AIG Insurance Company of Canada*

FORMS INDEX ENDORSEMENT

The contents of the Policy is comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
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ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 015



**CUSTOMER ADVISORY
REGARDING THE ENFORCEMENT OF
ECONOMIC EMBARGOES AND TRADE SANCTIONS**

This Trade Sanction Advisory is part of **AIG Insurance Company of Canada** comprehensive compliance program and is meant to serve as a reminder of the existing applicable legal requirements with respect to Trade Sanctions.

Your rights as a policyholder and payments to you, any insured or claimant, for loss under this policy may be affected by the administration and enforcement of economic embargoes and trade sanctions applicable to you, any insured, claimant and/or to the insurer and their respective controlling entities (hereinafter "Trade Sanctions").

WHAT IS AN ECONOMIC EMBARGO AND/OR TRADE SANCTION?

Trade Sanctions involve the imposition by a country of legal measures to restrict or prohibit trade, services or other economic activity with a target country, entity or individual. For example, the Parliament of Canada has enacted legislation authorizing the imposition of Trade Sanctions through the *United Nations Act*, the *Special Economic Measures Act* and some provisions of the *Export and Import Permits Act*.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer, or the parent company and ultimate controlling entity of the policyholder, insured, claimant or insurer, or the country where the claim arises, Trade Sanctions of foreign countries, including the United States of America, may be applicable. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to the payment of a claim.

Existing Trade Sanctions can be amended, and new Trade Sanctions can be imposed, at any time.

OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS

If we determine that you or any insured, additional insured, loss payee, or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant Trade Sanction, we may be required to comply with the requirements of the applicable Trade Sanction, which by way of example, may include blocking or "freezing" property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

POTENTIAL ACTIONS BY US

Depending upon the requirements of the relevant Trade Sanction:

1. We may be required to immediately cancel your coverage effective on the day that we determine that we have transacted business with an individual or entity associated with your policy on a prohibited list or connected to a sanctioned country as described in the relevant Trade Sanction.
2. If we cancel your coverage, you may not receive a return premium unless permitted pursuant to the relevant Trade Sanction. All blocked or frozen funds will be placed in an interest bearing blocked account established on the books of a financial institution.
3. We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction. Furthermore, we may not defend or provide any other benefits under your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant Trade Sanction.

This is Exhibit "P" referred to in the
Affidavit of Greg Fenske

Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 24, 2020 11:22 AM

To: Domenico Magisano <dmagisano@lernalers.ca>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>

Subject: Nygard - D&O Insurance [LAW-TDS.FID1853952]

Dom/Wayne, the Receiver is aware of the attached supplemental D&O policy. If there are other D&O policies (than the AIG policy you circulated yesterday and the attached Trisura policy), the Receiver not aware of them.

Please confirm in detail what it is that your clients are requesting the Receiver to do, how your clients will fund premium amounts, and when you consider that it is required to be done by.

Regards,

G. Bruce Taylor

Partner

P 204-934-2566

C 204-295-5241

F 204-934-0506

E gbt@tdslaw.com

W tdslaw.com/gbt

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TRISURA

CLIENT INVOICE

April 16, 2019

Client Address: Nygard Enterprises Ltd and Nygard Properties USA Ltd.
1771 Inkster Boulevard
Winnipeg MB R2X 1R3
Canada

Invoice No.: TDO1007769-2

Policy / Bond No.: TDO1007769

From: March 07, 2019

To: June 01, 2020

Product Type: Directors and Officers Liability – Private Company

Limit: \$5,000,000.00

Total Premium: \$14,678.00

Premium Schedules: April 16, 2019 \$14,678.00

Billing Currency: US Dollars

Purpose: Renewal

Broker Details: HUB International Ontario Limited - Toronto
199 Bay Street
Suite 4800
Toronto ON M5L 1E8

a step above

Vancouver Office
1055 West Georgia St., Suite 3020
Vancouver, BC V6E 3R5
Tel: (604) 688-5641
Fax: (604) 688-5828

Calgary Office
421 – 7th Ave SW, Suite 3360
Calgary, AB T2P 4K9
Tel: (403) 663-3343
Fax: (403) 214-9597

Toronto Office
333 Bay St., Suite 1610
Toronto, ON M5H 2R2
Tel: (416) 214-2555
Fax: (416) 214-9597

Montreal Office
1501 McGill College Ave., Suite 1620
Montreal, QC H3A 3M8
Tel: (514) 845-4555
Fax: (514) 845-6878

Halifax Office
201 Brownlow Ave., Suite 4
Dartmouth, NS B3B 1W2
Tel: (902) 488-6889
Fax: (416) 214-9597



SIDE A DIC LIABILITY INSURANCE POLICY

DECLARATIONS

Policy No.: TDO1007769

Prior Policy No.: TDO1006787

Item 1. Parent Corporation: Nygard Enterprises and Nygard Properties USA Ltd.

Address: 1771 Inkster Boulevard
Winnipeg MB R2X 1R3
Canada

Item 2. Policy Period: From March 07, 2019 to June 1, 2020
12:01 a.m. standard time at the address stated in Item 1.

Item 3. Limit of Liability: \$5,000,000.00 Aggregate Limit of Liability each Policy Period
(including Defence Costs and Inquiry Costs)

Item 4. Additional Coverage Limits of Liability **Limit of Liability**

Excess Directors or Officers Insurance Coverage Limit of Liability: \$N/A
(Such amount is in addition to the Aggregate Limit of Liability)

Policy Access Costs Limit of Liability: \$100,000.00
(Such amount is in addition to the Aggregate Limit of Liability)

Item 5. Discovery Periods Available:

(A) Optional Discovery:	1 year	Additional Premium:	125%
	3 years	Additional Premium:	N/A%
	6 years	Additional Premium:	N/A%
(B) Transaction Discovery:	1 year(s)	Additional Premium:	125%
(C) Former Executives:	1 year(s)	No Additional Premium	
(D) Financial Impairment:	1 year(s)	No Additional Premium	

Item 6. Schedule of Underlying Insurers:

(A) Primary Policy:

Primary Insurer: AIG Insurance Company of Canada
Policy No.: 01-173-52-10
Limit of Liability: \$5,000,000.00 per loss / \$5,000,000.00 in the aggregate
Retentions / Deductibles: \$50,000.00
Policy Period: From March 7, 2019 to June 1, 2020
12:01 a.m. standard time

(B) Other Underlying Insurers:

First Underlying Insurer:
Policy No.:
Limit of Liability:
Policy Period: From to
12:01 a.m. standard time

This policy contains a clause that may limit the amount payable

Second Underlying Insurer:
Policy No.:
Limit of Liability:
Policy Period: From to
12:01 a.m. standard time

Third Underlying Insurer:
Policy No.:
Limit of Liability:
Policy Period: From to
12:01 a.m. standard time

Fourth Underlying Insurer:
Policy No.:
Limit of Liability:
Policy Period: From to
12:01 a.m. standard time

Fifth Underlying Insurer:
Policy No.:
Limit of Liability:
Policy Period: From to
12:01 a.m. standard time

(C) Total amount of Underlying Limits of Liability \$5,000,000.00 plus any applicable retentions or deductibles under the Primary Policy.

Item 7. Knowledge of Claim or Inquiry: Chief Financial Officer

Item 8. Premium: \$14,678.00

Item 9. Endorsements Attached at Issuance: 1, 2

These Declarations along with the completed and signed Application and the Policy with endorsements, if any, shall constitute the entire contract between the Corporation, the Insured Persons and Trisura Guarantee Insurance Company.

In witness whereof, the Insurer has caused this Policy to be signed by its authorized officer.

TRISURA GUARANTEE INSURANCE COMPANY



Michael George
President & CEO

THIS IS A CLAIMS MADE AND INQUIRY RECEIVED POLICY WITH DEFENCE COSTS AND INQUIRY COSTS INCLUDED IN THE LIMIT OF LIABILITY, EXCEPT WHEN PROHIBITED BY THE LAWS OF THE PROVINCE OF QUEBEC OR AS OTHERWISE PROVIDED HEREIN, PLEASE READ CAREFULLY.

EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST AND INQUIRIES FIRST RECEIVED BY THE INSURED PERSON DURING THE POLICY PERIOD.

SIDE A DIC LIABILITY INSURANCE POLICY

IN CONSIDERATION OF the payment of the premium, and in reliance upon all statements made and information furnished to Trisura Guarantee Insurance Company (hereinafter called the "**Insurer**") including the statements made in the **Application** and subject to the Declarations and all the terms, conditions and limitations of this Policy, the **Insurer** agrees as follows:

I INSURING AGREEMENT

INSURED PERSON NON-INDEMNIFIED LIABILITY COVERAGE

The **Insurer** shall pay on behalf of the **Insured Persons** all **Non-Indemnified Loss** they are legally obligated to pay on account of any:

- A. **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or the **Discovery Period**, if exercised; or
- B. **Inquiry** first received by an **Insured Person** during the **Policy Period** or the **Discovery Period**, if exercised.

II DEFINITIONS

Whenever appearing in this Policy, words and phrases appearing in **bold type** shall have the meanings set forth below. These Definitions apply to the singular and the plural of these terms as circumstances and context require.

Application means all signed application forms, including attachments and materials requested therein or submitted therewith during the 12 months preceding the effective date of this Policy. **Application** shall also include all publicly available documents filed by the **Corporation** with the Ontario Securities Commission (OSC), the System for Electronic Document Analysis and Retrieval (SEDAR), the Securities and Exchange Commission of the United States of America (SEC), or any similar federal, provincial, territorial, state or foreign regulatory agency anywhere in the world during the 12 months preceding the effective date of this Policy. All such application forms, attachments and materials are deemed attached to and incorporated into this Policy.

Board Observer means any natural person who was, now is or shall be formally designated in writing as an observer at formal board meetings or committee meetings of the duly elected or appointed directors of the **Corporation**.

Claim means:

- (i) a written demand against any **Insured Person** for monetary damages or non-monetary or injunctive relief, including any request to toll or waive the statute of limitations;
- (ii) a civil, criminal, administrative, regulatory, mediation or arbitration proceeding against any **Insured Person** seeking monetary damages or non-monetary or injunctive relief, including any appeal thereof, commenced by:
 - (a) the issuance of a notice of action, statement of claim, writ of summons, complaint or similar pleading;
 - (b) the laying of an information or the return of an indictment or similar legal document;
 - (c) the filing of a statement of allegations, notice of charges or similar document; or
 - (d) receipt of a notice to appoint an arbitrator or mediator, an arbitration or mediation petition or similar document;
- (iii) a civil, criminal, administrative or regulatory investigation of any **Insured Person**, including any appeal thereof, commenced by the service upon or other receipt by any **Insured Person** of a written notice, formal investigative order or subpoena from the investigating authority, identifying such **Insured Person** against whom a proceeding described in paragraph (ii) above may be commenced;
- (iv) an **Extradition Proceeding** commenced by the receipt by an **Insured Person** of a written request from any province, territory, state or country to extradite an **Insured Person** to any other province, territory, state or country; or
- (v) any written demand, request or order issued by the Minister of the Environment (Ontario) pursuant to Section 17 of the Ontario Environmental Protection Act, or any equivalent provincial, territorial or federal statute of Canada, or any equivalent law in a foreign jurisdiction, that an **Insured Person** undertake remedial steps to repair or prevent injury or damage caused, or likely to be caused, by the discharge of a **Pollutant**, commenced by the receipt by an **Insured Person** of such written demand, request or order.

A **Claim** shall be deemed to have been first made at the earliest date upon which written notice thereof, or a copy of the **Claim**, was personally received by any **Insured Person** by any means including personal delivery, facsimile transmission or electronic mail.

Corporation means:

- (i) the **Parent Corporation**;
- (ii) any **Subsidiary**; and
- (iii) in the event of **Financial Impairment**, the resulting debtor-in-possession or equivalent status.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insurer** or **Organization**) incurred by an **Insured Person** in defending, opposing, settling, investigating or appealing **Claims**, and the premium for appeal, attachment or similar bonds (but the **Insurer** shall be under no obligation to provide such bonds) including, but not limited to:

- (i) opposing, resisting or appealing an **Extradition Proceeding**;
- (ii) defending or investigating a written demand to repay or return amounts pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any comparable rule of the **Corporation**, or any comparable Canadian or foreign law;
- (iii) assisting the **Insurer**, at its request, in relation to a **Claim**; and
- (iv) costs assessed against an **Insured Person**.

DIC Event means any of the following:

- (i) actual or intended rescission (in whole or in part), voiding or cancellation of any **Underlying Policy**;
- (ii) any **Underlying Insurer** is financially unable to indemnify the **Insured Person**;
- (iii) any **Underlying Insurer** fails or refuses to pay **Loss** because it is prohibited from doing so due to an automatic stay or similar payment prohibition against the policy proceeds arising out of a liquidation or reorganization proceeding by or against the **Organization**;
- (iv) refusal or denial of any **Underlying Insurer** to provide coverage as required under the **Underlying Policy** to any **Insured Person** for any portion of the **Loss**;
- (v) failure of any **Underlying Insurer** to indemnify any **Insured Person** for any portion of the **Loss** within 45 days after such indemnification is requested by, or on behalf of, the **Insured Person**; and
- (vi) according to the terms and conditions of the **Underlying Policy**, the **Underlying Insurer** is not liable for the **Loss**.

Discovery Period means the periods described in Section III, Discovery Periods.

Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, provincial, territorial, state or local law or under the provisions of any formal program established by the **Corporation**.

Employee means any:

- (i) natural person whose labour or service is both engaged and directed by the **Corporation**. This may include a full-time, part-time, seasonal or temporary employee in his or her capacity as such, but does not include any **Executive** of the **Corporation**;
- (ii) natural person leased to the **Corporation** or any **Independent Contractor**, so long as this person is working solely for the **Corporation** and only for conduct within his or her duties as such, if the **Corporation** indemnifies such leased person or **Independent Contractor** in the same manner as the **Corporations'** employees described in (i) above; or
- (iii) natural person volunteer whose labour or service is both engaged and directed by the **Corporation**, but only while that person is acting in their capacity as such.

Executive means any natural person who was, now is or shall be a duly elected, appointed, deemed or "de facto" director, officer, trustee (other than an insolvency or bankruptcy trustee or similar appointee), member of the board of managers, management committee member or advisory committee member; or any person serving in a functionally equivalent position in Canada or in a foreign jurisdiction.

Extradition Proceeding means any formal proceeding by which an **Insured Person** located in any province, territory, state or country is sought to be or is surrendered to any other province, territory, state or country for trial or otherwise to answer any **Wrongful Act**.

Financial Impairment means the status of the **Corporation** resulting from: (i) the appointment by any federal, provincial, territorial or foreign official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Corporation**; (ii) the appointment of any agent, receiver and/or receiver and manager by a creditor exercising its rights pursuant to a written instrument; (iii) a reorganization proceeding relating to the **Corporation** that has been brought in Canada under the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, or similar federal, provincial, territorial or foreign legislation; or (iv) the **Corporation** becoming a debtor in possession, as described in the Companies' Creditors Arrangement Act (Canada) or the Bankruptcy and Insolvency Act (Canada) or under United States bankruptcy law or an equivalent status under any foreign law.

Independent Contractor means any natural person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Corporation**, which specifies the terms of the **Corporation's** engagement of the **Independent Contractor**.

Independent Director means any natural person who was, now is or shall be a duly elected or appointed director of any **Organization** that is a corporation; or manager or member of the board of managers of any **Organization** that is a limited liability company; but only if such person is not and never has been an officer or employee of the **Organization**.

