

COURT FILE NUMBER B201 719774
25-2719774
COURT COURT OF QUEEN'S BENCH OF ALBERTA, IN BANKRUPTCY
JUDICIAL CENTRE CALGARY
MATTER



30939

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF GS E&R CANADA INC.
APPLICANT GS E&R CANADA INC.

ENTERED

DOCUMENT AFFIDAVIT OF JUNGHO PARK

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
STIKEMAN ELLIOTT LLP
4300 Bankers Hall West
888 – 3rd Street S.W.
T2P 5C5

Solicitor: Karen Fellowes, Q.C.
Phone Number: (403) 724-9469
Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.:

Counsel for the Applicant, GS E&R Canada Inc.

AFFIDAVIT OF JUNGHO PARK

Sworn on March 18, 2021

I, JUNGHO PARK, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am the Managing Director of GS E&R Canada Inc. ("E&R CANADA") and I am authorized to swear this affidavit on its behalf. I have personal knowledge of the matters and facts herein deposed, except where based on information and belief, in which case I believe the same to be true.

JH

I. BACKGROUND

2. E&R CANADA is a privately-owned company registered in Alberta and extra-provincially registered in British Columbia with operations in Alberta and British Columbia. E&R CANADA's registered office is located at 1600, 421 – 7th Avenue SW, Calgary, Alberta T2P 4K9, and its chief place of business is Fort Nelson, British Columbia. Attached hereto and marked as Exhibits "A" and "B" are the corporate search results for E&R CANADA in Alberta and British Columbia, respectively.
3. E&R CANADA's voting shares are entirely held by GS E&R Corporation, a body corporate with a registered address of 508, Nonhyeon-Ro, Gangnam-Gu, Seoul, Republic of Korea.
4. E&R CANADA's business focuses on energy exploration and production with a focus on liquid rich natural gas in North Eastern British Columbia primarily produced from the Liard Basin. E&R CANADA is an operator and has 100% of working interest in 147 gas wells, 7 satellites, 265 km of pipelines, 1 compression station and 1 Natural Gas Liquid facility. All well sites are accessible with an Argo (All-Terrain Vehicle) and truck access is available during the winter. Produced gas is transported by the North River Midstream pipeline and sold at Station 2. All by-products are transported by trucking.
5. E&R CANADA has 4 full-time employees, most of whom are located in its office in Calgary, Alberta. E&R CANADA also retains 7 contractors to work in the field.
6. On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal ("NOI") pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and appointed MNP Ltd. as its proposal trustee (the "Proposal Trustee"). As a result of the filing of the NOI, all proceedings against E&R CANADA and its assets were automatically stayed for an initial period of thirty (30) days (i.e. until April 10, 2021) (the "Stay Period"). A copy of the NOI is attached hereto as Exhibit "C".

A. Events Preceding the NOI

7. Over the past several years, E&R CANADA has not been profitable and has reported net losses on a consistent basis.

8. E&R CANADA's operations have been funded by sales revenue, and by way of funding through paid-in capital increases from the shareholder in Korea. Gas production revenue plunged by 75% from 2014 to 2019. In the 2020 calendar year, E&R CANADA incurred a net loss of \$1,306,535.
9. These losses have been due to a variety of factors, including a significant reduction in oil and gas prices and demand caused in part by the effects of the COVID-19 pandemic, and declining production rates due to the nature of the gas field.
10. In 2020 E&R CANADA applied for a business loan to secure operating funds, but due to the continued recession in the E&P industry and E&R CANADA's credit history, it was unable to get an approval from a financial institution. The shareholder was forced to provide additional capital of approximately \$1.9 million for operating expenses such as facility repairs, wages and taxes.
11. As at February 28, 2021, E&R CANADA's principal assets pre-impairment* consisted of the following:

Nature	Book Value (CAD)
Cash	\$ 1,840,630
Oil and Gas Assets*	\$ 3,811,256
Non-Oil and Gas Assets	\$ 4,451,178
Accounts Receivable	\$ 751,963
Total:	\$ 10,855,027

* E&R CANADA is completing an impairment assessment of the carrying value of its oil and gas assets in accordance with IAS 36 "Impairment of assets", as the COVID-19 pandemic constitutes an impairment trigger for E&R CANADA due to its potential negative impact on the long term cashflows from the business. It is highly likely that these assets will be impaired, reducing their carrying values as reported above.

14. As at February 28, 2021, E&R CANADA's principal liabilities consisted of the following:

Nature	Book Value (CAD)
Accounts Payable	\$ 372,597
Asset Retirement Obligations	\$ 15,612,263
Total:	\$ 15,984,860

15. E&R CANADA has no secured creditors with the exception of those creditors who have registered security interests in the Alberta Personal Property Registry as described below. A true copy of a recent PPR search is attached and marked as **Exhibit "D"** to this affidavit.
16. There are security interests registered against E&R CANADA's assets, including:
- (a) An all-present-and-after-acquired-property charge by the Toronto-Dominion Bank – this registration relates to \$475,000 in credit facilities, which is fully secured with a \$475,000 term deposit cash collateral.
 - (b) A serial number registration against a lease field truck by TDF Group Inc., with approximately \$32,500 owing and a lease term expiring October 31, 2022.
16. There is also an outstanding liability to the British Columbia Oil and Commission ("BCOGC") as a security deposit for potential environmental reclamation costs, in the amount of \$4,313,938 (as of March 9, 2021).

B. Previous Sales Attempts

17. Since 2019, E&R CANADA has made several attempts to sell its assets *en bloc* in order to mitigate its losses and ensure that its abandonment and reclamation obligations are assigned to a solvent purchaser. However, those efforts have proven unsuccessful in the past, as previous potential purchasers have failed to close any transaction.
18. In 2019, E&R CANADA tried to sell its assets to 'Crestmont Resources Ltd.' with the assistance of the sales agent 'MKS investments Ltd.' Due diligence was completed by reviewing the data room. After receiving the offer and buyer due diligence, E&R

JH.

CANADA determined that the potential purchaser did not qualify to complete the transaction.

19. On December 20, 2019, E&R CANADA received an indicative offer from 'MaxMin Resources, LLC.', using the sales agent 'Team K'. Due diligence was completed by reviewing the data room as well as a field trip. On February 7, 2020, 'MaxMin' decide not to carry on the deal due to the unexpected situation of COVID-19.
20. On March 6, 2020, E&R CANADA received a non-binding offer from 'Spoke Energy' using Sproule as sales agent. Due diligence was completed by reviewing the data room as well as a field trip. However, the deal was terminated on June 4, 2020, as the buyer and buyer's guarantors were deemed at the time to lack financial capabilities for long term operation.

C. Restructuring Efforts Since the Filing of the NOI

17. Since the filing of the NOI, E&R CANADA has taken the following steps:
 - (a) Meeting with the Proposal Trustee and assisting in the preparation of cash flow reports;
 - (b) Meeting with the Proposal Trustee with respect to upcoming discussions with the BCOGC;
 - (c) Meeting with critical vendors and suppliers and answering their questions with respect to the NOI process;
 - (d) Meeting with Sayer Energy Advisors and the Proposal Trustee in order to develop a SISP and prepare the data room with necessary information;
 - (e) Reviewing its operating expenses, pursuing the collection of accounts receivable and taking other steps to ensure the company remains financially viable without recourse to interim financing during the restructuring process.

II. GROUNDS FOR THE REQUESTED ORDERS

A. Stay Extension

18. In light of the foregoing, E&R CANADA requires an extension of the Stay Period in order to, *inter alia*, continue the restructuring of its business and affairs and attempt to make a viable proposal to its creditors.
19. I believe that, in comparison with a forced sale, an extension of the Stay Period that will allow E&R CANADA to take these steps constitutes the best option for the realization of E&R CANADA's assets and the maximization of their value. The extension of the Stay Period will allow E&R CANADA to preserve the value of its business and assets as a whole by minimizing any disruptions while it conducts its restructuring, thereby ensuring that E&R CANADA's creditors are able to maximize their recovery.
20. Management of E&R CANADA, in consultation with the Proposal Trustee, will continue to work in good faith on a restructuring path forward, which will include the cutting of costs, the maximization of returns, the pursuit of accounts receivable and the implementation of a viable exit strategy.
21. As a result of these factors, E&R CANADA submits that should the present proceedings be turned into bankruptcy proceedings, it is expected that the position of E&R CANADA's creditors will materially deteriorate.
22. In the interim, all creditors of E&R CANADA will be kept appraised of the progress of E&R CANADA's efforts to restructure its operations by communicating with E&R CANADA and with the Proposal Trustee.
23. E&R CANADA submits that it has acted and continues to act in good faith and with due diligence, with a view to maximizing value for the benefit of all of E&R CANADA's stakeholders.
24. E&R CANADA understands that the Proposal Trustee intends to file, in advance of the hearing of the present Application, its First Report with the Court supporting the extension of the Stay Period and other relief as requested herein.

B. Administration Charge

25. The participation of the Proposal Trustee, the Proposal Trustee's counsel and E&R CANADA's counsel are essential to E&R CANADA's restructuring. Given the size and extent of the assets and the expected complexity of the proceedings, E&R CANADA has consulted with its advisors and seeks a \$300,000 Administration Charge over all the assets, property and undertakings of E&R CANADA ("the Property") which shall secured the payments to be made to the foregoing professionals.
26. Given the size and extent of the assets and the expected complexity of the proceedings, E&R CANADA believes that the Administration Charge as sought is reasonable and adequate and should rank in priority to all other encumbrances.

C. Director and Officer's Charge

27. In order to continue to carry on business, albeit on a limited basis, during these proceedings, E&R CANADA requires the active and committed involvement and continued participation of its directors and officers, who manage its business, commercial activities and internal affairs of the Corporation (collectively, the "D&Os").
28. Although E&R CANADA intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the D&Os are nevertheless concerned about the possibility of personal liability in the context of the present proceedings.
29. Considering the risk to which the D&Os may be exposed to in assisting E&R CANADA during these proceedings, the D&Os require E&R CANADA to indemnify them for all liabilities which they may incur in the context of their roles after the filing of these proceedings.
30. Although E&R CANADA maintains directors and officers' liability insurance (the "D&O Insurance") for the benefit of the D&Os, the amount of the coverage set out in the D&O Insurance may potentially be insufficient to protect the D&Os from all of their potential liability, or subject to certain exclusions. Attached as **Exhibit "E"** is a copy of E&R CANADA's D&O Insurance policy.

31. E&R CANADA therefore requests a D&O Charge in the amount of \$100,000 over the Property to indemnify the D&Os in respect of any liability which they may incur over the course of these proceedings.
32. E&R CANADA submits that the requested D&O Charge is reasonable and adequate given, notably, the potential exposure of the D&Os to personal liability.
33. E&R CANADA will request that the D&O Charge rank behind the Administration Charge.

D. Sales and Investment Solicitation Process (SISP)

34. On March 12, 2021 E&R CANADA and the Proposal Trustee met with Sayer Energy Advisors (“Sayer”) a firm with expertise in the marketing and sale of oil and gas assets in Alberta and British Columbia. As a result of that meeting, the Proposal Trustee proceeded to engage Sayer in order to commence a formal SISP, conditional on the approval of this Honourable Court.
35. Details of the SISP are contained in the Proposal Trustee Report, and include the following proposed milestones:

Milestones	Estimated Deadlines
Establishment of a virtual data room	Week of April 12, 2021
Commencement by Sayer of the issuance of a solicitation package (including teasers, confidential information memorandums and non-disclosure agreements).	Week of April 12, 2021
Placing of advertising	
Due Diligence End Date for Potential Bidders	May 13, 2021
Phase I Bid Deadline	May 13, 2021
Determination of the Successful Bidder(s)	Week of May 24, 2021
Approval Hearing	June, 2021
Closing of the transaction contemplated in the Successful Bid(s)	30 days after Court approval of sale(s)

III. CONCLUSION

36. This Affidavit is sworn in support of E&R CANADA's Application for an Order extending the Stay Period, and for other related relief, and for no other or improper purpose.

SWORN before me in the City of
Calgary, in the Province of Alberta, on
this 18 day of March, 2021.

)
)
)
)
)
)
)
)

Jungho Park

Jungho Park

A Commissioner of Oaths in and for the
Province of Alberta

This is **Exhibit "A"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

A Commissioner for Oaths in and for the Province of Alberta

JH.

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/02/26
Time of Search: 03:08 PM
Search provided by: STIKEMAN ELLIOTT
Service Request Number: 34946138
Customer Reference Number: KF/ab

Corporate Access Number: 2015491992
Business Number: 801766056
Legal Entity Name: GS E&R CANADA INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
STX ENERGY CANADA INC.	2014/05/30

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2010/07/22 YYYY/MM/DD

Registered Office:

Street: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K9

Records Address:

Street: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K9

Email Address: GWLG.CALGARY.CORPORATE@GOWLINGWLG.COM

Directors:

Last Name: LEE

JH.

First Name: JAE SEUNG
Street/Box Number: 508, NONHYEON-RO, GANGNAM-GU
City: SEOUL
Postal Code: 06141
Country: REPUBLIC OF KOREA

Last Name: PARK
First Name: JUNG
Middle Name: HO
Street/Box Number: UNIT 301, 121 - 15TH AVENUE SE
City: CALGARY
Province: ALBERTA
Postal Code: T2G1G1

Last Name: SUR
First Name: FRANK
Middle Name: Y.
Street/Box Number: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K1

Voting Shareholders:

Last Name: GS E&R CORP.
Street: 508, NONHYEON-RO, GANGNAM-GU
City: SEOUL
Postal Code: 06141
Country: REPUBLIC OF KOREA
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SHARE STRUCTURE SCHEDULE IS ATTACHED HERETO
Share Transfers Restrictions: NO SECURITIES (OTHER THAN NON-CONVERTIBLE DEBT SECURITIES) OF THE CORPORATION SHALL BE TRANSFERRED WITHOUT THE APPROVAL OF THE BOARD OF DIRECTORS.

JH.

Min Number Of 1
Directors:

Max Number Of 11
Directors:

Business
Restricted To: NONE

Business
Restricted From: NONE

Other Provisions: OTHER PROVISIONS SCHEDULE IS ATTACHED HERETO

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2019	2019/09/25

Outstanding Returns:

Annual returns are outstanding for the 2020 file year(s).

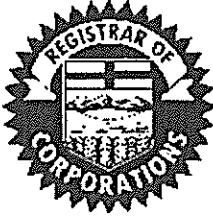
Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2010/07/22	Incorporate Alberta Corporation
2012/07/09	Service Provider Correct Legal Entity
2013/11/24	Change Address
2014/05/30	Name Change Alberta Corporation
2019/05/08	Change Director / Shareholder
2019/09/25	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2020/02/20	Update BN

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2010/07/22
Other Rules or Provisions	ELECTRONIC	2010/07/22
Letter - Spelling Error	10000606102405992	2011/10/12

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



JH.

This is **Exhibit "B"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

A Commissioner for Oaths in and for the Province of Alberta

JH.



Extrajurisdictional Company Summary

For
GS E&R CANADA INC.

Date and Time of Search: February 23, 2021 08:47 AM Pacific Time
Currency Date: October 15, 2020

ACTIVE

Registration Number in BC: A0080692
Name of Extrajurisdictional Company: GS E&R CANADA INC.
Registration Date and Time: Registered in British Columbia on July 23, 2010 09:10 AM Pacific Time
Last Annual Report Filed: Not Required Receiver: No

FOREIGN JURISDICTION INFORMATION

Identifying Number in Foreign Jurisdiction: 2015491992 Name in Foreign Jurisdiction: GS E&R CANADA INC.
Date of Incorporation, Continuation or Amalgamation in Foreign Jurisdiction: July 22, 2010 Foreign Jurisdiction: ALBERTA

COMPANY NAME INFORMATION

Previous Company Name: STX ENERGY CANADA INC. Date of Company Name Change: May 30, 2014

HEAD OFFICE INFORMATION

Mailing Address: 1000, 400 - 3RD AVENUE SW
CALGARY AB T2P 4H2
CANADA
Delivery Address: 1000, 400 - 3RD AVENUE SW
CALGARY AB T2P 4H2
CANADA

ATTORNEY INFORMATION

JH.

Corporation or Firm Name:

GOWLING WLG PACIFIC CORPORATE SERVICES INC.

Mailing Address:

SUITE 2300, BENTALL 5, 550 BURRARD STREET
VANCOUVER BC V6C 2B5
CANADA

Delivery Address:

SUITE 2300, BENTALL 5, 550 BURRARD STREET
VANCOUVER BC V6C 2B5
CANADA

DIRECTOR INFORMATION

Directors are not recorded for extraprovincial registration types. Go to the incorporating jurisdiction for director information.

JH.

This is **Exhibit "C"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 10 day of March, 2021

A Commissioner for Oaths in and for the Province of Alberta

JH.



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 02 - Calgary
Court No. 25-2719774
Estate No. 25-2719774

In the Matter of the Notice of Intention to make a proposal of:

GS E&R Canada Ltd.

Insolvent Person

MNP LTD / MNP LTÉE

Licensed Insolvency Trustee

Date of the Notice of Intention:

March 11, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 11, 2021, 19:52

E-File/Dépôt Electronique

Official Receiver

Harry Hays Building, 220 - 4th Ave SE, Suite 478, Calgary, Alberta, Canada, T2G4X3, (877)376-9902

Canada

JH.

This is **Exhibit "D"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

A Commissioner for Oaths in and for the Province of Alberta

JH.

