

# Directors and Officers Liability (Not for Profit Organizations) - Claims Made Form

WORD AND PHRASES IN QUOTATIONS HAVE SPECIAL MEANING AS DEFINED IN SECTION 2

## 1 INSURING AGREEMENT

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the "Insurer", including the statements in the application for insurance, and subject to all terms, conditions and limitations of this Policy, the "Insurer" agree as follows:

### a Insured Person and Entity Liability

To pay on the "Insured's" behalf "Loss" that they may become legally obligated to pay as a result of a "Claim" for a "Directors & Officers Wrongful Act".

### b Non-Profit Outside Directorship Liability

To pay on the "Insured's" behalf "Loss" that they may become legally obligated to pay as a result of a "Claim" for an "Outside Directorship Wrongful Act" for which an "Outside Entity" is not permitted to indemnify them or is unable to indemnify them due to its financial insolvency.

### c Employment Practices Liability

To pay on the "Insured's" behalf "Loss" that they may become legally obligated to pay as a result of a "Claim" for an "Employment Practices Wrongful Act".

### d Defense

To have the duty and right to defend any "Claim" made against the "Insured" for which coverage is provided by this policy.

This policy applies only to "Claims" first made against the "Insured" during the "Policy Period" and then only if reported to the "Insurer" as outlined in Section 6.

## 2 DEFINITIONS

### a "Claim" means:

- (i) a written or oral demand for compensatory damages or non-monetary relief;
- (ii) a civil proceeding commenced by the service of a notice of action, statement of claim or similar proceeding;
- (iii) a formal administrative or regulatory proceeding commenced by the filing of a notice of hearing or formal investigation order or similar document;  
against any "Insured" for a "Wrongful Act";
- (iv) a criminal or penal proceeding commenced by the laying of an information or similar proceeding against any "Insured Person" for a "Wrongful Act".

### b "Damages" means:

- (i) compensatory damages;
- (ii) punitive or exemplary damages first rendered by a court in Canada.  
Which the "Insured" is legally obligated to pay as a result of a judgment or settlement including pre and post-judgment interest. "Damages" shall not include fines, penalties, multiplied damages, or damages which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

### c "Defense Costs" means reasonable and necessary legal, accounting, adjusting, investigating, expert or appeal expenses incurred for the defense of "Claims" for which coverage is provided by this policy. "Defense Costs" does not include salaries, wages, overhead or benefit expenses of any "Insured Person".

### d "Declaration Page" means the Declaration Page applicable to this policy.

### e "Directors & Officers Wrongful Act" means any actual or alleged defamation, breach of duty, neglect, error, misstatement, misrepresentation, omission or other act done or attempted by any "Insured" in the discharge of their duties solely in their capacity with the "Entity" or any matter claimed against them solely by reason of their status as an "Insured Person".

### f "Employment Practices Wrongful Act" means any actual or alleged:

- (i) wrongful termination of an individual employment contract;
- (ii) discrimination or harassment adversely affecting any employee of or applicant for employment with the "Entity";
- (iii) wrongful deprivation of career opportunities or failure to employ or promote;
- (iv) wrongful discipline of employees;
- (v) negligent evaluation of employees;
- (vi) employment related misrepresentation;
- (vii) employment related defamation;
- (viii) retaliatory treatment against an employee of the "Entity" on account of such employee's exercise of his/her rights under the law;
- (ix) discrimination or harassment with respect to any past, present or prospective customers or clients of the "Entity".

### g "Entity" means:

- (i) the non-profit organization or association named on the "Declaration Page";
- (ii) any "Subsidiary" at the inception date of the policy;
- (iii) any former "Subsidiary" but coverage is only afforded with respect to "Wrongful Acts" occurring during its currency as a

“Subsidiary”;

(iv) any “Subsidiary” acquired or created after the inception date of this policy on condition that:

1. Written notice together with full information thereof, is provided to the “Insurer” within ninety (90) days of the acquisition or creation of any new “Subsidiary” whose total annual revenues exceed twenty-five percent (25%) of the total annual revenues of the “Entity” as reflected in the “Entity’s” most recent annual financial statements prior to such acquisition or creation;
2. Coverage shall apply only to “Wrongful Acts” occurring subsequent to the effective date of such acquisition unless the “Insurer” agrees, after presentation of a complete application and all appropriate information, to provide coverage by endorsement for “Wrongful Acts” occurring prior to such acquisition;
3. An additional premium as may be required by the “Insurer” be paid.

