

PROFESSIONAL LIABILITY INSURANCE
EXCESS AND CONTINGENT
PROFESSIONAL LIABILITY INSURANCE POLICY FOR
MEMBERS OF
ONTARIO NURSES' ASSOCIATION

HAND DELIVERED IN BARBADOS

Policy No: PL-2019

DECLARATIONS

1. INSURED

As per Insured in the Definitions, Schedule A.

2. POLICY PERIOD

From: DECEMBER 01, 2018

To: NOVEMBER 30, 2019 12:01 a.m. Standard Time.

3. 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 insured.

4. INSURER: ONA LIABILITY INSURANCE LIMITED

CGI Tower, 2nd Floor

Warrens, St. Michael, BB22026, Barbados, W.I.

5. PREMIUM

Annual Premium of Canadian Dollars CDN\$672,000.00 (payable Canadian Dollars CDN\$336,000.00 at the inception of the Policy and Canadian Dollars CDN\$336,000.00 six (6) months from the inception of the Policy) subject to a pro rata decrease in the event that the Ontario Nurses' Association suffers a decrease in membership.

SCHEDULE A

I SCHEDULE OF UNDERLYING INSURANCE

- (a) This policy is issued on the condition that each Insured practices his or her profession as an employee within an employer/employee relationship. It is a pre-condition to the validity of this policy that the employer of each 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:
 - (i) 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.
 - (ii) liability or claims or both as in (i) and also against other types of liability or perils.

If, for any reason, the insurance maintained by the employer fails or refuses to cover a claim up to the full limit of its face coverage this policy is invalid and 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 policy 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 policy 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 are to be reported to the Insurer by the Insured as soon as practicable after the request of the Insurer.

- (b) Insurance policies, other than those in (I) above, which are valid and collectible, and provide coverage or protection to the Insured against 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.

This policy 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.

II **DEFINITIONS**

- (a) AGGREGATE LIMIT means the maximum amount for which the Insurer is liable in any one policy period.
- (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 the Insured of intention to hold the Insured responsible for damages arising out of Bodily Injury, Personal Injury or Property Damage.
- (d) INSURED means each
 - (i) 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 Ontario Nurses' Association ("ONA") is the bargaining agent and who has regularly paid dues (or the equivalent) to ONA in accordance with criteria established from time to time by the Board of Directors of ONA and communicated to such Registered or Temporary Class nurse or nurse practitioner or allied personnel.
 - (ii) 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 of which the ONA is the bargaining agent and who had regularly paid dues (or the equivalent) to ONA in accordance with criteria which had been established from time to time by the Board of Directors of ONA and communicated to such 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/ Registered Nurse (Extended Class) or allied personnel.

- (e) INSURER means **ONA LIABILITY INSURANCE LIMITED.**
- (f) 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.
- (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 policy.

- (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;
 - (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 commencing each year on the day and hour first named in the Declarations or if the time between the effective date or anniversary and the termination of the policy 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 the 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 except as provided in Additional Insuring Agreements, shall mean the total sum which the Insured, or any underlying insurer, or any Self-Insurance Fund or any combination of them become obligated to pay by reason of a loss, either through adjudication or compromise, and shall also include 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.

III GENERAL INSURING AGREEMENT

Subject to the terms, conditions and limitations contained in this policy, 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 01, 1986 to April 30, 1992.
- (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 policy limits, all of the judgement against the Insured.

IV EXCLUSIONS

This Policy 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;
 - (i) with respect to which the Insured under this policy is also Insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not 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
 - (ii) resulting directly or indirectly from the Nuclear Energy Hazard arising from:
 - (1) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of the Insured;
 - (2) 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
 - (3) 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 policy 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 to any insured who 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 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 policy 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 policy if the Insured on the effective date of this policy 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.

V LIMIT OF LIABILITY

The liability of the Insurer under the General Insuring Agreement is limited for each Loss regardless of the number of Insureds involved 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 policy is limited for each Insured to the Aggregate Limit mentioned in the Declarations.

VI 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 Insurer in which event the Insured, the underlying insurers and Self-Insurance Funds and the Insurer shall co-operate in all things in the defense of such claims, 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) INDIVIDUALITY OF THE INSURED

No act, omission, declaration or negligent act of an Insured can be invoked in order to prejudice the rights of any other Insured.

(c) ADDITIONAL INSUREDS

The inclusion of more than one Insured under this policy does not increase the Insurer's limit of liability.

(d) CROSS LIABILITY

In the event that a Claim is made against an Insured by another Insured, it is agreed that the obligation of the Insurer under this policy is the same as if separate policies had been issued to each, but in no event shall the Insurer's liability exceed that stated in Section 3 of the Declarations.

(e) **NOTICE OF CLAIM OR LOSS**

Written notice of any claim or loss under this Policy, 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 no later than thirty (30) days after the expiration of the Policy Period.

(f) **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 01, 1986 to April 30, 1992, provided the claim therefor is first made against the Insured during this Policy Period, and that any such claims are reported in writing and received by the Insurer within thirty (30) days after the expiration of this Policy Period.

(g) **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 latter 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 expenses incurred under the present policy at the date of such refusal.

(h) **APPLICATION OF SALVAGES - SUBROGATION**

When this policy is applicable to Claim or Loss covered by any insurance or Self-Insurance Fund described in the Schedule of Underlying Insurance, as per Schedule A, 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 payment 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 them, the Insurer shall then be reimbursed out of any balance then remaining up to the amount paid hereunder, lastly, the interests (including the Insured) of whom this coverage is excess are entitled to claim the residue, if any, up to amounts paid. Amounts paid by the Insured and the Insurer for the above apportioning do not include defense costs.

Expense 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 expense incurred for recovery, it will be used to pay defense costs which will be apportioned in the same order as payment of salvages and recoveries for loss settlements.

(i) **SUBROGATION**

In the event of any indemnification under this policy 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.

(j) **DISPUTES**

Any dispute concerning this Policy must be filed in writing with the Insurer whose decision shall be final and binding on all parties and shall not be subject to any appeal or judicial review.

(k) **CONFORMITY WITH LAW**

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

(l) **TERRITORY**

Coverage under this policy 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.

(m) **AMENDMENTS, SUSPENSION OR TERMINATION**

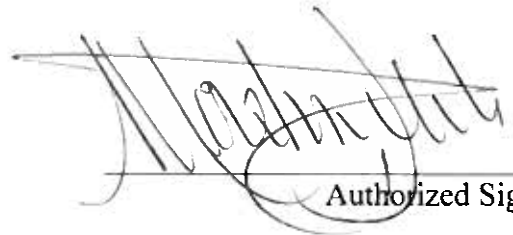
This Policy may be amended, suspended or terminated by the Insurer at any time.

(n) **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 costs and disbursements and interest 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.

IN WITNESS WHEREOF, the said **ONA LIABILITY INSURANCE LIMITED** has caused these Presents to be signed and this policy is made and accepted upon the above express conditions.

ONA LIABILITY INSURANCE LIMITED



Authorized Signatory

Date: November 6, 2018