Search ID #: Z13622653

Transmitting Party

STIKEMAN ELLIOTT LLP

4300 BANKERS HALL WEST-888 3 ST SW
CALGARY, AB T2P 5C5

Party Code: 50073519
Phone #: 403 266 9000
Reference #: LL/PI

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Business Debtor Search For:

GS E&R CANADA INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



JH.

Search ID #: Z13622653

Business Debtor Search For:

GS E&R CANADA INC.

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Registration Number: 14101033577

Registration Date: 2014-Oct-10

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Oct-10 23:59:59

Exact Match on: Debtor No: 1

Amendments to Registration

19082703155

Renewal

2019-Aug-27

Debtor(s)

Block

Status

Current

1 GS E&R CANADA INC.
2725 12TH ST NE SUITE 201
CALGARY, AB T2E 7J2

Secured Party / Parties

Block

Status

Current

1 THE TORONTO-DOMINION BANK - 80609
340 5 AVE SW
CALGARY, AB T2P 0L3

Collateral: General

Block

Description

Status

1	All present and after acquired accounts, debts, intangibles,	Current
2	chattel paper, choses in action, book debts, contractual	Current
3	rights, insurance claims relating to goods, monies,	Current
4	instruments, payments, bills of exchange, promissory notes,	Current
5	cheques, drafts, or other instruments and proceeds thereof.	Current

JH.

Search ID #: Z13622653

Business Debtor Search For:

GS E&R CANADA INC.

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Registration Number: 21011823470

Registration Date: 2021-Jan-18

Registration Type: SECURITY AGREEMENT

Registration Status: Current

Expiry Date: 2024-Jan-18 23:59:59

Exact Match on:

Debtor

No: 1

Debtor(s)

Block

Status

Current

1 GS E&R CANADA INC.
301- 121 15 AVE SE
CALGARY, AB T2G 1G1

Secured Party / Parties

Block

Status

Current

1 TDF GROUP INC.
17631 103 AVE NW
EDMONTON, AB T5S 1N8
Email: gtayag@drivigforce.ca

Collateral: Serial Number Goods

Block

Serial Number

Year

Make and Model

Category

Status

1 1FD0W5HT2FEB90658 2015 FORD SUPER DUTY F-550 MV - Motor Vehicle Current

Result Complete

JH.

This is **Exhibit "E"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 12 day of March, 2021

A Commissioner for Oaths in and for the Province of Alberta

JH.

LIBERTY MUTUAL INSURANCE COMPANY

Private Advantage Liability Policy



JH.



Policy Number: B2BPAL113736001

Liberty Private Advantage Liability (PAL) Policy Declarations

THIS IS A CLAIMS MADE POLICY. ALL ITEMS IN BOLD ARE DEFINED IN THE POLICY. Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") agrees to cover any loss if the claim is first made against any insured during the policy period and reported to Liberty as soon as practicable. Please read the attached policy terms carefully.

Item I COMPANY:

GS E&R Canada Inc.

Item II ADDRESS:

Unit 301, 121-15 Avenue SE
Calgary, Alberta
T2G 1G1 Canada

Item III POLICY PERIOD:

From 12:01 am April 25, 2019 To 12:01 am April 25, 2022

Instalment Terms

1 st Term	From	12:01 am	April 25, 2019	To	12:01 am	April 25, 2020
2 nd Term	From	12:01 am	April 25, 2020	To	12:01 am	April 25, 2021
3 rd Term	From	12:01 am	April 25, 2021	To	12:01 am	April 25, 2022

All times above at local time at the address shown in Item II

Item IV LIMITS OF LIABILITY:

Any loss payable under this policy for specific claim types is limited to the Limit of Liability for the applicable claim type as set forth below. All loss payable under this policy is further subject to the Total Limits of Liability noted below. If the insured has purchased a single combined aggregate Limit of Liability for all claim types then any loss paid under this policy for a specific claim type will reduce or potentially exhaust the remaining Limit of Liability for other claim types.

Executive / Insured Entity	Each loss and aggregate	\$ 3 000 000
Wrongdoing:	per policy period	
Wrongful Employment Practices:	Each loss and aggregate	\$ 3 000 000
	per policy period	
Fiduciary Wrongdoing:	Each loss and aggregate	N/A

1 3

(02/16)

Liberty Mutual Insurance Company

JH.



Policy Number: B2BPAL113736001

		per policy period	
		Total Limits of Liability:	\$ 3 000 000
Item V	SUBLIMITS OF LIABILITY:		
	Public Relations Costs Coverage for Crises:	Each loss and aggregate per policy period	\$100,000
	Investigation Costs for Derivative Demands:	Each loss and aggregate per policy period	\$250,000
	Criminal or Penal Proceeding against insured entity:	Each loss and aggregate per policy period	\$250,000
	Formal inquiry, investigation or commission against insured entity:	Each loss and aggregate per policy period	\$250,000
Item VI	DEDUCTIBLE(S):		
	Executive / Insured Entity Wrongdoing:		\$ 0
	Wrongful Employment Practices:		\$ 0
	US Wrongful Employment Practices		\$ 25 000
	Fiduciary Wrongdoing:		N/A
Item VII	PENDING OR PRIOR LITIGATION DATE:		
	Executive / Insured Entity Wrongdoing:		April 25, 2019
	Wrongful Employment Practices:		April 25, 2019
	Fiduciary Wrongdoing:		N/A
Item VIII	UNILATERAL DISCOVERY PERCENTAGE:		75 %
	BILATERAL DISCOVERY PERCENTAGE:		100 %
Item IX	ENDORSEMENT(S):		5
Item X	POLICY PERIOD PREMIUM:		\$ 11 880
	ANNUALIZED PREMIUM:		\$ 3 960
	1 st Instalment term		\$ 3 960
	2 nd Instalment term		\$ 3 960
	3 rd Instalment term		\$ 3 960

JH.



Policy Number: B2BPAL113736001

This policy is valid only if, in addition to the facsimile signature of the President of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of the Liberty Mutual Insurance Company.

A handwritten signature in cursive script that reads "J. Gold Armstrong".

Authorized Representative of Liberty Mutual Insurance Company

May 08, 2019

Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.

3	3
---	---

(02/16)

Liberty Mutual Insurance Company

JH.

1	INSURING AGREEMENTS		
1.1A	PERSONAL COVERAGE FOR INSURED INDIVIDUALS (SIDE A COVERAGE)	2.4	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS:
1.1B	COVERAGE FOR ENTITY INDEMNIFICATION (SIDE B COVER)	(a)	Written Employment Contract
1.1C	COVERAGE FOR ENTITY LIABILITY (SIDE C COVER)	(b)	Employee Benefits
1.1D	ADDITIONAL COVERAGE FOR EXECUTIVES (SIDE A COVER)	(c)	Front Pay
1.2	COVERAGE EXTENSIONS	(d)	Termination
(a)	Personal Coverage for Outside Directorships	(e)	Non-Monetary Claim
(b)	Public Relations Costs Coverage for Crises	(f)	Workplace Compliance Costs
(c)	Investigation Costs Coverage for Derivative Demands	(g)	Compensation
		2.5	EXCLUSIONS FOR FIDUCIARY WRONGDOING:
2	EXCLUSIONS	(a)	Liability of Others Assumed Under Contract
2.1	EXCLUSIONS APPLICABLE TO ALL INSURED	(b)	Intentional Breach of Government Benefits Legislation
(a)	Pending and Prior Litigation	(c)	Plan Funding/Deficit
(b)	Prior Claims, Facts, Circumstances	(d)	Employee Benefits
(c)	Dishonesty, Fraud, Criminal Intent	3	DEFINITIONS
(d)	Illegal Benefit	4	CLAIMS CONDITIONS
(e)	Insured Entity vs. Insured	4.1	NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED
(f)	Bodily Injury, Property Damage	4.2	DEFENCE AND SETTLEMENT
(g)	Pollution	4.3	ALLOCATION
(h)	Securities Claim	4.4	PRIORITY OF PAYMENTS
(i)	Employed Lawyers	4.5	OTHER INSURANCE
2.2	EXCLUSIONS FOR INSURED ENTITY ONLY:	4.6	SUBROGATION AND FURTHER ASSURANCES
(a)	Contract	5	GENERAL CONDITIONS
(b)	Trade Practices	5.1	LIMIT(S) OF LIABILITY
(c)	Government Benefits Legislation	5.2	DEDUCTIBLES
(d)	Services Liability	5.3	DISCOVERY PERIOD
(e)	Intellectual Property	5.4	SPOUSAL BENEFIT & ESTATE ENUREMENT
(f)	Product Liability	5.5	EXPOSURE CHANGES - MERGERS, ACQUISITIONS, SALE
(g)	Dividend/Option	5.6	SEVERABILITY
2.3	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING	5.7	TERMINATION AND PREMIUM REFUND
(a)	Liability of Others Assumed Under Contract	5.8	TERRITORY AND CURRENCY
(b)	Labour Relations	5.9	ARBITRATION AND APPLICABLE LAW
(c)	Government Sponsored Benefits	5.10	AUTHORIZATION
(d)	Employee Benefits Administration	5.11	AMENDMENT OR ASSIGNMENT
(e)	Payroll	5.12	INTERPRETATION
(f)	Pay Equity	5.13	NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC
(g)	US Fair Labour Standards Act	5.14	NOTICE OF NON RENEWAL
		5.15	GLOBAL LIBERALIZATION

JH.

1. INSURING AGREEMENTS

The Insuring Agreements are part of this contract of insurance ("the policy"). This policy also includes the Exclusions, Definitions, Claims Conditions and General Conditions found in paragraphs 2 through 5.

Any headings and titles in this policy exist only to make the policy easier to read and do not create or affect coverage. Terms in bold used in this policy are defined in paragraph 3.

Liberty has agreed to issue this policy:

- i) in reliance on the application; and
- ii) on the condition that the insured must pay any premium(s) when due.

Liberty only agrees to cover any loss if the claim is first made against any insured during the policy period and reported to Liberty as soon as practicable.

1.1 A PERSONAL COVERAGE FOR INSURED INDIVIDUALS ("SIDE A COVER")

Liberty agrees to pay on behalf of the insured individuals any loss on the condition that:

- i) the loss results from a claim first made against an insured individual during the policy period;
- ii) the claim is made against them in the capacity in which they are an insured under this policy; and
- iii) the claim is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices;

provided that:

- iv) the insured individual is not indemnified for the loss by an insured entity.

This coverage shall not be rescinded by Liberty in whole or in part for any reason.

1.1 B COVERAGE FOR ENTITY INDEMNIFICATION ("SIDE B COVER")

Liberty agrees to pay on behalf of the insured entity any loss on the condition that:

- i) the loss results from a claim first made against an insured individual during the policy period;
- ii) the claim is made against the insured individual in the capacity in which they are an insured under this policy;
- iii) the claim is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices; and
- iv) the insured entity indemnifies the insured individual;

provided that:

- v) the insured entity is permitted or required by applicable law to indemnify the insured individual.

1.1 C COVERAGE FOR ENTITY LIABILITY ("SIDE C COVER")

Liberty agrees to pay on behalf of the insured entity any loss on the condition that:

- i) the loss results from a claim first made against an insured entity during the policy period; and
- ii) the claim is based on executive wrongdoing, fiduciary wrongdoing, wrongful employment practices or insured entity wrongdoing.

JH.

1.1 D ADDITIONAL COVERAGE FOR EXECUTIVES ("SIDE A COVER"):

Liberty agrees to pay on behalf of any executive an additional Limit of Liability under this policy for any loss on the condition that:

- i) the loss results from a claim made against an executive during the policy period;
- ii) the additional Limit of Liability is equal to the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the declarations or \$1,000,000, whichever is less; and
- iii) the claim is based on executive wrongdoing, wrongful employment practices or fiduciary wrongdoing;

provided that:

- iv) the executive is not indemnified for the loss by an insured entity;
- v) the additional Limit of Liability provided by this paragraph shall be specifically excess of:
 - 1) the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the declarations; and
 - 2) the limit of liability under any other policy that is excess of this policy and such excess insurance must be completely exhausted before Liberty has any obligation to pay any loss under this paragraph.

1.2 COVERAGE EXTENSIONS

(a) PERSONAL COVERAGE FOR OUTSIDE DIRECTORSHIPS

Liberty agrees to pay on behalf of the executives and the insured entity under paragraphs 1.1 A and 1.1 B ("Side A & B Cover") any loss:

- i) in their capacity as members of the board of directors, trustees or equivalent position of any not-for-profit or charitable organization;
- ii) which results from a claim first made against them during the policy period;
- iii) which results from executive wrongdoing; and
- iv) which is excess of any indemnification to which the executive is entitled from the not-for-profit or charitable organization, and also of any insurance coverage available under policies issued to such organization or to its executives;

provided that:

- v) at the time of the executive wrongdoing, which is the subject of the claim, the executive is or was serving on the board of directors, trustees or equivalent position of the not-for-profit or charitable organization at the request of the company.

However there is no coverage for the not-for-profit or charitable organization itself or for any other director, officer or employee of such organization.

(b) PUBLIC RELATIONS COSTS COVERAGE FOR CRISES

Liberty agrees to pay on behalf of the insured entity any public relations costs which it reasonably incurs in engaging public relations consultants to manage a crisis; provided that:

- i) the crisis is first reported to Liberty during the policy period;
- ii) Liberty has no duty to defend any insured against crises;

- iii) Liberty has no duty to indemnify any insured for any judgment, penalty, sentence, order or condemnation of any kind resulting from a crises; and
 - iv) coverage under this paragraph is not considered defence costs and is subject to the sublimit of liability stated in Item V of the declarations and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the declarations.
- (c) **INVESTIGATION COSTS COVERAGE FOR DERIVATIVE DEMANDS**
- Liberty agrees to pay on behalf of the insured entity any investigation costs which it reasonably incurs solely in connection with a derivative demand; provided that:
- i) the derivative demand is first made during the policy period;
 - u) Liberty has no duty to defend any insured against a derivative demand; and
 - iii) coverage under this paragraph is not considered defence costs and is subject to the sublimit of liability stated in Item V of the declarations and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the declarations.

2. EXCLUSIONS

2.1 EXCLUSIONS APPLICABLE TO ALL INSURED

There is no coverage for public relations costs or investigation costs under paragraph 1.2 of this policy; or for loss resulting from a claim:

- (a) **PENDING AND PRIOR LITIGATION:** based on any litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment against or involving any insured:
 - i) which was pending on the date stated in Item VII of the declarations or which happened prior to that date; and
 - ii) which any insured knew about on that date,
 or any subsequent claim or loss based on substantially the same matters as were alleged in such prior or pending litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment;
- (b) **PRIOR CLAIMS, FACTS, CIRCUMSTANCES:** based on a claim or facts or circumstances which could reasonably be expected to give rise to a claim, which has been notified to and accepted by Liberty or any other insurer under any prior policy of which this policy is a renewal or replacement and if such prior policy affords coverage or would afford coverage except for the exhaustion of the applicable Limit of Liability;
- (c) **DISHONESTY, FRAUD, CRIMINAL INTENT:** based on wrongdoing or violation of the law deliberately committed or attempted by an insured with dishonest, fraudulent or criminal purpose or intent if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in an action or proceeding initiated by Liberty to determine coverage under the policy) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (d) **ILLEGAL BENEFIT:** based on any profit, sum of money, advantage or benefit obtained by any insured to which they are not legally entitled if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the policy) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (e) **INSURED ENTITY VS. INSURED:** brought by or on behalf of any insured entity. However, this exclusion does not apply to:
 - i) defence costs for a claim under paragraph 1.1 A;

JH.

- ii) a claim that is a derivative action and, for the purposes of this exception, the assistance, active participation or intervention for which "whistleblower" protection is afforded under section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A or similar provisions of any applicable law or regulation anywhere in the world, shall not alone be considered to be brought with the assistance, active participation, or intervention of any insured individual or insured entity;
 - iii) a claim brought by or on behalf of the company by any receiver, trustee, liquidator, monitor or creditors' committee appointed on behalf of any insured entity by a court or creditor when the company is bankrupt or insolvent;
 - iv) a claim brought or maintained outside the United States of America, Canada or any other common law jurisdiction, including any territories therein; or
 - v) a claim that is against an insured individual who has not acted in that capacity at any time in the past 2 years;
- (f) **BODILY INJURY, PROPERTY DAMAGE:** for bodily injury, sickness, disease or death of any individual, violation or invasion of any right of privacy or private occupancy, or damage or destruction to any property, whether tangible or intangible, including loss of use thereof. However, this exclusion does not apply to:
- i) a claim for emotional distress, humiliation or mental anguish or injury resulting from libel, slander, defamation or disparagement or from a violation of an individual's right of privacy caused by wrongful employment practices; or
 - ii) defence costs on account of any claim which is brought pursuant to section 217.1 of the *Criminal Code*, R.S.C., 1985, c.C-46, Bill 168, the *Ontario Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any insured individual;
- (g) **POLLUTION:** based on pollution. However this exclusion does not apply to:
- i) a claim under paragraph 1.1 A;
 - ii) a retaliatory treatment claim;
 - iii) a derivative action;
 - iv) a claim in connection with any private purchase or sale or any offer to privately purchase or sell, any shares of the insured entity; or
 - v) defence costs in which the insured entity under paragraph 1.1 B ("Side B Cover") reasonably incurs to defend a pollution claim first brought and conducted against an insured individual in Canada;
- (h) **SECURITIES CLAIM:** which is or is based on a securities claim. However, this exclusion does not apply to:
- i) a claim for executive wrongdoing or insured entity wrongdoing which occurred during the company's initial public offering roadshow activities; or
 - ii) a securities claim that is based on an initial public offering or any public debt securities offering which is subject to registration under applicable law anywhere in the world, provided that Liberty is given at least 30 days prior written notice of such offering along with a copy of the relevant prospectus or offering document and the insured agrees to any amendments to the terms and conditions of this policy and pays any additional premium which may be required by Liberty; or
- (i) **EMPLOYED LAWYER:** against any employed lawyer based on the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any person or entity other than the insured

JH.

entity, any employee or executive, in their capacity as such, even if such service is at the request of the insured entity or part of the regular assigned duties of the employed lawyer.