h “Insured” means any “Insured Person” and the “Entity”;

i “Insured Person” means any individual who was, now is or shall be a director, officer, trustee, employee, volunteer or member of any duly constituted committee or the “Entity”, including the estates, heirs, legal representatives or assigns or any said deceased, incompetent, insolvent or bankrupt individuals.

j “Interrelated Wrongful Acts” means “Wrongful Acts” that have as a common tie any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

k “Insurer” means Red River Mutual.

l “Loss” means “Damages” and “Defense Costs” resulting from a “Claim” for which coverage is provided by this policy.

m “Original Policy” means the first policy purchased by the “Entity” providing coverage of a similar nature to this policy and which has continued through renewal or reinstatement on an uninterrupted basis since its inception. Each Insuring Agreement is considered separately.

n “Outside Director” means any “Insured Person” acting in the capacity as a duly elected or appointed director, officer or trustee or an “Outside Entity” provided such position is being held at the specific request of the “Entity”.

o “Outside Directorship Wrongful Act” means a “Directors & Officers Wrongful Act” committed by an “Outside Director”.

p “Outside Entity” means any legally constituted non-profit organization or association.

q “Policy Period” means the period from the inception date of this policy to the policy expiration date as set out in the Declarations, or a shorter period in the event the policy is cancelled.

r “Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste reconditioned or reclaimed materials as well as any air emission, odour, waste water, oil or oil products, infectious or biological waste, asbestos or asbestos products or any noise.

s “Subsidiary” means any non-profit organization or association more than fifty percent (50%) owned by the “Entity”.

t “Wrongful Act” means a “Directors & Officers Wrongful Act”, an “Employment Practices Wrongful Act” and/or an “Outside Directorship Wrongful Act”.

### 3 EXTENSIONS

Subject to the terms, conditions and exclusions of this policy:

#### a Discovery Period (Bilateral)

If the “Insurer” cancels or refuses to renew this policy for reasons other than non-payment of the premiums due hereunder or if the “Entity” cancels or does not renew this policy and provided there are no outstanding premiums due hereunder, the “Insured” shall have the right within thirty (30) days of the effective date of cancellation or expiry of this policy and upon payment of a premium calculated as a percentage (see below) of the “full annual premium”, to an extension of the cover granted by this policy for “Claims” made against the “Insured” during the period of one (1) year after the effective date of cancellation or expiry of this policy, but only with respect to any “Wrongful Act” occurring prior to the date of such cancellation or expiry.

As used herein, “full annual premium” means the premium level in effect immediately prior to the effective date of cancellation or expiry.

Premium Calculation:

(i) If the “Insurer” cancels or refuses to renew:

- 75% - if purchased following the initial policy issued by the “Insurer”;
- 65% - if purchased following the second consecutive policy issued by the “Insurer”;
- 55% - if purchased following the third consecutive policy issued by the “Insurer”;
- 45% - if purchased following the fourth consecutive policy issued by the “Insurer”

(ii) If the “Entity” cancels or does not renew: 100%.

If the Discovery Period extension is purchased, the entire premium shall be deemed earned at its commencement without any obligation by the “Insurer” to return any part thereof and it shall not in any way increase the limit of liability set forth in the Declarations.

The acceptance by the “Insured” of the “Insurer’s” offer of a new policy relieves the “Insurer” of any obligation it may have had to provide Discovery Period coverage under this policy.

#### b Spousal/Co-defendant Clause

Coverage as afforded by this policy shall apply to the spouse (including a domestic partner) of an “Insured Person” provided that: (a) such spouse is named as a co-defendant in a “Claim” against an “Insured Person”; and (b) such spouse is so named solely by reason of (i) his/her status as the spouse of an “Insured Person” or (ii) his/her ownership interest in property which the claimant seeks as recovery in such “Claim”; and (c) it is not alleged in the “Claim” that the spouse is liable to the claimant for any reasons other than those contemplated above; and (d) coverage is provided by this policy to the “Insured Person” for the “Claim”.