Inquiry means any of the following:

- (i) a request or demand for an **Insured Person** to appear at a meeting, examination for discovery or interview, or produce documents, or to compel witness testimony relating to the business of the **Organization** or the **Insured Person's** capacity as such, or by virtue of their status as such, where such request or demand is:
 - (a) by an **Official**; or
 - (b) by or on behalf of the **Organization**, its board of directors, or any committee of its board of directors, arising out of a request or demand set forth in (a) above; or which is part of the **Organization's** investigation and evaluation of a derivative demand;
- (ii) the arrest or confinement of an **Insured Person**, whether residential or custodial, by a law enforcement authority, relating to the business of the **Organization** or the **Insured Person's** capacity as such; or
- (iii) a raid or on-site visit to any **Organization** by an **Official** that involves the production, review, copying or confiscation of records or interviews of any **Insured Person** or is in regard to the **Insured Person's** insured capacity or status.

Inquiry shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in the normal review or compliance process of the **Organization**, or a law enforcement authority, governmental investigative authority or enforcement organization of a securities or commodities exchange or other self-regulatory entity.

Inquiry Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees, or costs of travel or accommodation of any **Insured Person** or the **Insurer**) incurred by an **Insured Person** with the **Insurer's** prior consent, such consent not to be unreasonably withheld or delayed, solely in connection with an **Inquiry**.

Insured Person means any:

- (i) **Executive of the Corporation**;
- (ii) **Board Observer**, but only with respect to any **Claim** arising out of **Wrongful Acts** by an **Executive** of the **Corporation** and where such **Claim** is: (1) initially made and continuously maintained against such **Board Observer** and one or more **Executives** of the **Corporation** and (2) such **Board Observer** is represented by the same legal counsel as the **Executive** of the **Corporation** against whom such **Claim** is initially made and continuously maintained;
- (iii) **Employee**, but only with respect to any **Claim** while such **Claim** is initially made and continuously maintained against such **Employee** and one or more **Executives** of the **Corporation**;
- (iv) in-house General Counsel, director of investor relations, director of human resources, or Risk Manager, or their equivalent position, of the **Corporation**;
- (v) a prospective director of a **Corporation** in any listing particulars, prospectus, circular or similar document; or
- (vi) an **Outside Entity Executive**.

Insurer means Trisura Guarantee Insurance Company.

Interrelated Wrongful Acts means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

Loss means:

- (i) compensatory, moral, punitive, exemplary or multiplied damages, judgments (including pre-judgment and post-judgment interest), or settlements. The insurability of moral, punitive, exemplary or multiplied damages shall be governed by the law of any jurisdiction which has a substantial relationship to the **Insured Person**, the **Corporation**, this Policy, or the **Claim** or **Inquiry** giving rise to such damages and which is favourable to the insurability of such damages;
- (ii) civil fines, civil penalties or administrative monetary penalties levied against an **Insured Person**. The insurability of civil fines, civil penalties or administrative monetary penalties levied against an **Insured Person** shall be governed by the law of any jurisdiction which has a substantial relationship to such **Insured Person**, this Policy, or the **Claim** or **Inquiry** giving rise to such civil fines, civil penalties or administrative monetary penalties and which is favourable to the insurability of such civil fines, civil penalties or administrative monetary penalties;
- (iii) amounts owing by any **Executives** of the **Organization** pursuant to any Canadian federal, provincial or territorial legislation for which the **Executives** of the **Organization** are statutorily liable in their capacity as such as a result of the **Organization's Financial Impairment**;
- (iv) Mitigation Expenses, solely under Section III, Mitigation Expenses;
- (v) **Inquiry Costs**;
- (vi) **Defence Costs**;
- (vii) plaintiffs' legal counsel fees awarded as part of a final judgment or in connection with the settlement of a **Claim**; and
- (viii) reasonable fees (including legal fees and expert fees), costs, and expenses, including the premium for a bond and the origination fee for a loan, incurred, with the prior written consent of the **Insurer**, such consent not to be unreasonably withheld, by the **Insured Person** to defend a written demand to repay or return amounts pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 ("SOX"), or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), or any rule of the **Corporation** to clawback compensation or profits, or any comparable Canadian or foreign law. However this shall not include any amounts for which the **Insured Persons** are liable under Section 304(a) of SOX, Section 954 of Dodd-Frank, or any compensation or profit clawback rule of the **Corporation** or any comparable Canadian or foreign law.

Loss shall not include:

- (a) any criminal fines or criminal penalties levied against an **Insured Person**;
- (b) taxes, other than those covered under paragraph (iii) above; and
- (c) uninsurable matters, the insurability of which shall be governed by the law of any jurisdiction which has a substantial relationship to the **Insured Persons**, the **Corporation**, this Policy, or the **Claim** or **Inquiry** giving rise to such matters and which is favourable to the insurability of such matters. However, the **Insurer** shall not assert that any amount attributable to violations of Section 130 or 130.1 of the Ontario Securities Act, as amended or Sections 11, 12 or 15 of the Securities Act of 1933 of the United States of America, as amended, is subject to this paragraph (c), unless such amount is determined to be uninsurable in a final non-appealable adjudication (other than a declaratory or equivalent proceeding or action brought by or against the **Insurer**).

Management Control means:

- (i) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors or equivalent governing body of a corporation; the management committee members of a joint venture or partnership; or the members of the management board of a limited liability company; or
- (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Corporation**, to elect, appoint or designate a majority of: the board of directors or equivalent governing body of a corporation; the management committee of a joint venture or partnership; or the management board of a limited liability company.

Non-Indemnified Loss means **Loss**:

- (i) for which the **Insured Persons** are not indemnified by the **Organization**; and
- (ii) are not indemnified by the **Underlying Insurers** as a result of:
 - (a) the limits of the **Underlying Insurance** being exhausted by reason of the **Underlying Insurers**, the **Organization**, the **Insured Persons** or another source paying losses covered thereunder; or
 - (b) a **DIC Event**.

Official means:

- (i) any federal, provincial, territorial, local or foreign statutory, civil or common law enforcement authority or other governmental investigative authority (including, but not limited to, the Department of Justice Canada, any provincial or territorial Department of Justice, any federal, provincial or territorial securities commission, the United States of America Department of Justice, Securities and Exchange Commission and/or any attorney general); or
- (ii) the enforcement organization of any securities or commodities exchange or other self-regulatory entity.

Organization means the **Corporation** and any **Outside Entity**.

Outside Entity means any entity including any incorporated or unincorporated joint venture, limited liability company, not-for-profit organization, or an outside entity or equivalent term as defined in the **Underlying Insurance**, that is not a **Corporation**.

Outside Entity Executive means an **Executive** of the **Corporation** serving in the capacity as an **Executive** in any **Outside Entity**, but only during such time that such service is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to such **Executive** by the **Corporation**, or if such **Executive** is a member of a class of persons serving within the meaning of any one of the foregoing.

Parent Corporation means the entity named in Item 1 of the Declarations.

Policy Period means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of termination of this Policy.

Pollutants means any substance, located anywhere in the world, exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by or pursuant to the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, the United States of America Environmental Protection Agency, or any federal, provincial, territorial, state, county, municipal or local counterpart thereof. Such substances shall include, but are not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, lead or lead products, silica or silica products, mould of any type, electric or magnetic or electromagnetic field, and noise. Waste materials include materials to be recycled, reconditioned or reclaimed.

Subsidiary means any entity in which the **Parent Corporation** has or had **Management Control**, either directly or indirectly through one or more other **Subsidiaries**:

- (i) on or before the inception date of this Policy; or
- (ii) after the inception date of this Policy by reason of being created or acquired by the **Parent Corporation** after such date.

An entity becomes a **Subsidiary** when the **Parent Corporation** acquires **Management Control** of such **Subsidiary**, either directly or indirectly through one or more other **Subsidiaries**. An entity ceases to be a **Subsidiary** when the **Parent Corporation** ceases to have **Management Control** of such **Subsidiary**, either directly or indirectly through one or more other **Subsidiaries**.

In all events, coverage as is afforded under this Policy with respect to any **Claim** made against, or **Inquiries** received by, any **Insured Persons** of any **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective date upon which the **Parent Corporation** acquired **Management Control** of such **Subsidiary** and prior to the date upon which the **Parent Corporation** ceased to have **Management Control** of such **Subsidiary**.

