

**EXCESS AND CONTINGENT  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**DECLARATIONS**

1. **NAMED INSURED:** The Ontario Nurses' Association ("ONA") by and on behalf of its members.

2. **ADDITIONAL NAMED INSUREDS**

Each person who is a member in good standing of the ONA and who is:

(i) a registered or temporary class nurse or nurse practitioner/registered nurse (Extended Class) or allied personnel who is included within a bargaining unit for which the ONA is the bargaining agent and who has regularly paid dues to ONA, or

(ii) a registered or temporary class nurse or nurse practitioner/registered nurse (Extended Class) or allied personnel or former registered or temporary class nurse or nurse practitioner or allied personnel who was, when the alleged error, omission or negligent act took place, a person included within a bargaining unit for which the ONA is the bargaining agent and who had regularly paid dues to the ONA.

The membership list maintained by the ONA, from time to time, shall be determinative as to who is, at any point during the Policy Period, an additional named insured as described above.

3. **INSURER**

Trisura Guarantee Insurance Company ("Insurer")  
1610-333 Bay Street  
Toronto, Ontario  
M5H 2R2

*Vic Brandonisio*

Vic Brandonisio  
Vice President, Fronting Solutions

4. **POLICY NUMBER**

The Policy Number is: TRS0260020

5. **POLICY PERIOD**

**FROM:** December 1, 2022 at 12:01 A.M. Eastern Standard Time

**TO:** December 1, 2023 at 12:00 A.M. Eastern Standard Time

**6. LIMIT OF LIABILITY**

- (a) \$1,500,000 per Loss in excess of all amounts recoverable under the underlying insurance policies and Self-Insurance Funds described in the attached Schedule "A".
- (b) \$6,000,000 Aggregate Limit per Additional Named Insured.

# INSURANCE CONTRACT

## 1. DEFINITIONS

In this Contract, unless the context requires otherwise, all words and phrases that have capitalized initial letters (except titles) have special meanings which are as follows:

- (a) “**Aggregate Limit**” means the maximum amount for which the Insurer is liable under this Contract in any one Policy Period as set out in the Declarations.
- (b) “**Bodily Injury**” means bodily injury, sickness or disease including mental anguish and death at any time resulting therefrom and damages for care and loss of services incidental thereto.
- (c) “**Claim**” means a written or oral notice received by an Insured of intention to hold such Insured responsible for damages arising out of Bodily Injury, Personal Injury or Property Damage.
- (d) “**Insured**” means the Additional Named Insureds as defined in the Declarations.
- (e) “**Loss**” means Personal Injury or Property Damage, regardless of the number of claims arising out of the same error, omission or negligent act in the rendering of health services, including home care services, public health services and teaching and instruction on the subject of the Insured’s profession of registered or temporary class nurse or nurse practitioner/registered nurse (Extended Class) or other allied personnel.
- (f) “**Loss Adjustment Expenses**” shall mean expenditures made in connection with the disposition of a Claim, Loss or legal proceeding in connection with a Claim, made during the Policy Period, including, but not limited to: costs of investigation and negotiation; costs of bonds; court costs; prejudgement interest; defence costs and legal expenses incurred in direct connection with legal actions. For greater clarity, however, Loss Adjustment Expenses shall not include amounts paid or payable by collectible underlying policies of insurance or when covered by a Self-Insurance Fund.
- (g) “**Nuclear Energy Hazard**” means the radioactive, toxic, explosive or other hazardous properties of Radioactive Material.
- (h) “**Nuclear Facility**” means:

- (i) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
- (ii) any equipment or device designed or used for (1) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
- (iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium and uranium or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste Radioactive Material;

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

- (i) **“Other Defendant”** means any defendant who is not an Insured under this Contract.
- (j) **“Personal Injury”** means any one or more of
  - (i) Bodily Injury;
  - (ii) injury arising out of an error in the identification of a newborn; or
  - (iii) injury arising out of any one or more of false arrest, detention or imprisonment or malicious prosecution.
- (k) **“Policy Period”** means the period of one year set out as the “Policy Period” in the Declarations or if the time between the beginning of the Policy Period and the termination of the Contract is less than one year, then such lesser period. If death should arise from Bodily Injury, it shall be considered to have occurred in the same Policy Period as that when the Bodily Injury began.
- (l) **“Private Practice”** means the provision of paid services in the Insured's capacity as a registered or temporary class nurse, or nurse practitioner/registered nurse (Extended Class), or other allied personnel on behalf of herself, himself, or an organization owned or controlled by the Insured.