2.2 EXCLUSIONS FOR INSURED ENTITY ONLY

There is no coverage for the insured entity for public relations costs or investigation costs under paragraph 1.2 of this policy; or for loss resulting from a claim:

- (a) **CONTRACT:** based on any breach of or liability arising from any oral or written contract or agreement. However, this exclusion does not apply to defence costs for wrongful employment practices;
- (b) **TRADE PRACTICES:** based on violation of any applicable law anywhere in the world with respect to unfair trade practices, anti-trust, anti-competitive behavior, price fixing, bid-rigging, predatory pricing, restraint of trade or discrimination, including the *Competition Act*, R.S.C., 1985, c.C-34, or similar legislation anywhere in the world;
- (c) **GOVERNMENT BENEFITS LEGISLATION:** based on the violation of or failure to comply with any obligation imposed under legislation relating to government sponsored benefit programs;
- (d) **SERVICES LIABILITY:** based on any services rendered or which should have been rendered to any third party, whether for remuneration or not;
- (e) **INTELLECTUAL PROPERTY:** based on the infringement of any patent, copyright, trademark, trade secret, intellectual property rights and/or misappropriation of ideas, including "product dressing";
- (f) **PRODUCT LIABILITY:** based on the conception, design, manufacture, advertisement, sale, distribution, use or consumption of any product which is defective, hazardous or unfit for its intended purpose, or based on the failure to warn that any product is defective, hazardous or unfit for its intended purpose; or
- (g) **DIVIDEND/ OPTIONS:** for any dividends or distributions of earnings or losses paid or not paid, or for share options or damages in lieu of share options.

2.3 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING

There is no coverage for any insured for loss resulting from a claim based on wrongful employment practices, or a claim based on insured entity wrongdoing which is:

- (a) **LIABILITY OF OTHERS ASSUMED UNDER A CONTRACT:** based on any liability of others that an insured has assumed under any contract, unless the insured would have been legally liable in the absence of such contract;
- (b) **LABOUR RELATIONS:** based on the negotiation or breach of a collective agreement involving the company or a violation of the collective bargaining rights of employees by any insured;
- (c) **GOVERNMENT SPONSORED BENEFITS:** for benefits under a government sponsored benefits program;
- (d) **EMPLOYEE BENEFITS ADMINISTRATION:** based on any actual or alleged wrongful interpretation, application, or administration of an employee benefits program;
- (e) **PAYROLL:** based on the failure or refusal of an insured to:
 - i) collect, retain, return, pay or remit employee taxes, deductions at source, pension or retirement savings contributions or other employee benefit contributions or union dues;
 - ii) pay, retain, reimburse or indemnify any salary, wages, overtime pay, vacation pay, commissions, bonuses, fees, benefits, expenses, or any remuneration of any kind owed to an employee of the company; or

- iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by the company;
- (f) **PAY EQUITY:** alleging a systemic differential in pay between employees who perform different work allegedly of equal or comparable value, including a claim based on a violation of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, s. 11, or similar legislation anywhere in the world, but does not include a claim for an actual or alleged differential in pay for the same work or substantially similar work. However, this exclusion does not apply to a retaliatory treatment claim; or
- (g) **US FAIR LABOUR STANDARDS ACT:** made in the territorial limits and jurisdiction of the United States of America for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the Fair Labor Standards Act (except the Equal Pay Act). However, this exclusion does not apply to a retaliatory treatment claim.

2.4 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS

Other than for defence costs, there is no coverage for any insured for loss resulting from a claim based on wrongful employment practices, or a claim based on insured entity wrongdoing which is:

- (a) **WRITTEN EMPLOYMENT CONTRACT:** for an actual or alleged breach of any written employment contract unless the insured would have been liable for such loss in the absence of such written employment contract;
- (b) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit, other than salary, wages or commission, owed by the company to an employee or owed to an individual who is not an employee who is entitled to receive benefits as a result of the employment relationship, between the company and an employee, including under an employee benefits program;
- (c) **FRONT PAY:** alleging loss which constitutes front pay, future damages or other future economic relief or the equivalent thereof, if the company is ordered to reinstate the claimant as an employee by a judgment or other final adjudication and fails to do so;
- (d) **TERMINATION:** for any amount payable to an employee under any applicable statute or common law following dismissal, including severance, pay in lieu of notice and vacation pay. However, this exclusion does not apply to:
 - i) the portion of a claim amount which exceeds amounts equal to what the insured has reasonably and in good faith offered prior to arbitration or litigation as payment based on the insured's obligations to employees for termination of employment, including the minimum amount payable under the applicable statute;
 - ii) a claim for an actual or alleged differential in pay for the same work or substantially similar work; or
 - iii) a retaliatory treatment claim;
- (e) **NON-MONETARY CLAIM:** seeking only injunctive or other non-monetary relief;
- (f) **WORKPLACE COMPLIANCE COSTS:** alleging loss which constitutes:
 - i) the cost of compliance with or the satisfaction of obligations imposed under the *Employment Equity Act*, S.C. 1995, c.44 or any similar legislation anywhere in the world; or
 - ii) any costs or expenses associated with any accommodation or affirmative action program imposed under the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, the *Americans with Disabilities Act*, the *United States Civil Rights Act of 1964*, or similar legislation anywhere in the world, including without limitation any costs or expenses incurred by an insured to change, modify, alter, or improve a building, real estate, furniture, fixtures, or equipment of any kind to improve accessibility or usability; or

JH.

- (g) **COMPENSATION:** based on any dispute with respect to the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration whatsoever provided for in a contract of employment.

2.5 EXCLUSIONS FOR FIDUCIARY WRONGDOING

There is no coverage for any insured for loss resulting from a claim based on fiduciary wrongdoing which is:

- (a) **LIABILITY OF OTHER ASSUMED UNDER A CONTRACT:** based on the liability of others assumed by an insured under any contract unless an insured would have been legally liable in the absence of such contract;
- (b) **INTENTIONAL BREACH OF GOVERNMENT BENEFITS LEGISLATION:** based on the intentional violation of or failure to comply with any obligation imposed under legislation relating to a government sponsored benefits program;
- (c) **PLAN FUNDING/DEFICIT:** based on the intentional failure to fund a plan in accordance with applicable law or a plan instrument; the failure to collect or pay contributions owed to a plan, unless the failure is because of the negligence of the insured; or the inability of a plan to meet any of its obligations because of the bankruptcy and insolvency of the plan or any deficit position of the plan. However, this exclusion does not apply to defence costs; or
- (d) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit other than salary, wages or commission owed by the company to an employee or an individual other than an employee who is entitled to receive benefits as a result of the employment relationship between the company and an employee, including under an employee benefits program. However, this exclusion does not apply to defence costs.

3. DEFINITIONS

"administrator" means an individual who at any time had, has or will have legal responsibility for the administration or management of a plan, but does not include any consultant or outside service provider.

"application" means collectively all applications, renewal applications or questionnaires which any insured has submitted to Liberty at any time for the purpose of obtaining initial or renewal coverage, and any other documentation or information provided to Liberty by any insured in support of an application.

"bankrupt or insolvent/bankruptcy or insolvency" means a situation where an insured entity is in the financial position as a debtor as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. R-3, and occurs when:

- a) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental body or court or agency or by a creditor to take control of, supervise, manage or liquidate the insured entity;
- b) a reorganization proceeding relating to the insured entity is brought under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance; or
- c) the insured entity becomes a debtor-in-possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance.

"based on" means "based on, arising from or attributable to".

"Canada's Anti-Spam Legislation" means An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c.23.

“claim” means:

- a) any written demand for monetary or non-monetary relief;
- b) a civil action or other proceeding seeking damages or other non-monetary or injunctive relief before the civil courts and for the purposes of wrongful employment practices, includes an action or proceeding before any federal or provincial tribunal;
- c) a formal request for the extradition of an executive, but only where insurable by law;
- d) alternative dispute resolution (“ADR”), arbitration or mediation if the insured is obligated to participate in such ADR, arbitration or mediation;
- e) any formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- f) any criminal or penal proceeding against an insured commenced by the laying of an information or a return of an indictment; provided however, any coverage provided to the insured entity under this paragraph is subject to the sublimit of liability stated in Item V of the declarations; or
- g) a formal inquiry, investigation or commission conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions and competition, initiated in writing against an insured and which may reasonably be expected to result in findings relevant to the insured’s potential civil, penal or criminal liability for wrongdoing; provided however, any coverage provided to the insured entity under this paragraph is subject to the sublimit of liability stated in Item V of the declarations.

However, claim does not include any professional disciplinary investigation or proceeding, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining.

“company” means the company or other entity stated in Item I of the declarations and any subsidiary.

“crisis” means one of the following events:

- a) an employee layoff or restructuring involving 20% or more of total staff;
- b) an unanticipated death, incapacity or resignation of the president, chief executive officer or chief financial officer; or
- c) bankruptcy or insolvency.

“declarations” means the most current applicable Policy Declarations.

“defence costs” means that part of the loss consisting of reasonable and necessary costs incurred by an insured with Liberty’s consent, such consent not to be unreasonably withheld, in investigating, defending, appealing or monitoring claims, but this does not include expenses incurred by, or, any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a claim.

“derivative action” means an action or intervention in an action against an insured individual brought by a complainant in the name of and on behalf of a company within the meaning of and in accordance with the terms of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 or similar law or regulation anywhere in the world and that is brought without the assistance, active participation, or intervention of any insured.

“derivative demand” means any written notice, by one or more complainants, to the board of directors of an insured entity, of their intention to bring a derivative action against an insured individual for wrongdoing

“discovery period” means the period of time described in paragraph 5.3, but only if the requirements set out in that paragraph are met.

“employed lawyer” means a licensed lawyer or attorney, who is an employee of the insured entity, while performing legal services for the benefit of or on behalf of the insured entity.

“employee” means:

- a) any individual employed by the company at any time whether in the past, present or future, including any part-time, seasonal or temporary employee(s) and whom the company compensates by salary, wages and/or commission and has the right to govern and direct in the performance of such services; or
- b) any independent contractor.

"employee benefits" means any payment, consideration or benefit, other than salary, wages, or commission, owed by the company to an employee or a beneficiary as a result of the employment relationship, including benefits payable to an employee or a beneficiary under an employee benefits program.

"employee benefits program" means:

- a) any employee benefits plan, including but not limited to any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements, all as defined in the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.);
- b) any plan, including any welfare benefit plan, as defined in the United States Employee Retirement Income Security Act of 1974; or
- c) any similar program, plan or arrangement as described in a) and b) above, anywhere in the world.

"executive" means any past, present or future:

- a) duly elected, appointed, "de facto" or "deemed" director, officer, trustee, advisory board member or board observer of the board, or equivalent governing body;
- b) senior management or equivalent positions for which the company has provided an indemnification agreement or has amended its applicable by-laws to provide indemnification no less broad than that provided to its directors, officers or trustees;
- c) management or executive committee member of any partnership, limited partnership or joint venture which is a subsidiary;
- d) member of a management board or equivalent position of a limited liability company which is a subsidiary;
- e) individuals who hold titles, positions or capabilities equivalent to the positions of an executive as defined in items a) through d) above for a company incorporated within Canada or the United States of America, operating in a foreign jurisdiction; or
- f) employed lawyer;

of the company or under paragraph 1.2 (a) of a not-for-profit or charitable organization.

"executive wrongdoing" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by any executive or employee, but only in their capacity as an executive or employee, or under paragraph 1.2 (a), of a not-for-profit or charitable organization, including any matter claimed against any executive solely due to their status as an executive.

"fiduciary" means any individual who at any time, whether past, present or future, has or exercises discretionary authority or control over the management of any plan or its assets, and who therefore is subject to fiduciary obligations under applicable law. However, fiduciary does not include any consultant or outside service provider.

"fiduciary wrongdoing" means any actual, alleged, attempted or allegedly attempted:

- a) breach of or failure on the part of a fiduciary to meet their fiduciary obligations to a plan or the beneficiaries of a plan;
- b) fault, error, omission, misstatement or breach of duty on the part of any insured in the interpretation, application and administration of a plan; or

- c) matter claimed against any insured solely with respect to a plan and solely by reason of their status as a fiduciary of a plan.

“foreign jurisdiction” means any jurisdiction other than Canada or the United States of America.

“foreign policy” means any standard executive liability policy (including any mandatory endorsements) approved by Liberty Mutual Insurance Company to be sold within a foreign jurisdiction that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then “foreign policy” means the standard policy most recently registered in the local language of the foreign jurisdiction or, if no such policy has been registered, then the policy most recently registered in that foreign jurisdiction. The term foreign policy shall not include any professional liability coverage.

“government sponsored benefits program” means any benefits or compensation program created by statute whereby funds are held or managed by a governmental body, including workmen’s compensation, unemployment insurance, pension and social security programs.

“independent contractor” means any individual who is contracted in writing to perform services for the company in the conduct or operation of the company’s business, provided that such individual shall be deemed an employee only to the extent that he or she renders services for the benefit of the company’s business.

“initial public offering” means any initial offering of voting securities of the company to the public, which is subject to registration under applicable law anywhere in the world.

“insured” means any insured individual or insured entity.

“insured individual” means an executive, a fiduciary, an administrator, or an employee .

“insured entity” means the company or a plan.

“insured entity wrongdoing” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by the insured entity.

“investigation costs” means any reasonable costs, charges, fees (including but not limited to lawyers’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries or fees of the insured individual(s) or employee(s) or expenses incurred by, or, any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a derivative demand) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the insured entity, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any derivative demand.

“loss” means the total amount which the insured is legally obligated to pay for all claims based on wrongdoing which is covered under this policy, including:

- a) defence costs;
- b) damages, judgments, settlement amounts, statutory liabilities, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments.

Loss does not include:

- i) any judgment, settlement, sentence, order or condemnation: (i) against an insured entity, resulting from a formal administrative or regulatory proceeding, formal investigative order, summons, or criminal or penal proceeding; or (ii) against an insured entity resulting from a formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute;
- ii) any unpaid taxes, duties or levies of the company or an independent contractor which are not statutory liabilities;
- iii) costs associated with the monitoring, clean up, removal, containment, treatment, detoxification or neutralization of pollutants;
- iv) punitive or exemplary damages, or the multiplied portion of any multiplied damage award, except where insurable by law; or
- v) fines and penalties; however, where insurable by law, the following are considered loss:

JH.

- (a) civil penalties for which an executive is found liable as a result of violations of the United States Foreign Corrupt Practices Act or similar legislation anywhere in the world; or
- (b) administrative fines and penalties for which an executive is found liable as a result of violations of Canada's Anti-Spam Legislation.

With respect to the insurability of iv) and v) above, of all the jurisdictions applicable to a claim, the jurisdiction with the most favourable laws to the insured entity concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties.

"managerial control" means the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement or similar documents of an entity to elect, appoint or designate a majority of the directors of a corporation, trustees of an income fund or trust, management committee members of a joint venture, management board members of a limited liability company, general partner of a limited partnership or any other equivalent body.

"plan" means

- a) any pension plan of the company which was on or prior to the inception date of this policy sponsored solely by the company or sponsored jointly by the company and a labour organization solely for the benefit of the employees of the company, including any pension plan merged into or consolidated with such pension plan prior to the inception date of this policy;
- b) any employee benefits program which was on or prior to the inception date of this policy sponsored solely by the company or sponsored jointly by the company and a labour organization, solely for the benefit of the employees of the company; or
- c) any employee benefits program which during the policy period becomes sponsored solely by the company, or jointly by the company and a labour organization, solely for the benefit of the employees of the company, but only on the condition that Liberty agrees by endorsement to cover it within 90 days of its becoming sponsored.

However, plan does not include any multi-employer plan as defined under applicable law.

"policy" means:

- a) the application;
- b) the declarations;
- c) policy paragraphs 1 through 5; and
- d) any endorsements, whether issued at inception or during the policy period.

"policy period" means the period from the date stated in Item III of the declarations to the date of termination of this policy pursuant to paragraph 5.7. The discovery period is deemed to be part of the most recent policy period.

"pollution" means:

- a) the actual, alleged or threatened seepage, discharge, dispersal, release or escape of pollutants in contravention of; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants under:

the *Canadian Environmental Protection Act, 1999* (S.C. 1999, c.33) or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but limited to a claim for financial loss to the insured entity, its security holders or its creditors based on the matters described in a. and b. above. Pollutants include, without limitation, solids, liquids, gasses, thermal or electromagnetic irritants or contaminants or emanations, nuclear radiation or radioactive substances, smoke, vapour, odour, soot, oil or oil products, asbestos or asbestos products, silica, mould, noise, fumes, acids, alkalis, chemicals,

or waste materials including without limitation waste water or infectious or medical waste, whether or not they are to be recycled, reconditioned, or reclaimed.

"pollution claim" means a claim based on pollution.