Underlying Insurer means any of the insurer(s) of the **Underlying Policies**.

Underlying Policy means any of the underlying policies that are part of the **Underlying Insurance**.

Underlying Insurance means the schedule of directors and officers liability insurance policies stated in Item 6 of the Declarations.

Wrongful Act means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by any **Insured Person** while acting in his or her capacity as such, or any other matter claimed against an **Insured Person** solely by reason of his or her capacity as such.

III EXTENSIONS

Estates and Legal Representatives

This Policy shall cover **Non-Indemnified Loss** arising from any **Claims** or **Inquiries** made against the estates, heirs, legal representatives or assigns of **Insured Persons** who are deceased or against the legal representatives or assigns of **Insured Persons** who are incompetent, insolvent or bankrupt, to the extent that in the absence of such death, incompetency, insolvency or bankruptcy, such **Claims** or **Inquiries** would have been covered by this Policy.

Spousal and Domestic Partner Liability

This Policy shall cover **Non-Indemnified Loss** arising from any **Claims** or **Inquiries** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Insured Person** for all **Claims** or **Inquiries** arising solely out of his or her status as the spouse or **Domestic Partner** of such **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or **Domestic Partner**, or property transferred from the **Insured Person** to the spouse or **Domestic Partner**, provided, however, that this extension shall not afford coverage for any **Claim** or **Inquiry** for any actual or alleged **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** or **Inquiries** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person** and shall be subject to the Policy's terms, conditions and exclusions.

Discovery Periods

(A) Optional Discovery Period

If the **Parent Corporation** shall terminate, or the **Parent Corporation** or the **Insurer** shall refuse to renew, this Policy, the **Parent Corporation** or the **Insured Persons** shall have the right, upon payment of the additional premium calculated at that percentage set forth in Item 5(A) of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy for the period of time set forth in Item 5(A) of the Declarations following the effective date of such termination or non-renewal. The rights contained in this paragraph shall terminate unless written notice of such election, together with payment of the additional premium due, is received by the **Insurer** within 60 days following the effective date of termination or non-renewal.

(B) Transaction Discovery Period

In the event of a Transaction, as described in paragraph (F) of Section X, the **Parent Corporation** or the **Insured Persons** shall have the right, within 60 days before the end of the **Policy Period**, to request an offer from the **Insurer** of a Discovery Period for a period of up to 6 years or for such period as the **Parent Corporation** or the **Insured Persons** may request. The **Insurer** shall offer such Transaction Discovery Period on such terms, conditions and premium as the **Insurer** may in its sole discretion decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

(C) Former Executives Automatic Discovery Period

If the **Parent Corporation** cancels, or the **Parent Corporation** or the **Insurer** refuses to renew, this Policy, then solely with respect to any **Executive** of the **Corporation** who has ceased to act in his capacity as an **Executive** of the **Corporation** prior to the effective date of such cancellation or non-renewal, other than by reason of disqualification from holding office or from managing a company, there shall be an automatic extension of the coverage granted by this Policy for the period of time set forth in Item 5(C) of the Declarations following the effective date of such cancellation or non-renewal, but only if no replacement policy providing coverage of a similar nature to that afforded by this Policy is obtained anytime during such discovery period. In the event such a replacement policy is obtained during such discovery period, the automatic extension granted by this provision shall terminate upon the inception date of such replacement policy. This Former Executives Automatic Discovery Period shall be in place of the Discovery Periods described in paragraphs (A) or (D).

(D) Financial Impairment Discovery Period

In the event of **Financial Impairment** of the **Parent Corporation** during the **Policy Period**, if the Policy is cancelled or is not renewed or replaced, the **Insured Persons** will have an automatic Financial Impairment Discovery Period for the period of time set forth in Item 5(D) of the Declarations which shall commence after the effective date of cancellation or non-renewal, for no additional premium. If the Financial Impairment Discovery Period is triggered, then the right to elect the Discovery Period described in paragraph (A) above shall not apply.

Coverage under the **Discovery Periods** shall apply:

- (a) with respect to **Claims**, only to **Wrongful Acts** that occurred prior to the effective date of cancellation, non-renewal or the Transaction; or
- (b) with respect to **Inquiries**, only to circumstances or other matters that occurred prior to the effective date of cancellation, non-renewal or the Transaction.

This Discovery Period extension and the rights contained herein shall not be available in the event of termination of this Policy resulting from non-payment of premium. The entire premium for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**. This extension, once effected, is not cancellable. The **Discovery Period**, if exercised, shall form part of the **Policy Period** and shall not increase the Limit of Liability of the **Insurer** for the **Policy Period**.

Excess Directors or Officers Insurance

The **Insurer** shall pay up to the Excess Directors or Officers Insurance Coverage Limit of Liability stated in Item 4 of the Declarations, in addition to, and not as part of, the Limit of Liability stated in Item 3 of the Declarations, each **Policy Period** on behalf of the **Insured Persons** all **Non-Indemnified Loss** they are legally obligated to pay on account of any **Claim** for a **Wrongful Act** first made against them, or any **Inquiry** first received by them, during the **Policy Period** or the **Discovery Period**, if exercised, except when and to the extent that the **Organization** has indemnified such **Insured Persons**.

This extension of coverage shall be specifically excess of any insurance available to the **Insured Persons** that is specifically stated to be in excess of this Policy, and all **Underlying Insurance**, and such excess insurance must be completely exhausted by payment of **Loss** or other sums covered thereunder before the **Insurer** shall have any obligation to make any payment for **Non-Indemnified Loss** under this extension of coverage.

Underlying Insurance Liberalization

This Policy shall follow all terms contained in any **Underlying Insurance** as of the effective date of the **Policy Period** that result in more favorable coverage for the **Insured Persons** than the terms in this Policy, provided this shall not apply to the following provisions of this Policy: the Declarations; Section I; Section V; Section VI; paragraphs (E) and (Q) of Section X; and any endorsements to this Policy.

Policy Access Costs

The **Insurer** shall pay the reasonable legal and other professional fees, costs and expenses incurred by an **Insured Person** who is a director, officer or trustee of any **Corporation** in defending against efforts by any other **Insured Person**, any **Corporation** or any third party to seize or attach this Policy, or otherwise block or restrict access to the proceeds of this Policy or any **Underlying Insurance**, unless such amounts are paid or indemnified to the **Insured Person** by the **Corporation**. Such amounts are subject to the additional limit of liability set forth in Item 4 of the Declarations, which shall be payable in addition to and separately from the Limit of Liability and/or any additional limits, and shall not be incurred without the prior consent of the **Insurer**, which shall not be unreasonably delayed or denied.

Mitigation Expenses

The **Insurer** shall pay reasonable costs, charges, fees and expenses incurred by an **Insured Person** with the **Insurer's** prior consent, such consent not to be unreasonably withheld or delayed, that are reasonably likely to prevent or mitigate the **Loss** arising from a fact or circumstance reasonably likely to give rise to a **Claim** which has been noticed to, and such notice accepted by, the **Insurer** under paragraph (B) of Section IX.

Emergency Costs

Notwithstanding the provisions of paragraph B. of Section VII, if because of an emergency the **Insurer's** consent cannot be obtained prior to incurring **Defence Costs**, the **Insurer** will give retrospective consent but only for those costs for services performed during the 30 days immediately following the date on which the **Claim** was first made.

IV EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Non-Indemnified Loss** in connection with any **Claim** or **Inquiry** against an **Insured Person** for:

- (1) the gaining of any personal financial profit to which such **Insured Person** was not legally entitled; or
- (2) any deliberate criminal or deliberate fraudulent or dishonest act by such **Insured Person**;

if such conduct is established by a final non-appealable adjudication adverse to such **Insured Person** in the underlying **Claim** or **Inquiry**. However, these Exclusions shall not apply to:

- (a) **Defence Costs** or **Inquiry Costs**;
- (b) employment-related **Claims**;
- (c) an **Independent Director**, or
- (d) any **Loss** attributable to a violation of Sections 130 or 130.1 of the Ontario Securities Act, or Sections 11, 12, or 15 of the Securities Act of 1933, as amended, or any similar provisions of a Canadian federal, provincial or territorial law or an foreign law.