- (m) “**Property Damage**” means damage to or destruction of property including loss of use thereof.
- (n) “**Radioactive Material**” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board of Canada may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
- (o) “**Retained Limit**” means the total of all insurance policies and all Self-Insurance Funds applicable to a Loss and described in Schedule A, the Schedule of Underlying Insurance.
- (p) “**Self-Insurance Fund**” means any fund which the employer of any Insured, or any Other Defendant, has established, either alone or in co-operation with others, for the payment of amounts related to Property Damage and Personal Injury liability including or exclusively arising out of error, omission or negligent act in the rendering, intended rendering or failure to render, health services including home care services, public health services and teaching and instruction in the subject of the Insured's profession. It specifically includes, but is not limited to, all coverage provided to the Insured by virtue of the employer being a subscriber to the Healthcare Insurance Reciprocal of Canada.
- (q) “**Ultimate Net Loss**” shall mean the total sum of actual Loss sustained by the Insured, or for which the Insured becomes liable to pay, including if paid or payable by any underlying insurer, or any Self-Insurance Fund or any combination of them, by reason of a Loss, either through adjudication or compromise, and shall also include Loss Adjustment Expenses and other expenses, meaning hospital, medical and funeral charges, and all sums paid or payable as salaries, wages, compensation, fees, charges and interest and expenses for doctors, nurses and investigators and other persons, and for negotiation, investigation and defense of claims and excluding only the salaries of the Insured or any of the underlying insurer's permanent employees. Expenses as aforesaid shall not be included in Ultimate Net Loss when such are covered by collectible underlying policies of insurance which pay them in addition to the limit of liability or when covered by a Self-Insurance Fund.

## 2. CONDITIONS OF COVERAGE AND SCHEDULE OF UNDERLYING INSURANCE

This Contract is issued on the condition that the Insured practices his or her profession as an employee within an employer/employee relationship. It is a pre-condition to the validity of this Contract that the employer of the Insured maintain valid insurance in a minimum

amount of \$5,000,000.00 under which the Insured is covered, or has funds available, either against:

- (a) liability or claims or both arising out of error, omission or negligent act in the rendering of health services, including home care services, public health services and teaching and instruction in the subject of the Insured's profession, or
- (b) liability or claims or both as in (a) and also against other types of liability or perils.

This contract affords ultimate excess insurance only. If, for any reason, the insurance maintained by the employer fails or refuses to cover any claim within its \$5,000,000.00 or higher policy limit, this Contract shall not cover or respond to all or any portion of such a claim and the Insurer shall have no liability to the Insured.

The employer may maintain this coverage either through one or more policies of insurance or by way of Self-Insurance Funds. This Contract is exclusively an ultimate excess policy and is strictly intended to be coverage excess to all the policies and Self-Insurance Funds maintained by the employers whether that insurance or Self-Insurance Fund is characterized as primary coverage, excess coverage or both. Under no circumstances can this Contract be called upon to respond as primary coverage or as co-insurance with the insurance or Self-Insurance Funds maintained by the Insured's employer.

The details of these policies and Self-Insurance Funds are known to the employer and/or the employee and shall be reported to the Insurer by the Insured as soon as practicable after the request of the Insurer.

### **3. GENERAL INSURING AGREEMENT**

This Contract insures against liability arising out of the rendering, intended rendering or failure to render health services including home care services, public health services and teaching and instruction on the subject of the Insured's profession.

Subject to the terms, conditions and limitations contained in this Contract, the Insurer agrees to pay on behalf of the Insured that portion of the Ultimate Net Loss in excess of the Retained Limit which the Insured shall become legally obligated to pay as damages arising out of:

- (a) any Claim, provided the Claim is first made against the Insured during the Policy Period, arising out of Personal Injury or Property Damage begun or sustained prior to the Policy Period, which is due to an error, omission or negligent act by the Insured which took place from January 1, 1986 to April 30, 1992, and
- (b) Personal Injury or Property Damage sustained during the Policy Period which is caused by an error, omission or negligent act of the Insured,

provided the Claim is first made against the Insured during the Policy Period.