"public relations costs" means any reasonable costs, charges, fees and expenses (other than expenses incurred by, or any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a crisis) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the insured entity in engaging the services of public relations consultants to advise the insured entity with respect to managing the public communication of and limiting disruption to the insured entity's business following a crisis.

"retaliatory treatment claim" means a claim based on retaliatory treatment of the claimant by any insured resulting from the exercise by the claimant of any right under any applicable law.

"securities claim" means any claim (including a claim brought by any securities regulator or other government body) based on:

- a) a public offering of securities of the company, whether on the open market or arising from an initial public offering; or
- b) a violation of any statute governing securities including the failure to register securities issued in connection with a private placement which should have been registered with the appropriate securities regulator or other government body.

"spouse" means either of two persons, regardless of their gender, who i) are married to each other; ii) have cohabited continuously in a conjugal relationship outside marriage for a period of at least one year; or iii) have cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

"statutory liabilities" means unpaid liabilities of the company, including unpaid tax liabilities and unpaid wages and deductions at source, for which any executive becomes personally liable in their capacity as an executive under any applicable statute if the company is bankrupt or insolvent.

"subsidiary" means any for-profit entity of which the company either directly or through one or more of its subsidiaries:

- a) owns or owned more than 50% of any issued and outstanding securities or other interest that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or
- b) holds or held managerial control.

Notwithstanding the above, coverage provided under this policy with respect to a claim made against any insured entity or any insured individual shall only apply to wrongdoing committed or allegedly committed after the effective date that the insured entity became a subsidiary and prior to the effective date that the insured entity ceased to be a subsidiary.

"wrongdoing" means any executive wrongdoing, wrongful employment practices, fiduciary wrongdoing or insured entity wrongdoing.

"wrongful employment practices" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty on the part of the company or by an insured individual acting in the performance of their duties for the company, in connection with one or more of the following:

- a) dismissal, including constructive dismissal, of an employee in breach of any employment relationship;
- b) sexual or other harassment of an employee at or related directly to:
 - i) the company's workplace, and/or
 - ii) the employee's employment;

JH

- c) unlawful employment discrimination or violation of an employee's or prospective employee's employment-related civil rights based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status or characteristic protected under applicable law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
- d) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an employee or prospective employee with respect to the company;
- e) failure to create, apply or enforce employment-related policies or procedures at or with respect to the company's workplace;
- f) retaliatory treatment of an employee by the company resulting from the exercise by the claimant of any right under any applicable law; or
- g) unlawful discrimination, sexual harassment or violation of a natural person's civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an employee or prospective employee with the company.

4. CLAIMS CONDITIONS

4.1 NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED

- (a) It is a condition precedent to the insured's rights under this policy that after the chairperson, president, chief executive officer, chief financial officer or general counsel of any company becomes aware of any claim, the insured must give prompt written notice of such claim to Liberty as soon as practicable.
- (b) If the insured fails to notify Liberty of a claim promptly and Liberty substantially suffers prejudice as a result of that failure, Liberty may deny coverage in respect of that claim under the policy.
- (c) If during the policy period, any insured becomes aware of any facts, circumstances (including but not limited to a request to toll a statute of limitations) or wrongdoing that could reasonably give rise to a claim and if such facts, circumstances or wrongdoing are reported to Liberty during the policy period in writing with details as to the nature and date of such circumstances or wrongdoing, the identity of any potential claimant, the identity of any insured persons(s) involved in such circumstances or wrongdoing, and the manner in which the insured first became aware of such circumstances or wrongdoing, any claim subsequently arising from those facts or circumstances or wrongdoing will be deemed to be a claim made during the policy period, as long as the insured also gives notice of the claim as required by paragraph 4.1(a).
- (d) Notice of any claim, circumstances or wrongdoing as required by paragraph 4.1(a) and (c) shall be forwarded to: Liberty Mutual Insurance Company, 181 Bay St., Suite 900, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to: claims.liu@libertyiu.com
- (e) All other notices required under any other paragraphs of this policy will be to the same address, but to the attention of: Specialty Casualty Underwriting Department.
- (f) Notice from Liberty to the insured will be given to the company at the address stated in Item II of the declarations.
- (g) All notices under this policy shall be sent in writing by mail, prepaid expense courier, or email and shall be effective upon receipt thereof by the addressee.
- (h) The insured agrees:
 - i) to cooperate fully and promptly with Liberty and its representatives when a claim is made;

- ii) to do nothing that may prejudice Liberty's position or its rights of recovery; and
- iii) that the insured's obligations under paragraphs 4.1 and 4.6 will survive any termination of this policy.

The failure of an insured person(s) to provide information and cooperate with Liberty under paragraph 4.1 (h) shall not impact the rights of any other insured person(s) under this policy in any manner.

4.2 DEFENCE AND SETTLEMENT

- (a) Liberty has the right and duty to defend the insured including, without limitation, the right to retain and instruct counsel against any claim for which coverage is available under the policy.
- (b) Liberty may, with the insured's consent, settle any claim for which coverage is available in whole or in part under this policy.
- (c) Liberty's duty to defend the insured ends as soon as the applicable Limits of Liability stated in Items IV of the declarations are exhausted. If the applicable Limits of Liability are exhausted prior to the conclusion of any claim, Liberty can withdraw from the defence of such claim, and thereafter Liberty will have no further obligations whatsoever with respect to such claim or under the policy.
- (d) Defence costs incurred by Liberty or by the insured with Liberty's consent are part of and not in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs reduces and may exhaust the Limits of Liability.

4.3 ALLOCATION

- (a) If a claim made against an insured individual involves a loss that is only partially covered by this policy because such claim includes both covered and uncovered matters, the insured and Liberty agree that:
 - i) with respect to defence costs, in order to create certainty in determining a fair and equitable allocation, 100% of all defence costs shall be allocated to covered loss and advanced by Liberty on a current basis and that this allocation shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other loss;
 - ii) with respect to loss other than defence costs, the insured and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered loss and uncovered loss based on relative legal liability; however, no uncovered loss will be allocated to insured individuals if the company is bankrupt or insolvent; and
 - iii) if the insured and Liberty cannot agree on allocation with respect to loss other than defence costs then Liberty shall, at the insured's request, submit the allocation dispute to arbitration pursuant to paragraph 5.9.
- (b) If a claim is made against an insured entity and involves a loss that is only partly covered by this policy because such claim includes both covered and uncovered matters or covered and uncovered parties, the insured and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered loss and uncovered loss based on relative legal liability; however, if a claim solely for wrongful employment practices or fiduciary wrongdoing is made against an insured entity, the allocation described in paragraph 4.3 (a)(i) shall apply.

4.4 PRIORITY OF PAYMENTS

If losses arising from claim(s) which are covered under this policy, taken in the aggregate, exceed the available or remaining Limits of Liability, then, at the written request of the chairperson, the president, chief executive officer or chief financial officer of the company, Liberty will make payments according to the following priorities:

- (a) first, pay under paragraph 1.1 A the loss for which any insured individual is not indemnified by an insured entity;

- (b) second, pay any remainder of the Limits of Liability under paragraph 1.1 B for loss for which an insured entity has indemnified an insured individual; and
- (c) third, pay any remainder of the Limits of Liability under paragraph 1.1 C for loss which an insured entity is legally obliged to pay.

In the event Liberty withholds payment pursuant to (b) above, then Liberty shall, at such time and in such manner set forth in written instructions of the chairperson, the president, chief executive officer or chief financial officer of the company, remit such payment to the company or directly to or on behalf of the insured individuals.

The bankruptcy or insolvency of any insured does not change Liberty's obligations to prioritize payment of covered loss pursuant to this paragraph.

4.5 OTHER INSURANCE

If a loss or part of a loss which would, but for this paragraph, be covered by this policy, is covered under any other valid and collectible insurance policy, then this policy is excess to the other insurance policy and covers the loss only to that extent, unless the other insurance policy expressly refers to this policy and is specifically underwritten as excess to the limits of this policy.

4.6 SUBROGATION AND FURTHER ASSURANCES

Liberty is subrogated to the extent of any payment under this policy to all the insureds' rights of recovery against anyone, and is entitled to the insureds' cooperation and to sue for recovery in the insured's name. However, Liberty shall not subrogate against an insured individual except as it relates to paragraph 2.1 (c) and (d).

5. GENERAL CONDITIONS

5.1 LIMIT(S) OF LIABILITY

- (a) Liberty's obligation to pay any one loss and all loss under this policy during the policy period, including defence costs, is limited to the sum of the Total Limits of Liability stated in Item IV of the declarations and the additional Limit of Liability provided in paragraph 1.1D. The sublimits of liability stated in Item V of the declarations are part of and not in addition to the Total Limits of Liability stated in Item IV of the declarations.
- (b) Any one loss resulting from one of the claim types stated in Item IV of the declarations is subject to the Limits of Liability specified for that claim type stated in Item IV of the declarations.
- (c) If a loss results from more than one claim type stated in Item IV of the declarations the claim type limits specified in Item IV apply separately to each part of the loss.
- (d) All claims arising from the same wrongdoing or wrongdoing which is causally connected or which has as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of casually connected facts, circumstances, situations, events, transactions or causes, shall be deemed one claim and shall be deemed first made on the date the earliest of such claims is first made, regardless of whether such date is before or during the policy period.

5.2 DEDUCTIBLES

- (a) No deductible applies to loss resulting from:
 - i) a claim covered under paragraph 1.1 A;
 - ii) defence costs resulting from a claim covered under paragraph 1.1 B or 1.1 C occurring in Canada; however, a deductible will apply to any loss resulting from a claim based on wrongful employment practices covered under paragraph 1.1 B or 1.1 C; and
 - iii) investigation costs or public relations costs covered under 1.2 b) and c).

- (b) With respect to any other loss covered under this policy, Liberty's obligation is only to pay the amount which is excess of the applicable deductible stated in Item VI of the declarations. The insured entity must bear the deductible uninsured and at its own risk.
- (c) If a loss results from more than one claim type stated in Item IV of the declarations, the deductibles applicable to each claim type stated in in Item VI of the declarations apply separately to each part of the loss. However, the largest deductible is the maximum deductible applicable for all loss arising from such claim.
- (d) The insured entities must indemnify the insured individuals to the full extent permitted or required by applicable law and with respect to any advisory board member or board observer, the insured entities will be expected to indemnify such individuals in the same manner and Liberty will apply the deductible in the same manner as outlined in paragraph 5.2 (b) to any advisory board member or board observer. However, if the insured entities are financially unable to pay the deductible under this policy due to bankruptcy or insolvency or any insured entity refuses to indemnify the insured individuals, Liberty will advance the deductible to the insured individuals on behalf of the insured entities, with a full right of recovery against the insured entities, no later than 60 days after Liberty has received in writing details of such refusal or failure.

5.3 DISCOVERY PERIOD

- (a) If Liberty terminates or refuses to renew this policy other than for non-payment of premium or if the insured terminates or fails to renew this policy, coverage under this policy is automatically extended for 60 days following the effective date of termination, but only for any wrongdoing which happens before the effective date of termination of this policy and only if there is no replacement policy obtained providing coverage anytime during this 60 day period.
- (b) If Liberty terminates or refuses to renew this policy, other than for non-payment of premium, the insured can extend coverage under the policy for 12 months following the effective date of termination by written notice to Liberty and by paying an additional premium equal to the Unilateral Discovery Percentage amount stated in Item VIII of the declarations of the annual premium stated in Item X of the declarations, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to wrongdoing that occurred before the effective date of termination. If the insured chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(b).

- (c) If the insured terminates or refuses to renew this policy, the insured can extend coverage under the policy for 12 months following the effective date of termination by giving written notice to Liberty, and paying an additional premium equal to the Bilateral Discovery Percentage amount stated in Item VIII of the declarations of the annual premium stated in Item X of the declarations, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to wrongdoing that happened before the effective date of termination. If the insured chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(c).

- (d) The discovery period is part of the last policy period and does not increase the limits under paragraph 5.1.
- (e) An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to renewal is not a "refusal to renew" by Liberty under paragraphs 5.3 (a) or (b).

5.4 SPOUSAL BENEFIT & ESTATE ENUREMENT

- (a) If a claim against the insured for wrongdoing includes a claim against an executive's spouse solely because he/she is the executive's spouse, or to recover the spouse's assets, anything which the spouse is legally obliged to pay as a result of the claim (including defence costs) is a loss attributed to the

JH.



insured under this policy. However, there is no coverage for the spouse if the claim alleges a wrongful act on the part of the spouse.

- (b) This policy is binding upon and applies to the benefit of the insured's estate, heirs, executors, administrators and legal representatives, but only in respect of wrongdoing on the insured's part.

5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

- (a) If during the policy period the company merges or amalgamates with another entity, the company must give prompt notice of the merger or amalgamation to Liberty.
- (b) If during the policy period the company acquires or creates a new entity which becomes its subsidiary, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the company on a consolidated basis, coverage under this policy extends to the new entity and to any plan connected with the new entity but only with respect to any wrongdoing occurring after such acquisition or creation.
- (c) If during the policy period the company acquires or creates a new entity which becomes its subsidiary and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the company on a consolidated basis, then:
- i) coverage under this policy extends to the new entity and to any plan connected with the new entity for 90 days but only with respect to any wrongdoing occurring after such acquisition or creation;
 - ii) the coverage for the new entity and for any plan connected with the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the company has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the company has paid any additional premium required by Liberty.
- (d) If the company or any subsidiary is sold or dissolved during the policy period this policy will continue to apply to claims involving:

the sold or dissolved entity and/or its executives, and any plan sponsored by or connected with the sold or dissolved entity, and any fiduciary or administrator of that plan until the termination date of this policy or any renewal policy, but only for wrongdoing occurring before the sale or dissolution. Sale of the company means: a change in the control of the company within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a subsidiary means: a sale of more than 50% of any issued and outstanding securities or other interest of the subsidiary that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of managerial control of the subsidiary.

5.6 SEVERABILITY

For the purpose of assessing:

- (a) whether or not there is a material misrepresentation or non-disclosure in the application; or
- (b) whether or not exclusions or limitations of coverage apply,
- no knowledge or statement by any insured individual will be imputed to any other insured individual. However, any knowledge or statement by the chairperson, president, chief executive officer or chief financial officer will be imputed to the company or plan.

5.7 TERMINATION AND PREMIUM REFUND

- (a) This policy terminates at the earliest of the following times:

- i) on the date stated in Item III (B) of the declarations;
 - ii) the later of the date of receipt or deemed receipt by Liberty of written notice of termination from the company or the date specified in such notice;
 - iii) for non-payment of premium, fifteen (15) days after receipt or deemed receipt by the company of Liberty's written notice of termination;
 - iv) on any other date mutually agreed upon by the company and Liberty.
- (b) If this policy is terminated under paragraph 5.7 (a) (ii) or (iii), Liberty will refund any unearned premium on a pro rata basis.

5.8 TERRITORY AND CURRENCY

- (a) Coverage under this policy applies to wrongdoing which takes place and to claims anywhere in the world.
- (b) Unless the declarations expressly state otherwise, all dollar amounts in this policy refer to Canadian currency and all loss is payable in Canadian currency. If any Items stated in the declarations stipulate a currency other than Canadian dollars, all monetary amounts in the policy shall refer to such stipulated currency and all loss is payable in that stipulated currency.

5.9 ARBITRATION AND APPLICABLE LAW

- (a) If requested by either party, any dispute about coverage under this policy, including any dispute as to allocation, will be submitted to mediation and/or arbitration. Except as regards the choice of arbitrator or arbitration panel, the mediation and/or arbitration will be governed by the law of the province or territory of the address of the company stated in Item II of the declarations, unless the company and Liberty expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the company, one arbitrator selected by Liberty and one arbitrator selected by the first two arbitrators. None of the arbitrators can be former or present insureds or shareholders, partners or principals of or otherwise affiliated in business with any insureds or Liberty.
- (b) This policy is governed by the law of the jurisdiction in which it was issued without giving effect to the choice of law rules of that jurisdiction.

5.10 AUTHORIZATION

The company stated in Item I of the declarations is appointed as the agent of all insureds for all purposes under this policy, and by accepting this policy the company represents and warrants to Liberty that it is authorized to act on behalf of all insureds. The company is not an agent of Liberty.

5.11 AMENDMENT OR ASSIGNMENT

No amendment or change to, or assignment in whole or in part of an interest in, this policy is effective unless made in writing and signed by an authorized representative of Liberty.

5.12 INTERPRETATION

In this policy:

- (a) words and expressions shall be read with such changes in gender or number as the context shall require.
- (b) the headings and titles to the table of contents and paragraphs are meant to make it easier to read, and do not create or affect coverage.
- (c) a reference to an act, statute or any applicable law is deemed to extend to and include any amendments and successor acts, statutes or applicable laws and any rules, regulations, orders or directives issued thereunder.

5.13 NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.

While this policy is in effect, the company first named in Item I of the declarations is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The company first named in Item I of the declarations shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this policy. The amount of such company's participation is determined by the decision of Liberty Mutual Holding Company Board of Directors in compliance with any laws that apply.

5.14 NOTICE OF NON RENEWAL

Liberty has no obligation to renew this policy. However, if Liberty refuses to renew this policy, Liberty shall provide written notice of non-renewal to the company no less than 90 days prior to the effective date of termination of this policy. This notice applies only if the company submits a completed application in advance of the prescribed notice date. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

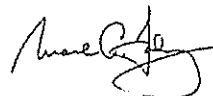
5.15 GLOBAL LIBERALIZATION

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

In regard to claim(s) brought and maintained solely in a foreign jurisdiction against an insured entity formed and operating in such foreign jurisdiction or insured individual thereof for any wrongdoing committed in such foreign jurisdiction, Liberty shall apply to such claim(s) those terms and conditions (and related provisions) of the foreign policy registered with the appropriate regulatory body in such foreign jurisdiction that are more favourable to such insured than the terms and conditions of this policy. However, this paragraph shall apply only to Paragraphs 1, 2, 3, 4.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10 and 5.11 of this policy and the comparable provisions of the foreign policy. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of this policy.