For the purposes of these Exclusions, for acts or omissions that are treated as a criminal violation in a foreign jurisdiction that are not treated as such in Canada, the imposition of a criminal fine or other criminal sanction in such foreign jurisdiction will not, by itself, be conclusive proof that a deliberate criminal act occurred.

SEVERABILITY OF EXCLUSIONS: With respect to the Exclusions of this Policy, the knowledge or conduct of any **Insured Person** shall not be imputed to any other **Insured Person** to determine if coverage is available.

V LIMITS OF LIABILITY

- (A) The Limit of Liability stated in Item 3 of the Declarations is the maximum aggregate liability of the **Insurer** for all **Non-Indemnified Loss** with respect to all **Claims** first made against, and **Inquiries** first received by, the **Insured Persons** in each **Policy Period**, including the **Discovery Period**, if exercised.
- (B) **Defence Costs** and **Inquiry Costs** shall be part of, and not in addition to, the applicable Limits of Liability stated in Item 3 of the Declarations, and payment of **Defence Costs** and **Inquiry Costs** by the **Insurer** shall reduce, and may exhaust, such applicable Limits of Liability, except where prohibited by the laws of the Province of Quebec.
- (C) All obligations of the **Insurer** arising from this Policy shall terminate if the Limit of Liability stated in Item 3 of the Declarations has been exhausted by payment of **Non-Indemnified Loss** in respect of a **Claim**, or aggregation of **Claims** covered under this Policy, and the premium will be fully earned.
- (D) All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to have been first made on the date the earliest of such **Claims** was first made against any **Insured Person**, regardless of whether such date was before or during the **Policy Period**.
- (E) All **Inquiries** arising out of the same or substantially similar facts shall be deemed one **Inquiry**, and such **Inquiry** shall be deemed to have occurred on the date the earliest of such **Inquiries** was first received by any **Insured Person**, regardless of whether such date was before or during the **Policy Period**.

VI ADDITIONAL COVERAGE LIMITS OF LIABILITY

- (A) **Policy Access Costs Limit of Liability:** The maximum aggregate liability of the **Insurer** for all **Policy Access Costs** shall be the amount stated in Item 4 of the Declarations as the **Policy Access Costs Limit of Liability**, which amount shall be in addition to, and not part of, the Limit of Liability stated in Item 3 of the Declarations.
- (B) **Excess Directors or Officers Insurance Coverage Limit of Liability:** The maximum aggregate liability of the **Insurer** for all **Loss** with respect to the coverage provided under Section III, **Excess Directors or Officers Insurance** shall be the amount stated in Item 4 of the Declarations as the **Excess Directors or Officers Insurance Coverage Limit of Liability**, which amount shall be in addition to, and not part of, the Limit of Liability stated in Item 3 of the Declarations.

VII DEFENCE AND SETTLEMENT

- (A) It shall be the duty of the **Insured Persons** and not the duty of the **Insurer** to select defence counsel and defend any **Claim** or **Inquiry** made against them. The **Insurer** does not assume any duty to defend or investigate.

- (B) The **Insured Persons** agree not to settle any **Claim**, incur any **Defence Costs** or **Inquiry Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** or **Inquiry**, without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defence Costs**, **Inquiry Costs**, assumed obligation or admission (other than **Emergency Costs** as provided by Section III) to which it has not consented.
- (C) The **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insured Persons**, and shall be consulted in advance by the **Insured Persons** regarding the investigation, defence and settlement of such **Claim** or **Inquiry**, including but not limited to selecting defence counsel and negotiating any settlement of any **Claim** or **Inquiry** that appears reasonably likely to be covered in whole or in part by this Policy.

VIII ADVANCEMENT OF DEFENCE COSTS

- (A) The **Insurer** shall advance covered **Defence Costs** and **Inquiry Costs** on account of a **Claim** or **Inquiry** reported pursuant to Section IX on a current basis, but no later than 45 days after receipt by the **Insurer** of invoices or bills detailing such **Defence Costs** or **Inquiry Costs** and all other information requested by the **Insurer** with respect to such invoices or bills until the applicable Limit of Liability set forth in Item 3 or 4 of the Declarations has been satisfied.

Furthermore, if the **Organization** is financially unable, or refuses in writing or fails within 45 days of an **Insured Person's** written request for indemnification, to advance, pay or indemnify an **Insured Person** for **Loss** on account of a **Claim** or **Inquiry**, then, upon the reporting of the **Claim** or **Inquiry** pursuant to Section IX, the **Insurer** shall advance covered **Defence Costs** or **Inquiry Costs**, to the **Insured Person** from the date such costs were first incurred and reported to the **Insurer**. Any **Defence Costs** or **Inquiry Costs** advanced in accordance with this provision shall be advanced only until the **Insured Person's** request for indemnification is resolved, by any means, and in the event the refusal to indemnify is determined to be invalid, any advanced **Defence Costs** or **Inquiry Costs** shall be repaid to the **Insurer** by the **Organization**.

- (B) Any advancement of **Defence Costs** or **Inquiry Costs** shall be repaid to the **Insurer** by the **Organization**, to the extent it is legally permissible, if and to the extent it is determined that such **Defence Costs** or **Inquiry Costs** are not insured under this Policy. If the **Organization** is legally prohibited from repaying such **Defence Costs** or **Inquiry Costs**, the **Insurer** may seek repayment from the **Insured Persons**, severally according to their respective interest, on whose behalf such amounts were paid. However, the **Insurer** shall not seek repayment from an **Insured Person** of advanced **Defence Costs** or **Inquiry Costs** that are uninsured pursuant to Section IV, paragraphs (1) or (2) of this Policy unless a final non-appealable adjudication has occurred.

IX NOTICE

- (A) The **Insured Person** or the **Corporation** shall, as a condition precedent to their rights under this Policy, give written notice to the **Insurer** of a **Claim** as soon as practicable after the natural person designated in Item 7 of the Declarations first becomes aware of such **Claim**, but in no event shall notification be given to the **Insurer** later than:
- (i) 90 days after this Policy expires and is renewed with the **Insurer**;
 - (ii) 60 days after this Policy expires or terminates and is not renewed with the **Insurer** (without a **Discovery Period** being purchased); or
 - (iii) the expiration date of the **Discovery Period**.
- (B) If during the **Policy Period** or **Discovery Period**, if exercised, the **Insured Persons** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such period either the **Insured Persons** or the **Corporation** give written notice to the **Insurer** of the facts or circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, events, persons and entities involved, then any **Claim** which is subsequently made against the **Insured Persons** and reported to the **Insurer** alleging, based upon, arising out of, or attributable to such facts or circumstances, or alleging any **Interrelated Wrongful Acts**, shall, for the purposes of this Policy, be treated as a **Claim** made during the **Policy Period** or **Discovery Period**, if exercised, in which such notice was given.
- (C) If during the **Policy Period** or **Discovery Period**, if exercised, the **Insured Persons** first become aware of any **Inquiry**, and if the **Insured Persons** or the **Corporation** give written notice to the **Insurer** as soon as practicable, but in no event shall notification be given to the **Insurer** later than 90 days, after the natural person designated in Item 7 of the Declarations first becomes aware of such **Inquiry**, then the **Inquiry** shall be treated

as properly reported hereunder and the **Inquiry Costs** arising therefrom shall be covered, subject to all terms, conditions and limitations of this Policy. Any **Claim** which arises out of such **Inquiry** shall be deemed to have been first made at the time such written notice of the **Inquiry** was received by the **Insurer**. However, if the **Insured Persons** or the **Corporation** elect not to report an **Inquiry**, then any **Claim** which arises out of the **Inquiry** shall be subject to the reporting requirements set forth in subparagraph (A) above, and coverage for such **Claim** will not be prejudiced because of the **Insured Persons'** or **Corporation's** failure to report the **Inquiry**.