However, where the Insured becomes legally obligated to pay such damages based on a judgement which is rendered both against the Insured and as a result of the error, omission or negligent act of the Insured, against any Other Defendant or Other Defendants and where the plaintiff chooses to levy execution against the Insured without first levying execution against any Other Defendant, it is in the complete discretion of the Insurer to pay any or, subject to the Contract limits, all of the judgement against the Insured.

#### **4. EXCLUSIONS**

This Contract shall not provide insurance against liability arising out of:

- (a) injury, sickness or disease, including death at any time resulting therefrom caused by the Insured in the commission of any criminal act, or any act committed in a disturbed mental state caused by the influence of hypnotics, intoxicants, narcotics or any illegal drug or substance. This exclusion does not apply to any Insured who is neither the author of nor a knowing accomplice to the act. Nor does this exclusion apply where the Insured can establish that the Insured has a drug and/or alcohol dependence that constitutes a handicap;
- (b) liability to the Insured as an employer of others or as proprietor, superintendent or executive officer of any hospital, sanitarium, clinic with bed and board facilities, nursing or convalescent home, home for aged or infirm persons, or business enterprise;
- (c) injury;

with respect to which the Insured under this Contract is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

resulting directly or indirectly from the Nuclear Energy Hazard arising from:

the ownership, maintenance, operation or use of a nuclear facility by or on behalf of the Insured;

the furnishing by the Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any Nuclear Facility; and

the transportation, consumption, possession, handling or disposal or use of radioactive material sold, handled, used or distributed by the Insured.

Exclusions (c)(i) and (ii) of this Contract shall not be construed to apply to any commercial or medical radioactive isotopes.

- (d) damages or injury done deliberately by the Insured, unless done in the honest belief that the act was medically justified or unless done to protect persons or property; but this exclusion does not apply if the Insured is neither author of, nor a knowing accomplice to, the act;
- (e) services rendered by the Insured in Private Practice;
- (f) the provision of services by the Insured, in her/his capacity as a registered or temporary class nurse or nurse practitioner/ registered nurse (Extended Class), or other allied personnel, while working for an employer where ONA is not the bargaining agent or while she or he is working in a non-ONA bargaining unit position;
- (g) liability covered either by valid and collectible insurance or any Self-Insurance Funds or both, the insurance afforded by this Contract being in excess of such insurance and funds;
- (h) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion or insurrection;
- (i) with respect to acts or omissions committed prior to 15 days before the effective date of this Contract if the Insured on the effective date of this Contract had, or could reasonably be expected to have had, knowledge that such errors, omissions or negligent acts might be expected to be the basis of a Claim or suit;
- (j) punitive and exemplary damages.

## **5. LIMIT OF LIABILITY**

The liability of the Insurer under the General Insuring Agreement is limited for each Loss to that portion of the Ultimate Net Loss in excess of the Insured's Retained Limit and then up to an amount not exceeding the per Loss amount mentioned in the Declarations; moreover, the limit of liability of the Insurer under this Contract is limited for the Insured to the Aggregate Limit mentioned in the Declarations.

## **6. CONDITIONS**

### **(a) Contribution, Assistance And Co-Operation**

The Insurer shall not be called upon to assume charge of, or participate in, the investigation, defense or settlement of any claim or suit brought or proceedings instituted against the Insured, nor to assume or contribute in any way to the costs of such investigation, defense or settlement regardless of whether or not the total amount of the Claim or Loss will, or seems likely



to, exceed the amount of coverage maintained by the employer as described in Schedule A - Schedule of Underlying Insurance. The Insurer shall have the right, such right to be exercised in its sole and absolute discretion, to associate with the Insured or any underlying insurer, or Self-Insurance Fund, or any combination of them, in the defense and control of any claim, suit or proceeding relative to any claim or suit which involves, or appears reasonably likely to involve, the Insured in which event the Insured, the underlying insurers and Self-Insurance Funds and the Insurer shall cooperate in all things in the defense of such claim, suit or proceeding.

If the Insured exercises any control over the defense of an action, any settlement or judgement will be at the expense of the Insured. In addition, the Insured shall not, except at his/her own cost, voluntarily make any payment, assume any obligation or incur any expense, other than immediate medical expense incurred at the time of the error, omission or negligent act.