President



Secretary

Endorsement No. 1

FIDUCIARY WRONGDOING EXCLUSION

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Paragraphs 1.1A, 1.1B, 1.1C, 1.1D, 4.3(b) are amended by deleting the words, **fiduciary wrongdoing**, wherever such words are used.
2. Paragraph 2.1, **EXCLUSIONS APPLICABLE TO ALL INSUREDS**, is amended by adding the following:

FIDUCIARY WRONGDOING: based on any fiduciary wrongdoing.
3. Paragraph 2.5, **EXCLUSIONS FOR FIDUCIARY WRONGDOING**, is deleted in its entirety.
4. Paragraph 3 **DEFINITIONS** “insured individual,” “insured entity” and “wrongdoing” are deleted and replaced with the following:

“insured individual” means an executive, an administrator, an employee, an advisory board member or board observer of the insured entity.

“insured entity” means the company.

“wrongdoing” means any executive wrongdoing, wrongful employment practices or insured entity wrongdoing.
5. Paragraph 5.5, **EXPOSURE CHANGES- MERGERS, ACQUISITIONS, SALE** is deleted and replaced with the following:

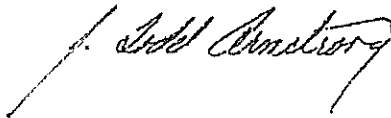
5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

 - (a) If during the policy period the company merges or amalgamates with another entity, the company must give prompt notice of the merger or amalgamation to Liberty.
 - (b) If during the policy period the company acquires or creates a new entity which becomes its subsidiary, and the new entity’s assets at the date of acquisition or creation are less than 35% of the assets of the company on a consolidated basis, coverage under this policy extends to the new entity, but only with respect to any wrongdoing occurring after such acquisition or creation.
 - (c) If during the policy period the company acquires or creates a new entity which becomes its subsidiary and the new entity’s assets at the date of acquisition or creation are more than 35% of the assets of the company on a consolidated basis, then:

- i) coverage under this policy extends to the new entity for 90 days but only with respect to any wrongdoing occurring after such acquisition or creation;
 - ii) the coverage for the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the company has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the company has paid any additional premium required by Liberty.
 - (d) If the company or any subsidiary is sold or dissolved during the policy period this policy will continue to apply to claims involving:

the sold or dissolved entity and/or its executives until the termination date of this policy or any renewal policy, but only for wrongdoing occurring before the sale or dissolution. Sale of the company means a change in the control of the company within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a subsidiary means: a sale of more than 50% of any issued and outstanding securities or other interest of the subsidiary that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of managerial control of the subsidiary.
6. Paragraph 5.6 SEVERABILITY is amended by deleting the words "or plan."

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date



Endorsement No. 2

PRIOR KNOWN WRONGFUL ACTS EXCLUSION
(Application/warranties not received)

Effective Date: April 25, 2019
 Policy Number: B2BPAL113736001
 Issued To: GS E&R Canada Inc.
 By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 2.1, EXCLUSIONS APPLICABLE TO ALL INSUREDS, is amended by adding the following:

PRIOR KNOWN WRONGFUL ACTS: based on any wrongdoing by any insured individual or insured entity that prior to April 25, 2019 any insured individual or insured entity was aware could reasonably give rise to a claim.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date



JH.

Endorsement No. 3

MULTI-YEAR POLICY ENDORSEMENT

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Wherever the term "policy period" appears in this policy (other than Item III and Item X of the declarations, and "policy period" in Paragraph 3. DEFINITIONS) it shall be replaced with the term "policy instalment term".
2. Paragraph 3, DEFINITIONS, "policy period" is deleted in its entirety and replaced with the following:

"policy period" means the period from the date specified in Item III of the declarations to the date of termination of this policy under paragraph 5.7 and shall include up to three (3) policy instalment terms as specified in Item III of the declarations under the heading entitled, Instalment Terms.

3. Paragraph 3, DEFINITIONS, is amended by adding the following:
"policy instalment term" means the applicable period specified in Item III of the declarations.
The discovery period is deemed to be part of the most recent policy instalment term.
4. Notwithstanding paragraph 5.7 of this policy, it is further understood and agreed that in the event Liberty is notified of a claim, pursuant to paragraph 4.1 of this policy, before the end of any policy instalment term specified in Item III of the declarations, Liberty shall have the right to terminate coverage under this policy for any subsequent policy instalment term specified in Item III of the declarations by giving written notice of termination to the company no less than 60 days prior to such termination. If such 60 day notice of termination period extends past the expiry of the applicable policy instalment term in which the claim was made, Liberty shall extend such policy instalment term to satisfy the 60 day notice of termination requirement but without increasing or reinstating the applicable Limits of Liability.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



J. Todd Armstrong

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date

2 2

Liberty Mutual Insurance Company

PAL51a (04/18)

JH

Endorsement No. 4

DEFENCE COSTS IN ADDITION TO THE LIMIT (CANADA ONLY AND WITH REMOVAL OF INSURED CONSENT TO SETTLEMENT)

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Solely for a claim occurring within Canada, the policy is amended as follows:

1. Paragraph 4.2(b) is deleted and replaced with the following:

(b) Liberty may, at its sole discretion, settle any claim for which coverage is available in whole or in part under this policy.

2. Paragraph 4.2 (d) is deleted and replaced with the following:

(d) Defence costs incurred by Liberty or by the insured with Liberty's consent are in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs does not reduce the applicable Limits of Liability stated in Item IV of the declarations. However, defence costs incurred under paragraph 2.1(g)v) are part of and not in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs reduces and may exhaust the Limits of Liability.

3. Paragraph 5.1 (a) is deleted in its entirety and replaced with the following:

(a) Liberty's obligation to pay any one loss and all loss under this policy during the policy period, not including defence costs, is limited to the Total Limits of Liability stated in Item IV of the declarations and the additional Limits of Liability provided in paragraph 1.1D and 4.2(d). The Sub-Limits of Liability stated in Item V of the declarations are part of and not in addition to the Total Limits of Liability stated in Item IV of the declarations.



PAL.60b (04/16)

JH.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

A handwritten signature in cursive script that reads "J. Todd Armstrong".

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date

2	2
---	---

PAL.60b (04/16)

JH.

Liberty Mutual Insurance Company

Endorsement No. 5

AUTOMATIC DISCOVERY PERIOD FOR RETIRED EXECUTIVES

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

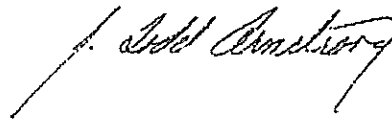
IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 5.3(a) of this policy is amended to include the following:

If Liberty refuses to renew or the insured terminates or refuses to renew this policy, then with respect to executive(s) who are retired, whose employment has been terminated, and/or who have not been re-elected as a director of the insured entity prior to the date of termination of this policy, there shall be an automatic extension of the coverage granted by this policy for a period of 36 months following the effective date of termination of this policy, but only for any wrongdoing occurring prior to the effective date of such executive(s) retirement, termination of employment, and/or failure to be re-elected, but only if there is no replacement policy obtained providing coverage for such retired, terminated or non-re-elected insured person(s) anytime during such 36 month period, in which case the automatic extension provided for in this paragraph shall terminate at the inception date of such replacement policy.

The automatic extension provided for in the above paragraph shall apply only to Insuring Agreement 1.1A.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date

1	1
---	---

PAL.77 (01/18)

COURT FILE
NUMBER

25-2719774

Clerk's Stamp:

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA, IN BANKRUPTCY

JUDICIAL CENTRE

CALGARY

MATTER

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, OF GS E&R CANADA INC.

APPLICANT

GS E&R CANADA INC.

DOCUMENT

AFFIDAVIT OF JUNGHO PARK

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP
4300 Bankers Hall West
888 – 3rd Street S.W.
T2P 5C5

Solicitor: Karen Fellowes, Q.C.
Phone Number: (403) 724-9469
Email: kfellowes@stikeman.com
Fax Number: (403) 266-9034
File No.:

Counsel for the Applicant, GS E&R Canada Inc.

AFFIDAVIT OF JUNGHO PARK

Sworn on March 18, 2021

I, JUNGHO PARK, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am the Managing Director of GS E&R Canada Inc. ("E&R CANADA") and I am authorized to swear this affidavit on its behalf. I have personal knowledge of the matters and facts herein deposed, except where based on information and belief, in which case I believe the same to be true.

I. BACKGROUND

2. E&R CANADA is a privately-owned company registered in Alberta and extra-provincially registered in British Columbia with operations in Alberta and British Columbia. E&R CANADA's registered office is located at 1600, 421 – 7th Avenue SW, Calgary, Alberta T2P 4K9, and its chief place of business is Fort Nelson, British Columbia. Attached hereto and marked as Exhibits "A" and "B" are the corporate search results for E&R CANADA in Alberta and British Columbia, respectively.
3. E&R CANADA's voting shares are entirely held by GS E&R Corporation, a body corporate with a registered address of 508, Nonhyeon-Ro, Gangnam-Gu, Seoul, Republic of Korea.
4. E&R CANADA's business focuses on energy exploration and production with a focus on liquid rich natural gas in North Eastern British Columbia primarily produced from the Liard Basin. E&R CANADA is an operator and has 100% of working interest in 147 gas wells, 7 satellites, 265 km of pipelines, 1 compression station and 1 Natural Gas Liquid facility. All well sites are accessible with an Argo (All-Terrain Vehicle) and truck access is available during the winter. Produced gas is transported by the North River Midstream pipeline and sold at Station 2. All by-products are transported by trucking.
5. E&R CANADA has 4 full-time employees, most of whom are located in its office in Calgary, Alberta. E&R CANADA also retains 7 contractors to work in the field.
6. On March 11, 2021, E&R CANADA filed a Notice of Intention to Make a Proposal ("NOI") pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and appointed MNP Ltd. as its proposal trustee (the "Proposal Trustee"). As a result of the filing of the NOI, all proceedings against E&R CANADA and its assets were automatically stayed for an initial period of thirty (30) days (i.e. until April 10, 2021) (the "Stay Period"). A copy of the NOI is attached hereto as Exhibit "C".

A. Events Preceding the NOI

7. Over the past several years, E&R CANADA has not been profitable and has reported net losses on a consistent basis.

8. E&R CANADA's operations have been funded by sales revenue, and by way of funding through paid-in capital increases from the shareholder in Korea. Gas production revenue plunged by 75% from 2014 to 2019. In the 2020 calendar year, E&R CANADA incurred a net loss of \$1,306,535.
9. These losses have been due to a variety of factors, including a significant reduction in oil and gas prices and demand caused in part by the effects of the COVID-19 pandemic, and declining production rates due to the nature of the gas field.
10. In 2020 E&R CANADA applied for a business loan to secure operating funds, but due to the continued recession in the E&P industry and E&R CANADA's credit history, it was unable to get an approval from a financial institution. The shareholder was forced to provide additional capital of approximately \$1.9 million for operating expenses such as facility repairs, wages and taxes.
11. As at February 28, 2021, E&R CANADA's principal assets pre-impairment* consisted of the following:

Nature	Book Value (CAD)
Cash	\$ 1,840,630
Oil and Gas Assets*	\$ 3,811,256
Non-Oil and Gas Assets	\$ 4,451,178
Accounts Receivable	\$ 751,963
Total:	\$ 10,855,027

* E&R CANADA is completing an impairment assessment of the carrying value of its oil and gas assets in accordance with IAS 36 "Impairment of assets", as the COVID-19 pandemic constitutes an impairment trigger for E&R CANADA due to its potential negative impact on the long term cashflows from the business. It is highly likely that these assets will be impaired, reducing their carrying values as reported above.

14. As at February 28, 2021, E&R CANADA's principal liabilities consisted of the following:

Nature	Book Value (CAD)
Accounts Payable	\$ 372,597
Asset Retirement Obligations	\$ 15,612,263
Total:	\$ 15,984,860

15. E&R CANADA has no secured creditors with the exception of those creditors who have registered security interests in the Alberta Personal Property Registry as described below. A true copy of a recent PPR search is attached and marked as **Exhibit "D"** to this affidavit.
16. There are security interests registered against E&R CANADA's assets, including:
 - (a) An all-present-and-after-acquired-property charge by the Toronto-Dominion Bank – this registration relates to \$475,000 in credit facilities, which is fully secured with a \$475,000 term deposit cash collateral.
 - (b) A serial number registration against a lease field truck by TDF Group Inc., with approximately \$32,500 owing and a lease term expiring October 31, 2022.
16. There is also an outstanding liability to the British Columbia Oil and Commission ("BCOGC") as a security deposit for potential environmental reclamation costs, in the amount of \$4,313,938 (as of March 9, 2021).

B. Previous Sales Attempts

17. Since 2019, E&R CANADA has made several attempts to sell its assets *en bloc* in order to mitigate its losses and ensure that its abandonment and reclamation obligations are assigned to a solvent purchaser. However, those efforts have proven unsuccessful in the past, as previous potential purchasers have failed to close any transaction.
18. In 2019, E&R CANADA tried to sell its assets to 'Crestmont Resources Ltd.' with the assistance of the sales agent 'MKS investments Ltd.' Due diligence was completed by reviewing the data room. After receiving the offer and buyer due diligence, E&R

CANADA determined that the potential purchaser did not qualify to complete the transaction.

19. On December 20, 2019, E&R CANADA received an indicative offer from 'MaxMin Resources, LLC.', using the sales agent 'Team K'. Due diligence was completed by reviewing the data room as well as a field trip. On February 7, 2020, 'MaxMin' decide not to carry on the deal due to the unexpected situation of COVID-19.
20. On March 6, 2020, E&R CANADA received a non-binding offer from 'Spoke Energy' using Sproule as sales agent. Due diligence was completed by reviewing the data room as well as a field trip. However, the deal was terminated on June 4, 2020, as the buyer and buyer's guarantors were deemed at the time to lack financial capabilities for long term operation.

C. Restructuring Efforts Since the Filing of the NOI

17. Since the filing of the NOI, E&R CANADA has taken the following steps:
 - (a) Meeting with the Proposal Trustee and assisting in the preparation of cash flow reports;
 - (b) Meeting with the Proposal Trustee with respect to upcoming discussions with the BCOGC;
 - (c) Meeting with critical vendors and suppliers and answering their questions with respect to the NOI process;
 - (d) Meeting with Sayer Energy Advisors and the Proposal Trustee in order to develop a SISP and prepare the data room with necessary information;
 - (e) Reviewing its operating expenses, pursuing the collection of accounts receivable and taking other steps to ensure the company remains financially viable without recourse to interim financing during the restructuring process.

II. GROUNDS FOR THE REQUESTED ORDERS

A. Stay Extension

18. In light of the foregoing, E&R CANADA requires an extension of the Stay Period in order to, *inter alia*, continue the restructuring of its business and affairs and attempt to make a viable proposal to its creditors.
19. I believe that, in comparison with a forced sale, an extension of the Stay Period that will allow E&R CANADA to take these steps constitutes the best option for the realization of E&R CANADA's assets and the maximization of their value. The extension of the Stay Period will allow E&R CANADA to preserve the value of its business and assets as a whole by minimizing any disruptions while it conducts its restructuring, thereby ensuring that E&R CANADA's creditors are able to maximize their recovery.
20. Management of E&R CANADA, in consultation with the Proposal Trustee, will continue to work in good faith on a restructuring path forward, which will include the cutting of costs, the maximization of returns, the pursuit of accounts receivable and the implementation of a viable exit strategy.
21. As a result of these factors, E&R CANADA submits that should the present proceedings be turned into bankruptcy proceedings, it is expected that the position of E&R CANADA's creditors will materially deteriorate.
22. In the interim, all creditors of E&R CANADA will be kept apprised of the progress of E&R CANADA's efforts to restructure its operations by communicating with E&R CANADA and with the Proposal Trustee.
23. E&R CANADA submits that it has acted and continues to act in good faith and with due diligence, with a view to maximizing value for the benefit of all of E&R CANADA's stakeholders.
24. E&R CANADA understands that the Proposal Trustee intends to file, in advance of the hearing of the present Application, its First Report with the Court supporting the extension of the Stay Period and other relief as requested herein.

B. Administration Charge

25. The participation of the Proposal Trustee, the Proposal Trustee's counsel and E&R CANADA's counsel are essential to E&R CANADA's restructuring. Given the size and extent of the assets and the expected complexity of the proceedings, E&R CANADA has consulted with its advisors and seeks a \$300,000 Administration Charge over all the assets, property and undertakings of E&R CANADA ("the Property") which shall secured the payments to be made to the foregoing professionals.
26. Given the size and extent of the assets and the expected complexity of the proceedings, E&R CANADA believes that the Administration Charge as sought is reasonable and adequate and should rank in priority to all other encumbrances.