- (D) Any notice shall be deemed to have been given and received on the day and at the time it is received by the **Insurer** at the following address:

Specialty Insurance Solutions Claims Department
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610, Box 22
Toronto, ON M5H 2R2

Fax: (416) 214-9597

Email: claims@trisura.com

- (E) Non-intentional failure to provide notice in a timely manner as set out above will not entitle the **Insurer** to deny coverage unless the **Insurer** can establish it has been actually, substantially and materially prejudiced as a result of such noncompliance.

X GENERAL CONDITIONS

- (A) **Policy Territory:** This Policy applies to **Wrongful Acts** committed by the **Insured Persons**, or to **Claims** or **Inquiries** anywhere in the world.

- (B) **Advancement and Indemnification:** This Policy has been issued to the **Parent Corporation** with the understanding and agreement that each **Organization** agrees to fulfill its indemnification and advancement obligations, if any, to the **Insured Persons** to the fullest extent required or permitted by: (1) law; and (2) any contract or agreement providing an indemnification obligation exceeding any such law. If the **Insurer** pays, as **Non-Indemnified Loss**, any indemnification owed to any **Insured Person** by the **Organization**, the **Insurer** does not waive or compromise any of its rights to recover such **Loss** from the **Organization**.

For purposes of determining a **Corporation's** indemnification obligation to any **Board Observer**, each **Board Observer** shall be deemed an **Executive** of the **Corporation**. Accordingly, the **Corporation** shall be deemed to have granted such indemnification to each **Board Observer** to the fullest extent permitted by law to the same extent as any **Executive** of the **Corporation**.

- (C) **Representations and Severability Clause:** In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application** for this Policy, a copy of which is deemed attached hereto, as being true, accurate and complete. All such statements and representations are the basis of this Policy and are to be considered as incorporated into this Policy. With respect to such statements and representations, no knowledge or information possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purposes of determining if coverage is available in favour of such **Insured Person**.
- (D) **Cooperation and Subrogation:** In the event of a **Claim** or **Inquiry**, the **Insured Person** and **Organization** agree to provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and will do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery against any person or organization to the extent of such payment and the **Insured Persons** and the **Organization** shall execute all papers required and do everything that may be necessary to secure such rights. In no event, however, shall the **Insurer** subrogate against any **Insured Person** under this Policy, unless such **Insured Person** has been convicted of a criminal act, or been determined by any final non-appealable adjudication in an underlying **Claim** to have committed a deliberate criminal or deliberate fraudulent or dishonest act, or determined by any final non-appealable adjudication in an underlying **Claim** to have obtained any personal financial profit to which such **Insured Person** was not legally entitled.
- (E) **Recoveries:** Any recovery (after payment of expenses incurred to obtain such recovery), whether effected by the **Insurer** or by the **Insured Person**, shall be applied (i) first to the satisfaction of the **Insured Person's** loss which would otherwise have been paid by the **Insurer** but for the fact that it is in excess of the Limit of Liability stated in

Item 3 of the Declarations, and (ii) second to reimburse the **Insurer** to reduce the **Non-Indemnified Loss** ultimately borne by the **Insurer** to what it would have been had the recovery preceded any payment of such **Non-Indemnified Loss** by the **Insurer**.

The obligations of the **Insured Persons** under this subsection will survive the termination or expiry of this Policy.

(F) **Reorganization:** If, during the **Policy Period**:

- (i) the **Parent Corporation** shall consolidate with or merge into another entity such that the **Parent Corporation** is not the surviving entity; or
- (ii) any person or entity, or group of persons or entities acting in concert, shall acquire **Management Control** of the **Parent Corporation**,

(either of the above events herein referred to as the "Transaction"),

coverage under this Policy shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, by the **Insured Persons**, or for **Inquiries** first made, prior to the effective date of the Transaction.

The **Parent Corporation** or any **Insured Person** shall give written notice to the **Insurer** of the Transaction as soon as practicable, but in no event later than 30 days after the effective date of the Transaction. The full annual premium for the **Policy Period** shall be deemed fully earned immediately upon the occurrence of the Transaction and the Policy may not be terminated by the **Parent Corporation**. As set out in Section III, Discovery Periods, the **Parent Corporation** or the **Insured Persons** shall have the right to request an offer from the **Insurer** of a Transaction Discovery Period.

(G) **Termination of Policy:** This Policy shall terminate at the earliest of the following times:

- (i) upon receipt by the **Insurer** of a written notice of termination from the **Parent Corporation**; provided that this Policy may not be terminated by the **Parent Corporation** after the effective date of a Transaction;
- (ii) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations of this Policy;
- (iii) 20 days after receipt by the **Parent Corporation** of the **Insurer's** notice of termination due to non-payment of premium; or
- (iv) at such other time as may be agreed upon by the **Insurer** and the **Parent Corporation**.

If the Policy is terminated in accordance with item (i) above, the **Insurer** shall refund to the **Parent Corporation** the unearned premium computed at the customary short rate. If the Policy is terminated in accordance with item (iii) above, the **Insurer** shall have the right to require payment by the **Parent Corporation** of the premium amount (calculated on a pro-rata basis) for the portion of the **Policy Period** during which the Policy was in effect.

The refund or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of termination, but such payment shall be made as soon as practicable.

(H) **Action Against Insurer:** No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms and conditions of this Policy, nor until the amount of the **Insured Persons'** obligation to pay shall have been finally determined: (a) by judgment against the **Insured Persons** after actual trial; or (b) by written agreement of the **Insured Persons**, the claimant and the **Insurer**.

No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured Person** or the **Organization** to determine the liability of the **Insured Person**, nor shall the **Insurer** be impleaded by the **Insured Person** or the **Organization** or their legal representatives.

- (I) **Bankruptcy or Insolvency:** Bankruptcy or insolvency of the **Corporation**, or of any of the **Insured Persons** or their estates, shall not relieve the **Insurer** of any of its obligations hereunder nor deprive the **Insurer** of its rights or defences under this Policy. In such event, the **Corporation** and the **Insured Persons** hereby waive and release any automatic stay or injunction in such proceeding that may apply to this Policy or its proceeds and agree not to oppose or object to any efforts by the **Insurer**, the **Corporation**, or any **Insured Person** to obtain relief from any such stay or injunction.
- (J) **Other Insurance:** If any **Non-Indemnified Loss** covered under this Policy is covered under any other valid and collectible insurance, then this Policy shall cover the **Non-Indemnified Loss**, subject to its terms and conditions, only to the extent that the amount of the **Non-Indemnified Loss** is in excess of the amount of such other insurance, except if such other insurance is **Underlying Insurance** or is written only as specific excess insurance over the limits of liability of this Policy. However, this Policy shall apply as primary cover to any personal umbrella excess liability insurance purchased by an **Insured Person**.

If **Non-Indemnified Loss** covered under this Policy is also covered under any other valid and collectible insurance but not paid by such other insurer, then this Policy will respond without regard to such other insurance, subject to its terms and conditions and without prejudice to the **Insurer's** rights to recover from the relevant insurer.

In the event of a **Claim** or **Inquiry** against an **Insured Person** arising out of his or her service as an **Outside Entity Executive**, coverage as is afforded by this Policy shall be specifically excess of any: (i) indemnification provided by such **Outside Entity**; and (ii) other insurance provided to such **Outside Entity**, regardless of whether such other insurance provides for a duty to defend the **Insured Person**, a duty to pay on behalf of the **Insured Person**, or a duty to advance **Defence Costs** to or on behalf of the **Insured Person**.

In the event that other insurance is provided to the **Outside Entity** by the **Insurer** (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a **Claim** or **Inquiry**), the **Insurer's** maximum aggregate limit of liability for all **Non-Indemnified Loss** combined in connection with a **Claim** or **Inquiry** covered, in part or in whole, by this Policy and such other insurance policy shall not exceed the greater of the applicable Limit of Liability of this Policy or the limit of liability of such other insurance policy.