## 4 EXCLUSIONS

This insurance does not apply to:

- a "Claims" for bodily injury, sickness, mental anguish, sexual abuse, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof or injury resulting from false arrest, detention, imprisonment, wrongful entry or eviction. However, this exclusion shall not apply to allegations of mental anguish in a "Claim" for an "Employment Practices Wrongful Act".
- b "Claims" arising out of or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of "Pollutants" into or upon real or personal property, the atmosphere or water, whether such discharge, dispersal, release or escape is intentional or accidental; or to "Loss" resulting from any direction or request to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize "Pollutants". However, this exclusion shall not apply to
  - (i) "Defense Costs" incurred in defending the "Insured Persons" arising from a "Claim" covered Insuring Agreement A of Section 1 first brought within the territorial limits and jurisdiction of Canada.
  - (ii) any "Claim" for an "Employment Practice Wrongful Act" arising from an employee's actual or threatened disclosure of the matters described in this exclusion.
- c "Claims" based upon, arising out of, directly or indirectly resulting from or in consequence of:
  - (i) ionizing, radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- d "Claims" arising from any "Wrongful Act" if notification has been given under any policy which has expired prior to or upon inception of this policy and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such "Loss", in whole or in part, as a result of such notice.
- e "Claims" based upon, arising out of, directly or indirectly resulting from or in consequence of any pending or prior litigation as at the inception date of the "Original Policy" or derived from the same or essentially the same facts as alleged in such pending or prior litigation.
- f "Claims" arising out of or attributable to any fraudulent, dishonest or criminal act committed deliberately by any "Insured Person" as determined by a judgment or other final adjudication.
- g "Claims" arising out of or attributable to any "Insured Person" gaining any profit, remuneration or advantage to which such "Insured Person" was not legally entitled as determined by a judgment or other final adjudication.
- h "Claims" initiated or instituted, directly or indirectly, by or on behalf of the "Entity". However, this exclusion does not apply to:
  - (i) any "Claim" made derivatively provided that such "Claim" is brought totally without the solicitation, assistance, participation or intervention of any "Insured Persons" or the "Entity"; and
  - (ii) any "Claim" brought by a liquidator, receiver or trustee in bankruptcy.
- i "Claims" for an actual or alleged breach of contract except that this exclusion shall not apply to
  - (i) allegations of tortuous conduct arising out of or attributable to an actual or alleged breach of contract; and
  - (ii) "Defense Costs" for "Claims" arising from an "Employment Practices Wrongful Act".
- j "Claims" arising out of or attributable to any grievance brought pursuant to a collective agreement.
- k "Claims" for the rendering or failure to render any kind of professional service for others, either gratuitously or for a fee.
- l "Claims" for an "Outside Directorship Wrongful Act" initiated or instituted, directly or indirectly, by or on behalf of the "Outside Entity" or a duly elected or appointed director, officer or trustee of the "Outside Entity".
- m "Claims" already covered under another valid and collectible insurance policy. However, this exclusion shall not apply to the difference in limit between the limit of liability under this policy and that of such other insurance policy. Any coverage provided by this policy shall be specifically excess of and shall not act in contribution with such other insurance policy.

NOTE: The "Wrongful Act" of any "Insured" shall not be imputed to any other "Insured" for the purpose of determining the applicability of the Exclusions in Section 4.