C. Director and Officer's Charge

27. In order to continue to carry on business, albeit on a limited basis, during these proceedings, E&R CANADA requires the active and committed involvement and continued participation of its directors and officers, who manage its business, commercial activities and internal affairs of the Corporation (collectively, the "D&Os").
28. Although E&R CANADA intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the D&Os are nevertheless concerned about the possibility of personal liability in the context of the present proceedings.
29. Considering the risk to which the D&Os may be exposed to in assisting E&R CANADA during these proceedings, the D&Os require E&R CANADA to indemnify them for all liabilities which they may incur in the context of their roles after the filing of these proceedings.
30. Although E&R CANADA maintains directors and officers' liability insurance (the "D&O Insurance") for the benefit of the D&Os, the amount of the coverage set out in the D&O Insurance may potentially be insufficient to protect the D&Os from all of their potential liability, or subject to certain exclusions. Attached as Exhibit "E" is a copy of E&R CANADA's D&O Insurance policy.

31. E&R CANADA therefore requests a D&O Charge in the amount of \$100,000 over the Property to indemnify the D&Os in respect of any liability which they may incur over the course of these proceedings.
32. E&R CANADA submits that the requested D&O Charge is reasonable and adequate given, notably, the potential exposure of the D&Os to personal liability.
33. E&R CANADA will request that the D&O Charge rank behind the Administration Charge.

D. Sales and Investment Solicitation Process (SISP)

34. On March 12, 2021 E&R CANADA and the Proposal Trustee met with Sayer Energy Advisors ("Sayer") a firm with expertise in the marketing and sale of oil and gas assets in Alberta and British Columbia. As a result of that meeting, the Proposal Trustee proceeded to engage Sayer in order to commence a formal SISP, conditional on the approval of this Honourable Court.
35. Details of the SISP are contained in the Proposal Trustee Report, and include the following proposed milestones:

Milestones	Estimated Deadlines
Establishment of a virtual data room	Week of April 12, 2021
Commencement by Sayer of the issuance of a solicitation package (including teasers, confidential information memorandums and non-disclosure agreements).	Week of April 12, 2021
Placing of advertising	
Due Diligence End Date for Potential Bidders	May 13, 2021
Phase I Bid Deadline	May 13, 2021
Determination of the Successful Bidder(s)	Week of May 24, 2021
Approval Hearing	June, 2021
Closing of the transaction contemplated in the Successful Bid(s)	30 days after Court approval of sale(s)

III. CONCLUSION

36. This Affidavit is sworn in support of E&R CANADA's Application for an Order extending the Stay Period, and for other related relief, and for no other or improper purpose.

SWORN before me in the City of)
Calgary, in the Province of Alberta, on)
this 18 day of March, 2021.)

Robert Hamilton)
A Commissioner of Oaths in and for the)
Province of Alberta)

Jungho Park

No Expiry

This is Exhibit "A" referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

Robert Hamilton

A Commissioner for Oaths in and for the Province of Alberta

RH

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/02/26
Time of Search: 03:08 PM
Search provided by: STIKEMAN ELLIOTT
Service Request Number: 34946138
Customer Reference Number: KF/ab

Corporate Access Number: 2015491992
Business Number: 801766056
Legal Entity Name: GS E&R CANADA INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
STX ENERGY CANADA INC.	2014/05/30

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2010/07/22 YYYY/MM/DD

Registered Office:

Street: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K9

Records Address:

Street: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K9

Email Address: GWLG.CALGARY.CORPORATE@GOWLINGWLG.COM

Directors:

Last Name: LEE

RH

First Name: JAE SEUNG
Street/Box Number: 508, NONHYEON-RO, GANGNAM-GU
City: SEOUL
Postal Code: 06141
Country: REPUBLIC OF KOREA

Last Name: PARK
First Name: JUNG
Middle Name: HO
Street/Box Number: UNIT 301, 121 - 15TH AVENUE SE
City: CALGARY
Province: ALBERTA
Postal Code: T2G1G1

Last Name: SUR
First Name: FRANK
Middle Name: Y.
Street/Box Number: 1600, 421 - 7TH AVENUE SW
City: CALGARY
Province: ALBERTA
Postal Code: T2P4K1

Voting Shareholders:

Last Name: GS E&R CORP.
Street: 508, NONHYEON-RO, GANGNAM-GU
City: SEOUL
Postal Code: 06141
Country: REPUBLIC OF KOREA
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SHARE STRUCTURE SCHEDULE IS ATTACHED HERETO
Share Transfers Restrictions: NO SECURITIES (OTHER THAN NON-CONVERTIBLE DEBT SECURITIES) OF THE CORPORATION SHALL BE TRANSFERRED WITHOUT THE APPROVAL OF THE BOARD OF DIRECTORS.

Min Number Of Directors: 1
Max Number Of Directors: 11
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: OTHER PROVISIONS SCHEDULE IS ATTACHED HERETO

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2019	2019/09/25

Outstanding Returns:

Annual returns are outstanding for the 2020 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2010/07/22	Incorporate Alberta Corporation
2012/07/09	Service Provider Correct Legal Entity
2013/11/24	Change Address
2014/05/30	Name Change Alberta Corporation
2019/05/08	Change Director / Shareholder
2019/09/25	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2020/02/20	Update BN

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2010/07/22
Other Rules or Provisions	ELECTRONIC	2010/07/22
Letter - Spelling Error	10000606102405992	2011/10/12

RH

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



RH

This is **Exhibit "B"** referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

Robert Hamilton

A Commissioner for Oaths in and for the Province of Alberta

RH



Extraprovincial Company Summary

For
GS E&R CANADA INC.

Date and Time of Search: February 23, 2021 08:47 AM Pacific Time
Currency Date: October 15, 2020

ACTIVE

Registration Number in BC: A0080692
Name of Extraprovincial Company: GS E&R CANADA INC.
Registration Date and Time: Registered in British Columbia on July 23, 2010 09:10 AM Pacific Time
Last Annual Report Filed: Not Required Receiver: No

FOREIGN JURISDICTION INFORMATION

Identifying Number in Foreign Jurisdiction: 2015491992 Name in Foreign Jurisdiction: GS E&R CANADA INC.
Date of Incorporation, Continuation or Amalgamation in Foreign Jurisdiction: July 22, 2010 Foreign Jurisdiction: ALBERTA

COMPANY NAME INFORMATION

Previous Company Name: STX ENERGY CANADA INC. Date of Company Name Change: May 30, 2014

HEAD OFFICE INFORMATION

Mailing Address: 1000, 400 - 3RD AVENUE SW
CALGARY AB T2P 4H2
CANADA Delivery Address: 1000, 400 - 3RD AVENUE SW
CALGARY AB T2P 4H2
CANADA

ATTORNEY INFORMATION

Corporation or Firm Name:
GOWLING WLG PACIFIC CORPORATE SERVICES INC.

Mailing Address:
SUITE 2300, BENTALL 5, 550 BARRARD STREET
VANCOUVER BC V6C 2B5
CANADA

Delivery Address:
SUITE 2300, BENTALL 5, 550 BARRARD STREET
VANCOUVER BC V6C 2B5
CANADA

DIRECTOR INFORMATION

Directors are not recorded for extraprovincial registration types. Go to the incorporating jurisdiction for director information.

This is Exhibit "C" referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

Robert Hamilton

A Commissioner for Oaths in and for the Province of Alberta

RH



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 02 - Calgary
Court No. 25-2719774
Estate No. 25-2719774

In the Matter of the Notice of Intention to make a proposal of:

GS E&R Canada Ltd.

Insolvent Person

MNP LTD / MNP LTÉE

Licensed Insolvency Trustee

Date of the Notice of Intention:

March 11, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act.

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 11, 2021, 19:52

E-File / Dépôt Electronique

Official Receiver

Harry Hays Building, 220 - 4th Ave SE, Suite 478, Calgary, Alberta, Canada, T2G4X3, (877)376-9902

Canada

RH

This is Exhibit "D" referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

Robert Hamilton

A Commissioner for Oaths in and for the Province of Alberta

RH

Search ID #: Z13622653

Transmitting Party

STIKEMAN ELLIOTT LLP

4300 BANKERS HALL WEST-888 3 ST SW
CALGARY, AB T2P 5C5

Party Code: 50073519
Phone #: 403 266 9000
Reference #: LL/PI

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Business Debtor Search For:

GS E&R CANADA INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



RH

Search ID #: Z13622653

Business Debtor Search For:

GS E&R CANADA INC.

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Registration Number: 14101033577
Registration Date: 2014-Oct-10

Registration Type: SECURITY AGREEMENT
Registration Status: Current
Expiry Date: 2024-Oct-10 23:59:59

Exact Match on: Debtor No: 1

Amendments to Registration

19082703155

Renewal

2019-Aug-27

Debtor(s)

Block

Status
Current

1 GS E&R CANADA INC.
2725 12TH ST NE SUITE 201
CALGARY, AB T2E 7J2

Secured Party / Parties

Block

Status
Current

1 THE TORONTO-DOMINION BANK - 80609
340 5 AVE SW
CALGARY, AB T2P 0L3

Collateral: General

Block **Description**

Status

1 All present and after acquired accounts, debts, intangibles,

Current

2 chattel paper, choses in action, book debts, contractual

Current

3 rights, insurance claims relating to goods, monies,

Current

4 instruments, payments, bills of exchange, promissory notes,

Current

5 cheques, drafts, or other instruments and proceeds thereof.

Current

RH

Search ID #: Z13622653

Business Debtor Search For:

GS E&R CANADA INC.

Search ID #: Z13622653

Date of Search: 2021-Mar-18

Time of Search: 11:44:41

Registration Number: 21011823470
Registration Date: 2021-Jan-18

Registration Type: SECURITY AGREEMENT
Registration Status: Current
Expiry Date: 2024-Jan-18 23:59:59

Exact Match on: Debtor No: 1

Debtor(s)

Block

Status
Current

1 GS E&R CANADA INC.
301- 121 15 AVE SE
CALGARY, AB T2G 1G1

Secured Party / Parties

Block

Status
Current

1 TDF GROUP INC.
17631 103 AVE NW
EDMONTON, AB T5S 1N8
Email: gtayag@drivigforce.ca

Collateral: Serial Number Goods

<u>Block</u>	<u>Serial Number</u>	<u>Year</u>	<u>Make and Model</u>	<u>Category</u>	<u>Status</u>
1	1FD0WSHT2FEB90658	2015	FORD SUPER DUTY F-550	MV - Motor Vehicle	Current

Result Complete

RH

This is Exhibit "E" referred to in the Affidavit of Jungho Park,
sworn before me by videoconference in the City of Calgary,
in the Province of Alberta, on this 18 day of March, 2021

Robert Hamilton

A Commissioner for Oaths in and for the Province of Alberta

RH

LIBERTY MUTUAL INSURANCE COMPANY

Private Advantage Liability Policy



RH



Policy Number: B2BPAL113736001

Liberty Private Advantage Liability (PAL) Policy Declarations

THIS IS A CLAIMS MADE POLICY. ALL ITEMS IN BOLD ARE DEFINED IN THE POLICY. Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") agrees to cover any loss if the claim is first made against any insured during the policy period and reported to Liberty as soon as practicable. Please read the attached policy terms carefully.

Item I COMPANY:

GS E&R Canada Inc.

Item II ADDRESS:

Unit 301, 121-15 Avenue SE
Calgary, Alberta
T2G 1G1 Canada

Item III POLICY PERIOD:

From 12:01 am April 25, 2019 To 12:01 am April 25, 2022

Instalment Terms

1 st Term	From	12:01 am	April 25, 2019	To	12:01 am	April 25, 2020
2 nd Term	From	12:01 am	April 25, 2020	To	12:01 am	April 25, 2021
3 rd Term	From	12:01 am	April 25, 2021	To	12:01 am	April 25, 2022

All times above at local time at the address shown in Item II

Item IV LIMITS OF LIABILITY:

Any loss payable under this policy for specific claim types is limited to the Limit of Liability for the applicable claim type as set forth below. All loss payable under this policy is further subject to the Total Limits of Liability noted below. If the insured has purchased a single combined aggregate Limit of Liability for all claim types then any loss paid under this policy for a specific claim type will reduce or potentially exhaust the remaining Limit of Liability for other claim types.

Executive / Insured Entity	Each loss and aggregate	\$ 3 000 000
Wrongdoing	per policy period	
Wrongful Employment Practices:	Each loss and aggregate	\$ 3 000 000
	per policy period	
Fiduciary Wrongdoing:	Each loss and aggregate	N/A

RH



Policy Number: B2BPAL113736001

		per policy period
	Total Limits of Liability:	\$ 3 000 000
Item V	SUBLIMITS OF LIABILITY:	
	Public Relations Costs Coverage for Crises:	Each loss and aggregate per policy period \$100,000
	Investigation Costs for Derivative Demands:	Each loss and aggregate per policy period \$250,000
	Criminal or Penal Proceeding against insured entity:	Each loss and aggregate per policy period \$250,000
	Formal inquiry, investigation or commission against insured entity:	Each loss and aggregate per policy period \$250,000
Item VI	DEDUCTIBLE(S):	
	Executive / Insured Entity Wrongdoing:	\$ 0
	Wrongful Employment Practices:	\$ 0
	US Wrongful Employment Practices:	\$ 25 000
	Fiduciary Wrongdoing:	N/A
Item VII	PENDING OR PRIOR LITIGATION DATE:	
	Executive / Insured Entity Wrongdoing:	April 25, 2019
	Wrongful Employment Practices:	April 25, 2019
	Fiduciary Wrongdoing:	N/A
Item VIII	UNILATERAL DISCOVERY PERCENTAGE:	75 %
	BILATERAL DISCOVERY PERCENTAGE:	100 %
Item IX	ENDORSEMENT(S):	5
Item X	POLICY PERIOD PREMIUM:	\$ 11 880
	ANNUALIZED PREMIUM:	\$ 3 960
	1 st Instalment term	\$ 3 960
	2 nd Instalment term	\$ 3 960
	3 rd Instalment term	\$ 3 960

RH



Policy Number: B2BPAL113736001

This policy is valid only if, in addition to the facsimile signature of the President of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of the Liberty Mutual Insurance Company.

A handwritten signature in cursive script that reads "J. Todd Armstrong".

Authorized Representative of Liberty Mutual Insurance Company

May 08, 2019

Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.

Liberty Private Advantage Liability (PAL)



1	INSURING AGREEMENTS		
1.1A	PERSONAL COVERAGE FOR INSURED INDIVIDUALS (SIDE A COVERAGE)	2.4	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS:
1.1B	COVERAGE FOR ENTITY INDEMNIFICATION (SIDE B COVER)	(a)	Written Employment Contract
1.1C	COVERAGE FOR ENTITY LIABILITY (SIDE C COVER)	(b)	Employee Benefits
1.1D	ADDITIONAL COVERAGE FOR EXECUTIVES (SIDE A COVER)	(c)	Front Pay
1.2	COVERAGE EXTENSIONS	(d)	Termination
(a)	Personal Coverage for Outside Directorships	(e)	Non-Monetary Claim
(b)	Public Relations Costs Coverage for Crises	(f)	Workplace Compliance Costs
(c)	Investigation Costs Coverage for Derivative Demands	(g)	Compensation
		2.5	EXCLUSIONS FOR FIDUCIARY WRONGDOING:
2	EXCLUSIONS	(a)	Liability of Others Assumed Under Contract
2.1	EXCLUSIONS APPLICABLE TO ALL INSURED	(b)	Intentional Breach of Government Benefits Legislation
(a)	Pending and Prior Litigation	(c)	Plan Funding/Deficit
(b)	Prior Claims, Facts, Circumstances	(d)	Employee Benefits
(c)	Dishonesty, Fraud, Criminal Intent	3	DEFINITIONS
(d)	Illegal Benefit	4	CLAIMS CONDITIONS
(e)	Insured Entity vs. Insured	4.1	NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED
(f)	Bodily Injury, Property Damage	4.2	DEFENCE AND SETTLEMENT
(g)	Pollution	4.3	ALLOCATION
(h)	Securities Claim	4.4	PRIORITY OF PAYMENTS
(i)	Employed Lawyers	4.5	OTHER INSURANCE
2.2	EXCLUSIONS FOR INSURED ENTITY ONLY:	4.6	SUBROGATION AND FURTHER ASSURANCES
(a)	Contract	5	GENERAL CONDITIONS
(b)	Trade Practices	5.1	LIMIT(S) OF LIABILITY
(c)	Government Benefits Legislation	5.2	DEDUCTIBLES
(d)	Services Liability	5.3	DISCOVERY PERIOD
(e)	Intellectual Property	5.4	SPOUSAL BENEFIT & ESTATE ENUREMENT
(f)	Product Liability	5.5	EXPOSURE TRIANGLES - MERGERS, ACQUISITIONS, SALT
(g)	Dividend/Option	5.6	SEVERABILITY
2.3	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING	5.7	TERMINATION AND PREMIUM REFUND
(a)	Liability of Others Assumed Under Contract	5.8	TERRITORY AND CURRENCY
(b)	Labour Relations	5.9	ARBITRATION AND APPLICABLE LAW
(c)	Government Sponsored Benefits	5.10	AUTHORIZATION
(d)	Employee Benefits Administration	5.11	AMENDMENT OR ASSIGNMENT
(e)	Payroll	5.12	INTERPRETATION
(f)	Pay Equity	5.13	NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC
(g)	US Fair Labour Standards Act	5.14	NOTICE OF NON RENEWAL
		5.15	GLOBAL LIBERALIZATION

RH

1. INSURING AGREEMENTS

The Insuring Agreements are part of this contract of insurance ("the policy"). This policy also includes the Exclusions, Definitions, Claims Conditions and General Conditions found in paragraphs 2 through 5.

Any headings and titles in this policy exist only to make the policy easier to read and do not create or affect coverage. Terms in bold used in this policy are defined in paragraph 3.