(b) **Notice Of Claim Or Loss**

Written notice of any claim or loss under this Contract, together with a description of the event, circumstance or fact which gave rise thereto shall be given as soon as practicable by the Insured to the Insurer but in no event received later than thirty (30) days after the expiration of the Policy Period.

(c) **Notice of Claim**

Notice of Claim in regard to Personal Injury or Property Damage sustained during the Policy Period, or to Claims arising out of an error, omission or negligent act by the Insured which took place from January 1, 1986 to April 30, 1992, provided the claim therefor is first made against the Insured during the Policy Period, shall be reported in writing and received by the Insurer within thirty (30) days after the expiration of the Policy Period.

(d) **Settlement and Contestation Of Claims**

In the event the Insurer exercises its rights to intervene pursuant to paragraph (a) above the Insurer will not settle the Claim or Loss without first obtaining the written consent of the Insured.

However, if a settlement is rendered impossible by the sole refusal of the Insured, the Insured must continue the defense at his or her own expense. The liability of the Insurer will then be limited to the amount for which the Claim or Loss could have so settled together with Loss Adjustment expenses covered hereunder at the date of such refusal.

(e) **Application Of Salvages - Subrogation**

When this Contract is applicable to Claim or Loss covered by any insurance or Self-Insurance Fund described in Schedule A - Schedule of Underlying Insurance, the Insured's rights of recovery against any person or other entity cannot always be exclusively subrogated to the Insurer. It is therefore understood and agreed that in case of any recovery hereunder, the Insurer shall act in concert with all other interests (including the Insured) concerned in the exercise of such rights of recovery. The apportioning of any amounts which may be recovered shall follow the principle that any Insured that shall have paid an amount over and above any amounts paid under all insurance or Self-Insurance Funds shall first be reimbursed up to the amounts paid by such Insured and the Insurer shall then be reimbursed up to the any amount paid by the Insurer hereunder, and lastly, the interests (including the Insured) of whom this coverage is excess are entitled to claim the residue of any such recovery, if any, up to amounts so paid by such interests. In apportioning amounts recovered by way of salvage or subrogation, as set out above, amounts paid by the Insured and the Insurer for defense costs are not taken into consideration.

Expenses necessary for the recovery shall be apportioned among the interests (including the Insured) concerned in the ratio of their recoveries as finally settled, provided the Insurer will not pay an amount greater than the amount of its recovery as finally settled. If any amount remains after the apportioning of amounts paid in settlement and for expenses incurred for recovery, it then will be used to pay defense costs which will be apportioned in the same order as payment of salvages and recoveries for loss settlements.

(f) **Subrogation**

In the event of any indemnification under this Contract the Insurer shall be subrogated to all the Insured's rights of recovery. The Insured must sign and deliver all deeds and documents required and take all necessary measures to ensure these rights.

(g) **Conformity With Law**

Provisions of this Contract which are at variance with the laws of Ontario are hereby modified in order to conform with such laws.

(h) **Territory**

Coverage under this Contract applies to errors, omissions, and negligent acts committed anywhere in the world provided that the original suit for damages is instituted and conducted within Canada.

(i) **Amendments, Suspension Or Termination**

This Contract may be amended, suspended or terminated by the Insurer at any time.

(j) **Appeals**

In the event the Insured or the Insured's underlying insurer(s) elect(s) not to appeal a judgement in excess of the underlying limits, the Insurer may elect to make such appeal at its own cost and expense and shall be liable for the Loss Adjustment Expenses incidental thereto, but in no event shall the liability of the Insurer for the Ultimate Net Loss exceed the amount set forth in the Declarations as the limit for any one Loss plus the cost and expense of such appeal.

(k) **Entire Agreement**

This Contract, including the Schedules and any endorsements or amendments attached hereto, constitutes the entire agreement between the Insurer and the Insured pertaining to the insurance coverages provided hereunder.

**SCHEDULE A**  
**Schedule of Underlying Insurance**

The Retained Limit applicable to a Loss shall be the total of all insurance policies and all Self-Insurance Funds applicable to the Loss, provided that such amount shall not be less than the greater of:

- (i) \$5,000,000; and
- (ii) the actual amount of primary insurance carried by the employers of the Insureds including any Self-Insurance Fund.