## 5 LIMITS OF LIABILITY AND DEDUCTIBLE

- a The "Insurer" shall pay one hundred percent (100%) of "Loss" in excess of the deductible stated in the Declarations up to the limit of liability stated in the Declarations except that "Defence Costs" shall be paid over and above the limit of liability stated in the Declarations provided the said limit has not been previously exhausted by the payment of "Loss" or currently exhausted by the payment of "Damages". The deductible shall apply to "Damages" but not to "Defence Costs".
- b The aggregate limit of liability (if shown on the Declaration Page) shall be the "Insurer's" maximum liability for all claims made during the policy period and shall apply in excess of the applicable deductibles.
- c All "Loss" arising out of the same "Wrongful Act" and all "Interrelated Wrongful Acts" shall be deemed to be one "Loss", and such "Loss" shall be deemed to have originated in the earliest "Policy Period" in which a "Claim" is first made against any "Insured" alleging any such "Wrongful Act" or "Interrelated Wrongful Acts".
- d If a "Claim" triggers more than one (1) deductible amount, the highest of such deductible amounts shall be deemed the deductible amount applicable to "Loss" arising from such "Claim".
- e The fact that this policy may be extended by virtue of the exercise of the Discovery Period shall not in any way increase the limit of liability set forth in the Declarations.
- f If the "Insurer" has agreed to increase the limit of liability under this policy or any prior policy issued by the "Insurer" (if this policy forms part of a continuous series of renewals), such increase shall not apply to:
  - (i) claims made before the effective date of the increase;
  - (ii) any fact or circumstance known to the "Insured" on the effective date of the increase and likely to give rise to a "Claim".
- g If the limit of liability has been reduced, the reduced limit shall apply to all "Claims" made to the "Insurer" after the effective

date of the reduction, whether or not the "Insured" had prior knowledge of the "Claim" or of any fact or circumstance likely to give rise to a "Claim".

## 6 NOTICE OF CLAIM

The "Insured" shall, as soon as practicable, provide written notice to the "Insurer" at the address indicated in the Declarations after being made aware of a "Claim" for which coverage would be afforded by this policy, but in no event later than thirty (30) days following the expiration date of the "Policy Period". This thirty (30) day extended reporting period will only apply if no replacement coverage is obtained during such thirty (30) period.

If during the "Policy Period" the "Insured" becomes aware of a "Wrongful Act" which could reasonably give rise to a "Claim" and the "Insured" delivers written notice thereof to the "Insurer" prior to the date of expiry of the policy, any "Claim" arising out of such reported "Wrongful Act" shall be treated as a "Claim" made during the "Policy Period" in which such written notice was delivered. The written notice shall include:

- a the names of the potential claimants and a description of the specific "Wrongful Act" which forms the basis of their potential "Claim";
- b the consequences which have resulted or may result from such specific "Wrongful Act";
- c the nature of the potential damage arising from such specific "Wrongful Act"; and
- d the circumstances by which the "Insured" first became aware of the specific "Wrongful Act".

If the effective date of termination of the policy is a Saturday, Sunday or Statutory Holiday, any "Claim" reported to the "Insurer" on the business day immediately following the termination date will be deemed to have been reported within the "Policy Period".

Notwithstanding the aforementioned, any late notice or absence of notice is cause for forfeiture of the rights of the "Insured", if the "Insurer" sustains injury therefrom.

## 7 DEFENSE AND SETTLEMENT

No "Defense Costs" payable under this policy shall be incurred without the "Insurer's" consent, which is not to be unreasonably withheld. The "Insurer" shall not settle or compromise any "Claim" without the written consent of the "Insured" involved in the "Claim". If, however, the "Insured" shall refuse to consent to any settlement recommended by defense counsel and the "Insured" elects to contest the "Claim", then the "Insurer's" liability for the "Claim" shall not exceed:

- a the amount for which the "Claim" could have been so settled plus the "Defense Costs" incurred with its consent up to the date of such refusal; and
- b seventy percent (70%) of "Loss", including "Defense Costs", in excess of the amount referenced in paragraph a above. The remaining thirty percent (30%) of "Loss", including "Defense Costs", shall be paid by the "Insured", uninsured and at their own risk, notwithstanding anything to the contrary in Article e of Section 8 of this policy.

Such amounts are subject to the provisions of Section 5 of this policy.

The "Insured" shall give the "Insurer" such information and cooperation as it may reasonably require and as shall be in the power of the "Insured" to provide.

## 8 GENERAL CONDITIONS

### a Authorized agent of the "Insured":

In consideration of the issuance of this policy, the "Insured" agrees that the "Entity" is hereby appointed and authorized to act as agent on behalf of the "Insured" with respect to all matters of any nature or kind relating to or affecting this policy.

### b Non-rescindable

This policy may not be rescinded by the "Insurer" solely with respect to coverage provided to the "Insured Persons" for "Claims" for which the "Entity" is not permitted to indemnify them or cannot indemnify them due to its financial insolvency.