Liberty has agreed to issue this policy:

- i) in reliance on the application; and
- ii) on the condition that the insured must pay any premium(s) when due.

Liberty only agrees to cover any loss if the claim is first made against any insured during the policy period and reported to Liberty as soon as practicable.

1.1 A PERSONAL COVERAGE FOR INSURED INDIVIDUALS ("SIDE A COVER")

Liberty agrees to pay on behalf of the insured individuals any loss on the condition that:

- i) the loss results from a claim first made against an insured individual during the policy period;
- ii) the claim is made against them in the capacity in which they are an insured under this policy, and
- iii) the claim is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices;

provided that:

- iv) the insured individual is not indemnified for the loss by an insured entity.

This coverage shall not be rescinded by Liberty in whole or in part for any reason.

1.1 B COVERAGE FOR ENTITY INDEMNIFICATION ("SIDE B COVER")

Liberty agrees to pay on behalf of the insured entity any loss on the condition that:

- i) the loss results from a claim first made against an insured individual during the policy period;
- ii) the claim is made against the insured individual in the capacity in which they are an insured under this policy;
- iii) the claim is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices; and
- iv) the insured entity indemnifies the insured individual,

provided that:

- v) the insured entity is permitted or required by applicable law to indemnify the insured individual.

1.1 C COVERAGE FOR ENTITY LIABILITY ("SIDE C COVER")

Liberty agrees to pay on behalf of the insured entity any loss on the condition that:

- i) the loss results from a claim first made against an insured entity during the policy period; and
- ii) the claim is based on executive wrongdoing, fiduciary wrongdoing, wrongful employment practices or insured entity wrongdoing.

1.1 D ADDITIONAL COVERAGE FOR EXECUTIVES ("SIDE A COVER"):

Liberty agrees to pay on behalf of any executive an additional Limit of Liability under this policy for any loss on the condition that:

- i) the loss results from a claim made against an executive during the policy period;
- ii) the additional Limit of Liability is equal to the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the declarations or \$1,000,000, whichever is less; and
- iii) the claim is based on executive wrongdoing, wrongful employment practices or fiduciary wrongdoing;

provided that:

- iv) the executive is not indemnified for the loss by an insured entity;
- v) the additional Limit of Liability provided by this paragraph shall be specifically excess of:
 - 1) the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the declarations; and
 - 2) the limit of liability under any other policy that is excess of this policy and such excess insurance must be completely exhausted before Liberty has any obligation to pay any loss under this paragraph.

1.2 COVERAGE EXTENSIONS

(a) PERSONAL COVERAGE FOR OUTSIDE DIRECTORSHIPS

Liberty agrees to pay on behalf of the executives and the insured entity under paragraphs 1.1 A and 1.1 B ("Side A & B Cover") any loss:

- i) in their capacity as members of the board of directors, trustees or equivalent position of any not-for-profit or charitable organization;
- ii) which results from a claim first made against them during the policy period;
- iii) which results from executive wrongdoing; and
- iv) which is excess of any indemnification to which the executive is entitled from the not-for-profit or charitable organization, and also of any insurance coverage available under policies issued to such organization or to its executives;

provided that:

- v) at the time of the executive wrongdoing, which is the subject of the claim, the executive is or was serving on the board of directors, trustees or equivalent position of the not-for-profit or charitable organization at the request of the company.

However there is no coverage for the not-for-profit or charitable organization itself or for any other director, officer or employee of such organization.

(b) PUBLIC RELATIONS COSTS COVERAGE FOR CRISES

Liberty agrees to pay on behalf of the insured entity any public relations costs which it reasonably incurs in engaging public relations consultants to manage a crisis, provided that:

- i) the crisis is first reported to Liberty during the policy period;
- ii) Liberty has no duty to defend any insured against crises;

RH

- iii) Liberty has no duty to indemnify any insured for any judgment, penalty, sentence, order or condemnation of any kind resulting from a crisis; and
 - iv) coverage under this paragraph is not considered defence costs and is subject to the sublimit of liability stated in Item V of the declarations and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the declarations.
- c) **INVESTIGATION COSTS COVERAGE FOR DERIVATIVE DEMANDS**
- Liberty agrees to pay on behalf of the insured entity any investigation costs which it reasonably incurs solely in connection with a derivative demand; provided that:
- i) the derivative demand is first made during the policy period;
 - ii) Liberty has no duty to defend any insured against a derivative demand; and
 - iii) coverage under this paragraph is not considered defence costs and is subject to the sublimit of liability stated in Item V of the declarations and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the declarations.

2. EXCLUSIONS

2.1 EXCLUSIONS APPLICABLE TO ALL INSUREDS

There is no coverage for public relations costs or investigation costs under paragraph 1.2 of this policy; or for loss resulting from a claim:

- (a) **PENDING AND PRIOR LITIGATION:** based on any litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment against or involving any insured:
 - i) which was pending on the date stated in Item VII of the declarations or which happened prior to that date; and
 - ii) which any insured knew about on that date,or any subsequent claim or loss based on substantially the same matters as were alleged in such prior or pending litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment;
- (b) **PRIOR CLAIMS, FACTS, CIRCUMSTANCES:** based on a claim or facts or circumstances which could reasonably be expected to give rise to a claim, which has been notified to and accepted by Liberty or any other insurer under any prior policy of which this policy is a renewal or replacement and if such prior policy affords coverage or would afford coverage except for the exhaustion of the applicable Limit of Liability;
- (c) **DISHONESTY, FRAUD, CRIMINAL INTENT:** based on wrongdoing or violation of the law deliberately committed or attempted by an insured with dishonest, fraudulent or criminal purpose or intent if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in an action or proceeding initiated by Liberty to determine coverage under the policy) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (d) **ILLEGAL BENEFIT:** based on any profit, sum of money, advantage or benefit obtained by any insured to which they are not legally entitled if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the policy) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (e) **INSURED ENTITY VS. INSURED:** brought by or on behalf of any insured entity. However, this exclusion does not apply to:
 - i) defence costs for a claim under paragraph 1.1 A;

- ii) a claim that is a derivative action and, for the purposes of this exception, the assistance, active participation or intervention for which "whistleblower" protection is afforded under section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A or similar provisions of any applicable law or regulation anywhere in the world, shall not alone be considered to be brought with the assistance, active participation, or intervention of any insured individual or insured entity;
 - iii) a claim brought by or on behalf of the company by any receiver, trustee, liquidator, monitor or creditors' committee appointed on behalf of any insured entity by a court or creditor when the company is bankrupt or insolvent;
 - iv) a claim brought or maintained outside the United States of America, Canada or any other common law jurisdiction, including any territories therein; or
 - v) a claim that is against an insured individual who has not acted in that capacity at any time in the past 2 years;
- (f) **BODILY INJURY, PROPERTY DAMAGE:** for bodily injury, sickness, disease or death of any individual, violation or invasion of any right of privacy or private occupancy, or damage or destruction to any property, whether tangible or intangible, including loss of use thereof. However, this exclusion does not apply to:
- i) a claim for emotional distress, humiliation or mental anguish or injury resulting from libel, slander, defamation or disparagement or from a violation of an individual's right of privacy caused by wrongful employment practices; or
 - ii) defence costs on account of any claim which is brought pursuant to section 217.1 of the *Criminal Code*, R.S.C., 1985, c.C-46, Bill 168, the *Ontario Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any insured individual;
- (g) **POLLUTION:** based on pollution. However this exclusion does not apply to:
- i) a claim under paragraph 1.1 A;
 - ii) a retaliatory treatment claim;
 - iii) a derivative action;
 - iv) a claim in connection with any private purchase or sale or any offer to privately purchase or sell, any shares of the insured entity; or
 - v) defence costs in which the insured entity under paragraph 1.1 B ("Side B Cover") reasonably incurs to defend a pollution claim first brought and conducted against an insured individual in Canada;
- (h) **SECURITIES CLAIM:** which is or is based on a securities claim. However, this exclusion does not apply to:
- i) a claim for executive wrongdoing or insured entity wrongdoing which occurred during the company's initial public offering roadshow activities; or
 - ii) a securities claim that is based on an initial public offering or any public debt securities offering which is subject to registration under applicable law anywhere in the world, provided that Liberty is given at least 30 days prior written notice of such offering along with a copy of the relevant prospectus or offering document and the insured agrees to any amendments to the terms and conditions of this policy and pays any additional premium which may be required by Liberty; or
- (i) **EMPLOYED LAWYER:** against any employed lawyer based on the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any person or entity other than the insured

RH

entity, any employee or executive, in their capacity as such, even if such service is at the request of the insured entity or part of the regular assigned duties of the employed lawyer.

2.2 EXCLUSIONS FOR INSURED ENTITY ONLY

There is no coverage for the insured entity for public relations costs or investigation costs under paragraph 1.2 of this policy; or for loss resulting from a claim:

- (a) **CONTRACT:** based on any breach of or liability arising from any oral or written contract or agreement. However, this exclusion does not apply to defence costs for wrongful employment practices;
- (b) **TRADE PRACTICES:** based on violation of any applicable law anywhere in the world with respect to unfair trade practices, anti-trust, anti-competitive behavior, price fixing, bid-rigging, predatory pricing, restraint of trade or discrimination, including the *Competition Act*, R.S.C., 1985, c C-34, or similar legislation anywhere in the world;
- (c) **GOVERNMENT BENEFITS LEGISLATION:** based on the violation of or failure to comply with any obligation imposed under legislation relating to government sponsored benefit programs;
- (d) **SERVICES LIABILITY:** based on any services rendered or which should have been rendered to any third party, whether for remuneration or not;
- (e) **INTELLECTUAL PROPERTY:** based on the infringement of any patent, copyright, trademark, trade secret, intellectual property rights and/or misappropriation of ideas, including "product dressing";
- (f) **PRODUCT LIABILITY:** based on the conception, design, manufacture, advertisement, sale, distribution, use or consumption of any product which is defective, hazardous or unfit for its intended purpose, or based on the failure to warn that any product is defective, hazardous or unfit for its intended purpose; or
- (g) **DIVIDEND/ OPTIONS:** for any dividends or distributions of earnings or losses paid or not paid, or for share options or damages in lieu of share options.

2.3 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING

There is no coverage for any insured for loss resulting from a claim based on wrongful employment practices, or a claim based on insured entity wrongdoing which is:

- (a) **LIABILITY OF OTHERS ASSUMED UNDER A CONTRACT:** based on any liability of others that an insured has assumed under any contract, unless the insured would have been legally liable in the absence of such contract;
- (b) **LABOUR RELATIONS:** based on the negotiation or breach of a collective agreement involving the company or a violation of the collective bargaining rights of employees by any insured;
- (c) **GOVERNMENT SPONSORED BENEFITS:** for benefits under a government sponsored benefits program;
- (d) **EMPLOYEE BENEFITS ADMINISTRATION:** based on any actual or alleged wrongful interpretation, application, or administration of an employee benefits program;
- (e) **PAYROLL:** based on the failure or refusal of an insured to:
 - i) collect, retain, return, pay or remit employee taxes, deductions at source, pension or retirement savings contributions or other employee benefit contributions or union dues;
 - ii) pay, retain, reimburse or indemnify any salary, wages, overtime pay, vacation pay, commissions, bonuses, fees, benefits, expenses, or any remuneration of any kind owed to an employee of the company; or

RH

- iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by the company;
- (f) **PAY EQUITY:** alleging a systemic differential in pay between employees who perform different work allegedly of equal or comparable value, including a claim based on a violation of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, s. 11, or similar legislation anywhere in the world, but does not include a claim for an actual or alleged differential in pay for the same work or substantially similar work. However, this exclusion does not apply to a retaliatory treatment claim; or
- (g) **US FAIR LABOUR STANDARDS ACT:** made in the territorial limits and jurisdiction of the United States of America for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the Fair Labor Standards Act (except the Equal Pay Act). However, this exclusion does not apply to a retaliatory treatment claim.

2.4 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS

Other than for defence costs, there is no coverage for any insured for loss resulting from a claim based on wrongful employment practices, or a claim based on insured entity wrongdoing which is:

- (a) **WRITTEN EMPLOYMENT CONTRACT:** for an actual or alleged breach of any written employment contract unless the insured would have been liable for such loss in the absence of such written employment contract;
- (b) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit, other than salary, wages or commission, owed by the company to an employee or owed to an individual who is not an employee who is entitled to receive benefits as a result of the employment relationship, between the company and an employee, including under an employee benefits program;
- (c) **FRONT PAY:** alleging loss which constitutes front pay, future damages or other future economic relief or the equivalent thereof, if the company is ordered to reinstate the claimant as an employee by a judgment or other final adjudication and fails to do so;
- (d) **TERMINATION:** for any amount payable to an employee under any applicable statute or common law following dismissal, including severance, pay in lieu of notice and vacation pay. However, this exclusion does not apply to:
 - i) the portion of a claim amount which exceeds amounts equal to what the insured has reasonably and in good faith offered prior to arbitration or litigation as payment based on the insured's obligations to employees for termination of employment, including the minimum amount payable under the applicable statute;
 - ii) a claim for an actual or alleged differential in pay for the same work or substantially similar work, or
 - iii) a retaliatory treatment claim;
- (e) **NON-MONETARY CLAIM:** seeking only injunctive or other non-monetary relief;
- (f) **WORKPLACE COMPLIANCE COSTS:** alleging loss which constitutes:
 - i) the cost of compliance with or the satisfaction of obligations imposed under the *Employment Equity Act*, S.C. 1995, c.44 or any similar legislation anywhere in the world; or
 - ii) any costs or expenses associated with any accommodation or affirmative action program imposed under the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, the Americans with Disabilities Act, the United States Civil Rights Act of 1964, or similar legislation anywhere in the world, including without limitation any costs or expenses incurred by an insured to change, modify, alter, or improve a building, real estate, furniture, fixtures, or equipment of any kind to improve accessibility or usability; or

RH

- (g) **COMPENSATION:** based on any dispute with respect to the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration whatsoever provided for in a contract of employment.

2.5 **EXCLUSIONS FOR FIDUCIARY WRONGDOING**

There is no coverage for any insured for loss resulting from a claim based on fiduciary wrongdoing which is:

- (a) **LIABILITY OF OTHER ASSUMED UNDER A CONTRACT:** based on the liability of others assumed by an insured under any contract unless an insured would have been legally liable in the absence of such contract;
- (b) **INTENTIONAL BREACH OF GOVERNMENT BENEFITS LEGISLATION:** based on the intentional violation of or failure to comply with any obligation imposed under legislation relating to a government sponsored benefits program;
- (c) **PLAN FUNDING/DEFICIT:** based on the intentional failure to fund a plan in accordance with applicable law or a plan instrument; the failure to collect or pay contributions owed to a plan, unless the failure is because of the negligence of the insured, or the inability of a plan to meet any of its obligations because of the bankruptcy and insolvency of the plan or any deficit position of the plan. However, this exclusion does not apply to defence costs, or
- (d) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit other than salary, wages or commission owed by the company to an employee or an individual other than an employee who is entitled to receive benefits as a result of the employment relationship between the company and an employee, including under an employee benefits program. However, this exclusion does not apply to defence costs.

3. **DEFINITIONS**

"administrator" means an individual who at any time had, has or will have legal responsibility for the administration or management of a plan, but does not include any consultant or outside service provider.

"application" means collectively all applications, renewal applications or questionnaires which any insured has submitted to Liberty at any time for the purpose of obtaining initial or renewal coverage, and any other documentation or information provided to Liberty by any insured in support of an application.

"bankrupt or insolvent/bankruptcy or insolvency" means a situation where an insured entity is in the financial position as a debtor as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. R-3, and occurs when:

- a) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental body or court or agency or by a creditor to take control of, supervise, manage or liquidate the insured entity;
- b) a reorganization proceeding relating to the insured entity is brought under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance, or
- c) the insured entity becomes a debtor-in-possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance.

"based on" means "based on, arising from or attributable to".

"Canada's Anti-Spam Legislation" means An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c.23.

"claim" means:

- a) any written demand for monetary or non-monetary relief;
- b) a civil action or other proceeding seeking damages or other non-monetary or injunctive relief before the civil courts and for the purposes of wrongful employment practices, includes an action or proceeding before any federal or provincial tribunal;
- c) a formal request for the extradition of an executive, but only where insurable by law;
- d) alternative dispute resolution ("ADR"), arbitration or mediation if the insured is obligated to participate in such ADR, arbitration or mediation;
- e) any formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- f) any criminal or penal proceeding against an insured commenced by the laying of an information or a return of an indictment; provided however, any coverage provided to the insured entity under this paragraph is subject to the sublimit of liability stated in Item V of the declarations; or
- g) a formal inquiry, investigation or commission conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions and competition, initiated in writing against an insured and which may reasonably be expected to result in findings relevant to the insured's potential civil, penal or criminal liability for wrongdoing; provided however, any coverage provided to the insured entity under this paragraph is subject to the sublimit of liability stated in Item V of the declarations.

However, claim does not include any professional disciplinary investigation or proceeding, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining.

"company" means the company or other entity stated in Item I of the declarations and any subsidiary.

"crisis" means one of the following events:

- a) an employee layoff or restructuring involving 20% or more of total staff;
- b) an unanticipated death, incapacity or resignation of the president, chief executive officer or chief financial officer; or
- c) bankruptcy or insolvency.

"declarations" means the most current applicable Policy Declarations.

"defence costs" means that part of the loss consisting of reasonable and necessary costs incurred by an insured with Liberty's consent, such consent not to be unreasonably withheld, in investigating, defending, appealing or monitoring claims, but this does not include expenses incurred by, or, any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a claim.