- (K) **Non-Renewal:** If the **Insurer** decides not to offer renewal terms for this Policy, the **Insurer** shall provide written notice to the **Parent Corporation** at least 60 days prior to the Policy expiration date.
- (L) **Valuation and Currency:** Except as otherwise provided in this Policy, all premiums, limits, **Non-Indemnified Loss** and any other amounts referred to in this Policy are expressed and payable in the currency of Canada. If judgment is rendered, settlement is agreed upon or another element of **Non-Indemnified Loss** under this Policy is incurred in a currency other than Canadian dollars, payment under this Policy shall be made in Canadian dollars at the noon rate of exchange set by the Bank of Canada on the date upon which the final judgment is entered, the amount of the settlement is agreed upon or the other element of **Non-Indemnified Loss** is due, respectively.
- (M) **Assignment:** This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.
- (N) **Changes:** Notice to any agent, broker or representative or knowledge possessed by any agent, broker, representative or any other persons shall not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued by the **Insurer** to form a part of this Policy.

The **Corporation** will give written notice to the **Insurer** within 45 days after the Risk Manager or General Counsel of the **Corporation** receives notice of any amendment making a material change to the terms and conditions of the **Underlying Insurance** during the **Policy Period** or the **Discovery Period**, if applicable.

- (O) **Non-Rescindability:** The coverage provided under this Policy shall be non-rescindable by the **Insurer**.
- (P) **Notices:** All notices, other than Notice of **Claim** or **Inquiry**, shall be given in writing addressed to:

Specialty Insurance Solutions Department
Trisura Guarantee Insurance Company
333 Bay Street, Suite 1610, Box 22
Toronto, ON M5H 2R2

Fax: (416) 214-9597

- (Q) **Governing Law and Jurisdiction:** This Policy shall be governed by the laws of the province of the principal address of the **Parent Corporation** as stated in Item 1 of the Declarations, except as provided by paragraphs (i) or (ii) of the definition of **Loss**. Other than as set out below in paragraph (S) of Section X, this Policy shall be subject to the exclusive jurisdiction of the Courts of the province of the **Parent Corporation's Address** as stated in Item 1 of the Declarations.
- (R) **Conformance with Provincial Statutes:** In the event of any inconsistency between any provincial or territorial legislation regarding insurance and any term or condition of this Policy, then, where permitted by law, the **Insurer**, shall apply those terms and conditions of either the provincial or territorial legislation of the policy which are more favourable to the **Insured Persons**.

(S) **Alternative Dispute Resolution:** This Policy shall follow the provisions of the **Underlying Insurance** in respect of any dispute, controversy or claim arising out of or relating to this Policy. In the event the **Insured Persons** prevail in any such dispute proceeding, then the **Insurer** shall pay the reasonable fees, costs and expenses incurred by the **Insured Persons** in connection with the dispute proceeding. Such payment shall be in addition to and not part of the **Limit of Liability** of this Policy.

XI QUEBEC

With respect to the Province of Quebec only, it is the express wish of all parties that this Policy and any related documents be drawn up in English. Il est de la volonté expresse des parties aux présentes que cette police et tous les documents qui s'y rattachent soient rédigés en anglais.

XII AUTHORIZATION CLAUSE

It is agreed that the **Parent Corporation** shall act on behalf of all **Insured Persons** with respect to the giving and receiving of any notice provided for in this Policy (subject to any **Insured Person's** or **Parent Corporation's** rights under Section III, Discovery Periods, and Section IX), the payment of premiums (subject to any **Insured Person's** rights under Section III, Discovery Periods), the receiving of any return premiums that may become due under this Policy, and the negotiation, agreement to and acceptance of any endorsement to this Policy.

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



TRISURA

USD CURRENCY CLAUSE

Endorsement No.: 1
Policy No.: TDO1007769

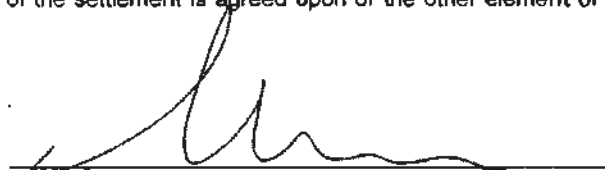
Effective Date Of Endorsement: March 7, 2019

Issued To: Nygard Enterprises and Nygard Properties USA Ltd

In consideration of the premium charged, it is hereby understood and agreed that the following replaces subsection (L) of Section X of the General Conditions of this Policy:

- (L) Valuation and Currency: Except as otherwise provided in this Policy, all premiums, limits, **Non-Indemnified Loss** and any other amounts referred to in this Policy are expressed and payable in the currency of the United States of America (American dollars). If judgment is rendered, settlement is agreed upon or another element of **Non-Indemnified Loss** under this Policy is incurred in a currency other than American dollars, payment under this Policy shall be made in American dollars at the noon rate of exchange set by the Bank of Canada on the date upon which the final judgment is entered, the amount of the settlement is agreed upon or the other element of **Non-Indemnified Loss** is due, respectively.

All other terms and conditions remain unchanged.



Authorized Representative



TRISURA

COVERAGE FOR SPECIFIED CONTROLLED AND AFFILIATED CORPORATIONS

Endorsement No.: 2
Policy No.: TDO1007769

Effective Date Of Endorsement: March 7, 2019

Issued To: Nygard Enterprises and Nygard Properties USA Ltd.

In consideration of the premium charged, it is hereby understood and agreed that the following replaces the definition of **Corporation** in Section II of this Policy:

Corporation means:

- (i) the **Parent Corporation**;
- (ii) any **Subsidiary**;
- (iii) in the event of **Financial Impairment**, the resulting debtor-in-possession or equivalent status; and
- (iv) the following controlled or affiliated corporations:

Controlled or Affiliated Corporation

Attachment Date

Nygard Holdings USA

March 7, 2018

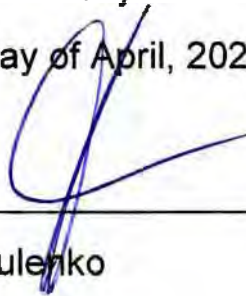
It is further understood and agreed that in granting the coverage provided by this endorsement, the **Insurer** shall not be liable to make any payment for **Non-Indemnified Loss** in connection with any **Claim** or **Inquiry** made against an **Insured** based upon, arising out of, or attributable to any litigation, proceeding or civil, criminal, administrative or regulatory investigation of which any **Insured** had notice and which was commenced prior to, or which was pending as of, the Attachment Date listed above for each controlled or affiliated corporation, or which arises from matters substantially the same as alleged or established in such litigation, proceeding or civil, criminal, administrative or regulatory investigation.

All other terms and conditions remain unchanged.


Authorized Representative

This is Exhibit "Q" referred to in the
Affidavit of Greg Fenske

Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano <dmagisano@lanners.ca>
Sent: Friday, April 24, 2020 11:36 AM
To: Bruce Taylor <GBT@tdslaw.com>; 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>
Subject: RE: Nygard - D&O Insurance [LAW-TDS.FID18S3952]

Bruce,

I will have to get formal instructions but we want to be practical about this. To me this can go one of two ways: (1) the Receiver advises both the Broker (HUB) and the insurer (AIG – also perhaps Trisura but need to look at the policy you just sent) that the Receiver will acquire the tailing coverage provided for in the policy providing that a third party pays the Additional Premium required; or (2) the Receiver simply provides written confirmation to HUB and AIG that they can take instructions directly from David Paton or Jim Bennett regarding acquiring the tailing coverage in the AIG (and perhaps the Trisura) policy.

My initial thought is it would save everyone a bunch of time and money if we just went with option (2) above.

Regardless of which option is chosen, a decision on tailing coverage needs to be made by May 1. Given that it is noon hour on April 24, 2020 I would say this needs to be resolved ASAP. I also don't think it is relevant as to how the Additional Premiums are going to be funded, what is relevant is that there is no longer a request that the Receiver fund it on behalf of the debtor companies.