### c Non-renewal

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 sixty (60) days subsequent to the date of such notice of non-renewal. If an extension of the "Policy Period" is required, the additional premium shall be computed on a pro rata basis.

### d Cancellation

This policy may be cancelled by the "Insured" by delivering written notice by mail, facsimile or by hand to the "Insurer" stating when thereafter such cancellation shall be effective. This policy may be cancelled by the "Insurer" by said delivery of written notice of cancellation to the "Insured" at the address shown in the Declarations stating when not less than one hundred and twenty (120) days thereafter, such cancellation shall be effective. However, if the "Insurer" cancels the policy because of non-payment of premium when due, this policy may be cancelled by the "Insurer" by said delivery of written notice of cancellation to the "Insured" at the address shown in the Declarations stating when, not less than fifteen (15) days thereafter, such cancellation shall be effective. The delivery of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the "Policy Period".

Unearned premium shall be computed on a pro rata basis. The "Insurer's" cheque delivered as aforesaid shall be a sufficient tender of any refund of premium due hereunder. Payment or tender of any unearned premium by the "Insurer" shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

### e Payment of "Loss"

If a "Claim" made against the "Insured" includes both covered and uncovered allegations:

(i) **Defence Costs:**

The "Insurer" shall pay one hundred percent (100%) of "Defence Costs" incurred on account of such "Claim" made against the "Insured".

(ii) **Damages:**

The payment of "Damages" by the "Insurer" shall be based on the relative legal exposure of the "Insured" to covered and uncovered allegations, which shall be determined upon settlement or final adjudication of the "Claim".

In the event that the "Insured" and "Insurer" cannot otherwise agree on the payment of "Damages", the issue of payment shall be submitted to binding arbitration pursuant to the Arbitration Act of the Canadian province or territory in which the policy was issued. In the absence of such provincial or territorial legislation, the Arbitration Act of Ontario shall govern the arbitration. The arbitration panel shall consist of one arbitrator appointed by the "Insured", one arbitrator appointed by the "Insurer" and a third independent arbitrator selected by the "Insured" and "Insurer's" appointees. The fees and disbursements of the arbitrators shall be shared equally by the "Insured" and "Insurer" who shall otherwise bear their own costs of the arbitration.

**f Action against "Insurer"**

No action shall be taken against the "Insurer" unless, as a condition precedent thereto, the "Insured" shall have been in full compliance with all the terms of this policy.

**g Subrogation**

In the event of any payment under this policy, the "Insurer" shall be subrogated to the extent of such payment to all the rights of recovery of the "Insured" 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 as may be necessary to enable the "Insurer" effectively to bring suit in the name of the "Insured".

**h Severability**

Subject to all of its terms and conditions, this policy shall apply to each "Insured" in the same manner and to the same extent as if a separate policy had been issued to each. With respect to the declarations and statements contained in the application for coverage, the knowledge of one "insured" shall not be imputed to any other "Insured". The total amount payable hereunder on behalf of all "Insureds" and, notwithstanding the number of "Insured's" involved, shall not exceed the limit of liability stated in the Declarations.

**i Territory**

Except as otherwise stated, coverage shall apply worldwide.

**j Currency**

Except as otherwise stated, all amounts under this policy are expressed and payable in the currency of Canada.

**k Headings**

The headings to the provisions in this policy, including those found in any endorsements attached hereto, are provided solely for convenience, and form no part of the terms and conditions of coverage.

**l Conformity to Statute**

The terms of this policy which are in conflict with the terms of any applicable laws construing this policy are hereby amended to conform to such laws.

**m Interpretation**

This policy shall be interpreted and construed in accordance with the laws of the Canadian province in which the policy was issued.

**n Declarations**

In consideration of the payment of the premium, in reliance upon the statements made in the application for this insurance which is made a part hereof and subject to all of the terms and conditions of this policy, the "Insurer" has caused this policy to be executed on the Declarations.

EXCEPT AS OTHERWISE PROVIDED IN THIS FORM, ALL TERMS, CONDITIONS AND PROVISIONS OF THE POLICY TO WHICH THIS FORM IS ATTACHED SHALL HAVE FULL FORCE AND EFFECT.