Regards

Dom

Domenico Magisano | Lanners LLP | Partner | phone 416 591 4121 | direct fax 416 591 4123 | dmagisano@lanners.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LANNERS   

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 24, 2020 12:22 PM
To: Domenico Magisano <dmagisano@lanners.ca>; 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Cc: Ross McFadyen <RAM@tdslaw.com>
Subject: Nygard - D&O Insurance [LAW-TDS.FID18S3952]

Dom/Wayne, the Receiver is aware of the attached supplemental D&O policy. If there are other D&O policies (than the AIG policy you circulated yesterday and the attached Trisura policy), the Receiver not aware of them.

Please confirm in detail what it is that your clients are requesting the Receiver to do, how your clients will fund premium amounts, and when you consider that it is required to be done by.

Regards,

G. Bruce Taylor
Partner

P 204-934-2566

C 204-295-5241

F 204-934-0506

E gbt@tdslaw.com

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1700 – 242 Hargrave Street • Winnipeg, Manitoba • R3C 0V1



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This is Exhibit "R" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 24, 2020 12:05 PM

To: Domenico Magisano <dmagisano@lernalers.ca>; Wayne M. Onchulenko <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>

Subject: RE: Nygard - D&O Insurance [LAW-TDS.FID1853952]

Dom, I'll discuss your message with the Receiver. I'm not sure you're right about the time period, but you'll need to decide on that.

Regards,

G. Bruce Taylor

P 204-934-2566

C 204-295-5241

From: Domenico Magisano <dmagisano@lernalers.ca>

Sent: Friday, April 24, 2020 11:36 AM

To: Bruce Taylor <GBT@tdslaw.com>; 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>

Subject: RE: Nygard - D&O Insurance [LAW-TDS.FID1853952]

Bruce,

I will have to get formal instructions but we want to be practical about this. To me this can go one of two ways: (1) the Receiver advises both the Broker (HUB) and the insurer (AIG – also perhaps Trisura but need to look at the policy you just sent) that the Receiver will acquire the tailing coverage provided for in the policy providing that a third party pays the Additional Premium required; or (2) the Receiver simply provides written confirmation to HUB and AIG that they can take instructions directly from David Paton or Jim Bennett regarding acquiring the tailing coverage in the AIG (and perhaps the Trisura) policy.

My initial thought is it would save everyone a bunch of time and money if we just went with option (2) above.

Regardless of which option is chosen, a decision on tailing coverage needs to be made by May 1. Given that it is noon hour on April 24, 2020 I would say this needs to be resolved ASAP. I also don't think it is relevant as to how the Additional Premiums are going to be funded, what is relevant is that there is no longer a request that the Receiver fund it on behalf of the debtor companies.

Regards

Dom

LERNER'S



From: Bruce Taylor <GBT@tdslaw.com>

Sent: April 24, 2020 12:22 PM

To: Domenico Magisano <dmagisano@lerner's.ca>; 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>

Cc: Ross McFadyen <RAM@tdslaw.com>

Subject: Nygard - D&O Insurance [LAW-TDS.FID1853952]

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Regards,

G. Bruce Taylor
Partner

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This is Exhibit "S" referred to in the
Affidavit of Greg Fenske
Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Domenico Magisano <dmagisano@lanners.ca>
Sent: Wednesday, April 8, 2020 4:59 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
Subject: Nygard Receivership - Messrs. Hudda and Carkner

Bruce,

My clients have been advised that the Receiver has retained one or both of Sajjad Hudda and Kevin Carkner to assist in administering the receivership estate. My clients have reason to believe that both Messrs. Hudda and Carkner have a personal agenda with respect to certain individuals within my client (who were also senior officers and/or directors of the companies in the receivership). Further, my clients are concerned that Mr. Hudda and/or Mr. Carkner are in the midst of assembling a buyer group to purchase some, or all, of the assets of the receivership companies and are using their engagement with the receiver to get a leg up in any sales process.

With that background, my clients require responses to the following questions:

1. What steps have been taken to ensure Messrs. Hudda and/or Carkner do not have access to non-debtor information?
2. Has the Receiver required Messrs. Hudda and Carkner to sign confidentiality agreements so as to ensure they are disseminating information that they obtain in their current capacity to third parties (related, or otherwise)?
3. Are Mr. Hudda and/or Mr. Carkner assisting the Receiver in any aspect of a possible sales process?
4. Did the Receiver require Messrs. Hudda and Carkner to disclose an intent to bid (either directly, or indirectly) on some, or all of the receivership debtor's assets?
5. If Mr. Hudda and/or Mr. Carkner were asked whether they intended to be a bidder, did they disclose that they were considering a bid on some, or all, of the receivership debtors' assets?
6. If Mr. Hudda and/or Mr. Carkner disclosed that they may wish to be bidders on some, or all, of the receivership debtors' assets, what steps have been taken to ensure that Mr. Hudda and/or Mr. Carkner are not receiving an advantage in the bidding process?

Our clients believe that these matters are of the utmost importance, not only for them, but also for the Receiver. In particular our clients are concerned that non-debtor information could be disseminated (through Messrs. Hudda and Carkner) to third parties without authorization and/or that Messrs. Hudda and Carkner are gaining an advantage in any possible sales process.

We look forward to your prompt response to the foregoing.

Yours truly

This is Exhibit "T" referred to in the
Affidavit of Greg Fenske

Affirmed before me at the City of
Winnipeg, this 24th day of April, 2020



Wayne Michael Onchulenko
A Notary Public
in and for the Province of Manitoba

From: Bruce Taylor <GBT@tdslaw.com>
Sent: April 21, 2020 8:02 PM
To: Domenico Magisano <dmagisano@lernalers.ca>
Cc: Wayne M. Onchulenko <WOnchulenko@ltglc.ca>
Subject: RE: Nygard Receivership - Messrs. Hudda and Carkner [LAW-TDS.FID1853952]

Dom,

The Receiver is not aware of any "personal agenda" of either Mr. Hudda or Mr. Carkner. Respectfully, expressing unsupported suspicions in reference to "certain individuals within your clients" is not helpful. If you wish to provide details and evidence of any misconduct of either that your clients consider should be brought to the attention of the Receiver, you are at liberty to do so.

I am advised that Messrs. Hudda and Carkner have generally continued in their pre-receivership roles, albeit in the context of the Nygard Group's limited activities.

In general terms, Mr. Hudda (CEO) has been a key point of contact for (i) discussions with top wholesale customers on AR collections, order fulfillment and wholesale inventory, (ii) employee matters, including providing direction on information requirements and assessment of cost / headcount reduction opportunities, (iii) coordinating re-opening of e-commerce activities and (iv) answering questions on corporate background, role of each Nygard entity, economics of wholesale business and related matters of interest or concern to the Receiver.

In general terms, Mr. Carkner (CFO) has been a key point of contact (i) to oversee banking activities through Debtors' accounts, including review and approval of payroll, (ii) to coordinate and review weekly collateral reporting to Lenders, including sign-off on borrowing base certificates; (iii) to provide focus on collections on independent wholesale customers, (iv) on financial matters generally, including providing direction on information requirements to finance and accounting staff and (v) to answer questions on corporate background on such matters as the role of each Nygard entity, economics of retail business.

Both currently have the same access to information in the Nygard Group's electronic system that they had prior to the receivership. Neither is currently participating in a bid in relation to any Nygard Group assets, directly or indirectly, and confidentiality agreements are not required. Both of have confirmed if they intend to participate in a bid, directly or indirectly, they will advise the Receiver, in advance, and the Receiver will take appropriate steps to ensure integrity of the process. Both remain in the employ of NIP and are bound to whatever confidentiality obligations were in place prior to the Receivership or are associated with their employment.

Regards,

G. Bruce Taylor
P 204-934-2566
C 204-295-5241

From: Domenico Magisano <dmagisano@lerners.ca>
Sent: Wednesday, April 8, 2020 4:59 PM
To: Bruce Taylor <GBT@tdslaw.com>
Cc: 'Wayne M. Onchulenko' <WOnchulenko@ltglc.ca>
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We look forward to your prompt response to the foregoing.

Yours truly

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