"derivative action" means an action or intervention in an action against an insured individual brought by a complainant in the name of and on behalf of a company within the meaning of and in accordance with the terms of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 or similar law or regulation anywhere in the world and that is brought without the assistance, active participation, or intervention of any insured.

"derivative demand" means any written notice, by one or more complainants, to the board of directors of an insured entity, of their intention to bring a derivative action against an insured individual for wrongdoing.

"discovery period" means the period of time described in paragraph 5.3, but only if the requirements set out in that paragraph are met.

"employed lawyer" means a licensed lawyer or attorney, who is an employee of the insured entity, while performing legal services for the benefit of or on behalf of the insured entity.

"employee" means:

Liberty Private Advantage Liability (PAL)



- a) any individual employed by the company at any time whether in the past, present or future, including any part-time, seasonal or temporary employee(s) and whom the company compensates by salary, wages and/or commission and has the right to govern and direct in the performance of such services; or
- b) any independent contractor.

"employee benefits" means any payment, consideration or benefit, other than salary, wages, or commission, owed by the company to an employee or a beneficiary as a result of the employment relationship, including benefits payable to an employee or a beneficiary under an employee benefits program.

"employee benefits program" means:

- a) any employee benefits plan, including but not limited to any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements, all as defined in the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.);
- b) any plan, including any welfare benefit plan, as defined in the United States Employee Retirement Income Security Act of 1974; or
- c) any similar program, plan or arrangement as described in a) and b) above, anywhere in the world.

"executive" means any past, present or future:

- a) duly elected, appointed, "de facto" or "deemed" director, officer, trustee, advisory board member or board observer of the board, or equivalent governing body;
- b) senior management or equivalent positions for which the company has provided an indemnification agreement or has amended its applicable by-laws to provide indemnification no less broad than that provided to its directors, officers or trustees;
- c) management or executive committee member of any partnership, limited partnership or joint venture which is a subsidiary;
- d) member of a management board or equivalent position of a limited liability company which is a subsidiary;
- e) individuals who hold titles, positions or capabilities equivalent to the positions of an executive as defined in items a) through d) above for a company incorporated within Canada or the United States of America, operating in a foreign jurisdiction, or
- f) employed lawyer;

of the company or under paragraph 1.2 (a) of a not-for-profit or charitable organization.

"executive wrongdoing" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by any executive or employee, but only in their capacity as an executive or employee, or under paragraph 1.2 (a), of a not-for-profit or charitable organization, including any matter claimed against any executive solely due to their status as an executive.

"fiduciary" means any individual who at any time, whether past, present or future, has or exercises discretionary authority or control over the management of any plan or its assets, and who therefore is subject to fiduciary obligations under applicable law. However, fiduciary does not include any consultant or outside service provider.

"fiduciary wrongdoing" means any actual, alleged, attempted or allegedly attempted:

- a) breach of or failure on the part of a fiduciary to meet their fiduciary obligations to a plan or the beneficiaries of a plan;
- b) fault, error, omission, misstatement or breach of duty on the part of any insured in the interpretation, application and administration of a plan; or

Liberty Private Advantage Liability (PAL)



- c) matter claimed against any insured solely with respect to a plan and solely by reason of their status as a fiduciary of a plan.

"foreign jurisdiction" means any jurisdiction other than Canada or the United States of America.

"foreign policy" means any standard executive liability policy (including any mandatory endorsements) approved by Liberty Mutual Insurance Company to be sold within a foreign jurisdiction that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then "foreign policy" means the standard policy most recently registered in the local language of the foreign jurisdiction or, if no such policy has been registered, then the policy most recently registered in that foreign jurisdiction. The term foreign policy shall not include any professional liability coverage.

"government sponsored benefits program" means any benefits or compensation program created by statute whereby funds are held or managed by a governmental body, including workmen's compensation, unemployment insurance, pension and social security programs.

"independent contractor" means any individual who is contracted in writing to perform services for the company in the conduct or operation of the company's business, provided that such individual shall be deemed an employee only to the extent that he or she renders services for the benefit of the company's business.

"initial public offering" means any initial offering of voting securities of the company to the public, which is subject to registration under applicable law anywhere in the world.

"insured" means any insured individual or insured entity.

"insured individual" means an executive, a fiduciary, an administrator, or an employee.

"insured entity" means the company or a plan.

"insured entity wrongdoing" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by the insured entity.

"investigation costs" means any reasonable costs, charges, fees (including but not limited to lawyers' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the insured individual(s) or employee(s) or expenses incurred by, or, any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a derivative demand) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the insured entity, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any derivative demand.

"loss" means the total amount which the insured is legally obligated to pay for all claims based on wrongdoing which is covered under this policy, including:

- a) defence costs;
- b) damages, judgments, settlement amounts, statutory liabilities, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments.

Loss does not include:

- i) any judgment, settlement, sentence, order or condemnation: (i) against an insured entity, resulting from a formal administrative or regulatory proceeding, formal investigative order, summons, or criminal or penal proceeding; or (ii) against an insured entity resulting from a formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute;
- ii) any unpaid taxes, duties or levies of the company or an independent contractor which are not statutory liabilities;
- iii) costs associated with the monitoring, clean up, removal, containment, treatment, detoxification or neutralization of pollutants;
- iv) punitive or exemplary damages, or the multiplied portion of any multiplied damage award, except where insurable by law; or
- v) fines and penalties; however, where insurable by law, the following are considered loss:

RH

- (a) civil penalties for which an executive is found liable as a result of violations of the United States Foreign Corrupt Practices Act or similar legislation anywhere in the world; or
- (b) administrative fines and penalties for which an executive is found liable as a result of violations of Canada's Anti-Spam Legislation.

With respect to the insurability of iv) and v) above, of all the jurisdictions applicable to a claim, the jurisdiction with the most favourable laws to the insured entity concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties.

"managerial control" means the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement or similar documents of an entity to elect, appoint or designate a majority of the directors of a corporation, trustees of an income fund or trust, management committee members of a joint venture, management board members of a limited liability company, general partner of a limited partnership or any other equivalent body.

"plan" means

- a) any pension plan of the company which was on or prior to the inception date of this policy sponsored solely by the company or sponsored jointly by the company and a labour organization solely for the benefit of the employees of the company, including any pension plan merged into or consolidated with such pension plan prior to the inception date of this policy;
- b) any employee benefits program which was on or prior to the inception date of this policy sponsored solely by the company or sponsored jointly by the company and a labour organization, solely for the benefit of the employees of the company; or
- c) any employee benefits program which during the policy period becomes sponsored solely by the company, or jointly by the company and a labour organization, solely for the benefit of the employees of the company, but only on the condition that Liberty agrees by endorsement to cover it within 90 days of its becoming sponsored.

However, plan does not include any multi-employer plan as defined under applicable law.

"policy" means:

- a) the application;
- b) the declarations;
- c) policy paragraphs 1 through 5; and
- d) any endorsements, whether issued at inception or during the policy period.

"policy period" means the period from the date stated in Item III of the declarations to the date of termination of this policy pursuant to paragraph 5.7. The discovery period is deemed to be part of the most recent policy period.

"pollution" means:

- a) the actual, alleged or threatened seepage, discharge, dispersal, release or escape of pollutants in contravention of; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants under:

the *Canadian Environmental Protection Act*, 1999 (S.C. 1999, c.33) or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but limited to a claim for financial loss to the insured entity, its security holders or its creditors based on the matters described in a. and b. above. Pollutants include, without limitation, solids, liquids, gasses, thermal or electromagnetic irritants or contaminants or emanations, nuclear radiation or radioactive substances, smoke, vapour, odour, soot, oil or oil products, asbestos or asbestos products, silica, mould, noise, fumes, acids, alkalis, chemicals,

or waste materials including without limitation waste water or infectious or medical waste, whether or not they are to be recycled, reconditioned, or reclaimed.

"pollution claim" means a claim based on pollution.

"public relations costs" means any reasonable costs, charges, fees and expenses (other than expenses incurred by, or any remuneration paid to, insured individuals for time spent in assessing, investigating, dealing with or assisting others to deal with a crisis) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the insured entity in engaging the services of public relations consultants to advise the insured entity with respect to managing the public communication of and limiting disruption to the insured entity's business following a crisis.

"retaliatory treatment claim" means a claim based on retaliatory treatment of the claimant by any insured resulting from the exercise by the claimant of any right under any applicable law.

"securities claim" means any claim (including a claim brought by any securities regulator or other government body) based on:

- a) a public offering of securities of the company, whether on the open market or arising from an initial public offering; or
- b) a violation of any statute governing securities including the failure to register securities issued in connection with a private placement which should have been registered with the appropriate securities regulator or other government body.

"spouse" means either of two persons, regardless of their gender, who i) are married to each other, ii) have cohabited continuously in a conjugal relationship outside marriage for a period of at least one year; or iii) have cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

"statutory liabilities" means unpaid liabilities of the company, including unpaid tax liabilities and unpaid wages and deductions at source, for which any executive becomes personally liable in their capacity as an executive under any applicable statute if the company is bankrupt or insolvent.

"subsidiary" means any for-profit entity of which the company either directly or through one or more of its subsidiaries:

- a) owns or owned more than 50% of any issued and outstanding securities or other interest that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or
- b) holds or held managerial control.

Notwithstanding the above, coverage provided under this policy with respect to a claim made against any insured entity or any insured individual shall only apply to wrongdoing committed or allegedly committed after the effective date that the insured entity became a subsidiary and prior to the effective date that the insured entity ceased to be a subsidiary.

"wrongdoing" means any executive wrongdoing, wrongful employment practices, fiduciary wrongdoing or insured entity wrongdoing.

"wrongful employment practices" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty on the part of the company or by an insured individual acting in the performance of their duties for the company, in connection with one or more of the following:

- a) dismissal, including constructive dismissal, of an employee in breach of any employment relationship;
- b) sexual or other harassment of an employee at or related directly to:
 - i) the company's workplace, and/or
 - ii) the employee's employment;

- c) unlawful employment discrimination or violation of an employee's or prospective employee's employment-related civil rights based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status or characteristic protected under applicable law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
- d) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an employee or prospective employee with respect to the company;
- e) failure to create, apply or enforce employment-related policies or procedures at or with respect to the company's workplace;
- f) retaliatory treatment of an employee by the company resulting from the exercise by the claimant of any right under any applicable law; or
- g) unlawful discrimination, sexual harassment or violation of a natural person's civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an employee or prospective employee with the company.

4. CLAIMS CONDITIONS

4.1 NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED

- (a) It is a condition precedent to the insured's rights under this policy that after the chairperson, president, chief executive officer, chief financial officer or general counsel of any company becomes aware of any claim, the insured must give prompt written notice of such claim to Liberty as soon as practicable.
- (b) If the insured fails to notify Liberty of a claim promptly and Liberty substantially suffers prejudice as a result of that failure, Liberty may deny coverage in respect of that claim under the policy.
- (c) If during the policy period, any insured becomes aware of any facts, circumstances (including but not limited to a request to toll a statute of limitations) or wrongdoing that could reasonably give rise to a claim and if such facts, circumstances or wrongdoing are reported to Liberty during the policy period in writing with details as to the nature and date of such circumstances or wrongdoing, the identity of any potential claimant, the identity of any insured persons(s) involved in such circumstances or wrongdoing, and the manner in which the insured first became aware of such circumstances or wrongdoing, any claim subsequently arising from those facts or circumstances or wrongdoing will be deemed to be a claim made during the policy period, as long as the insured also gives notice of the claim as required by paragraph 4.1(a).
- (d) Notice of any claim, circumstances or wrongdoing as required by paragraph 4.1(a) and (c) shall be forwarded to: Liberty Mutual Insurance Company, 181 Bay St., Suite 900, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to: claims.liu@libertyiu.com
- (e) All other notices required under any other paragraphs of this policy will be to the same address, but to the attention of: Specialty Casualty Underwriting Department.
- (f) Notice from Liberty to the insured will be given to the company at the address stated in Item II of the declarations.
- (g) All notices under this policy shall be sent in writing by mail, prepaid expense courier, or email and shall be effective upon receipt thereof by the addressee.
- (h) The insured agrees:
 - i) to cooperate fully and promptly with Liberty and its representatives when a claim is made;

- ii) to do nothing that may prejudice Liberty's position or its rights of recovery; and
- iii) that the insured's obligations under paragraphs 4.1 and 4.6 will survive any termination of this policy.

The failure of an insured person(s) to provide information and cooperate with Liberty under paragraph 4.1 (h) shall not impact the rights of any other insured person(s) under this policy in any manner.

4.2 DEFENCE AND SETTLEMENT

- (a) Liberty has the right and duty to defend the insured including, without limitation, the right to retain and instruct counsel against any claim for which coverage is available under the policy.
- (b) Liberty may, with the insured's consent, settle any claim for which coverage is available in whole or in part under this policy.
- (c) Liberty's duty to defend the insured ends as soon as the applicable Limits of Liability stated in Items IV of the declarations are exhausted. If the applicable Limits of Liability are exhausted prior to the conclusion of any claim, Liberty can withdraw from the defence of such claim, and thereafter Liberty will have no further obligations whatsoever with respect to such claim or under the policy.
- (d) Defence costs incurred by Liberty or by the insured with Liberty's consent are part of and not in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs reduces and may exhaust the Limits of Liability.

4.3 ALLOCATION

- (a) If a claim made against an insured individual involves a loss that is only partially covered by this policy because such claim includes both covered and uncovered matters, the insured and Liberty agree that:
 - i) with respect to defence costs, in order to create certainty in determining a fair and equitable allocation, 100% of all defence costs shall be allocated to covered loss and advanced by Liberty on a current basis and that this allocation shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other loss;
 - ii) with respect to loss other than defence costs, the insured and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered loss and uncovered loss based on relative legal liability; however, no uncovered loss will be allocated to insured individuals if the company is bankrupt or insolvent; and
 - iii) if the insured and Liberty cannot agree on allocation with respect to loss other than defence costs then Liberty shall, at the insured's request, submit the allocation dispute to arbitration pursuant to paragraph 5.9.
- (b) If a claim is made against an insured entity and involves a loss that is only partly covered by this policy because such claim includes both covered and uncovered matters or covered and uncovered parties, the insured and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered loss and uncovered loss based on relative legal liability; however, if a claim solely for wrongful employment practices or fiduciary wrongdoing is made against an insured entity, the allocation described in paragraph 4.3 (a)(i) shall apply.

4.4 PRIORITY OF PAYMENTS

If losses arising from claim(s) which are covered under this policy, taken in the aggregate, exceed the available or remaining Limits of Liability, then, at the written request of the chairperson, the president, chief executive officer or chief financial officer of the company, Liberty will make payments according to the following priorities:

- (a) first, pay under paragraph 1.1 A the loss for which any insured individual is not indemnified by an insured entity;

- (b) second, pay any remainder of the Limits of Liability under paragraph 1.1 B for loss for which an insured entity has indemnified an insured individual; and
- (c) third, pay any remainder of the Limits of Liability under paragraph 1.1 C for loss which an insured entity is legally obliged to pay.

In the event Liberty withholds payment pursuant to (b) above, then Liberty shall, at such time and in such manner set forth in written instructions of the chairperson, the president, chief executive officer or chief financial officer of the company, remit such payment to the company or directly to or on behalf of the insured individuals.

The bankruptcy or insolvency of any insured does not change Liberty's obligations to prioritize payment of covered loss pursuant to this paragraph.

4.5 OTHER INSURANCE

If a loss or part of a loss which would, but for this paragraph, be covered by this policy, is covered under any other valid and collectible insurance policy, then this policy is excess to the other insurance policy and covers the loss only to that extent, unless the other insurance policy expressly refers to this policy and is specifically underwritten as excess to the limits of this policy.

4.6 SUBROGATION AND FURTHER ASSURANCES

Liberty is subrogated to the extent of any payment under this policy to all the insureds' rights of recovery against anyone, and is entitled to the insureds' cooperation and to sue for recovery in the insured's name. However, Liberty shall not subrogate against an insured individual except as it relates to paragraph 2.1 (c) and (d).

5. GENERAL CONDITIONS

5.1 LIMIT(S) OF LIABILITY

- (a) Liberty's obligation to pay any one loss and all loss under this policy during the policy period, including defence costs, is limited to the sum of the Total Limits of Liability stated in Item IV of the declarations and the additional Limit of Liability provided in paragraph 1.1D. The sublimits of liability stated in Item V of the declarations are part of and not in addition to the Total Limits of Liability stated in Item IV of the declarations.
- (b) Any one loss resulting from one of the claim types stated in Item IV of the declarations is subject to the Limits of Liability specified for that claim type stated in Item IV of the declarations.
- (c) If a loss results from more than one claim type stated in Item IV of the declarations the claim type limits specified in Item IV apply separately to each part of the loss.
- (d) All claims arising from the same wrongdoing or wrongdoing which is causally connected or which has as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of causally connected facts, circumstances, situations, events, transactions or causes, shall be deemed one claim and shall be deemed first made on the date the earliest of such claims is first made, regardless of whether such date is before or during the policy period.

5.2 DEDUCTIBLES

- (a) No deductible applies to loss resulting from:
 - i) a claim covered under paragraph 1.1 A;
 - ii) defence costs resulting from a claim covered under paragraph 1.1 B or 1.1 C occurring in Canada; however, a deductible will apply to any loss resulting from a claim based on wrongful employment practices covered under paragraph 1.1 B or 1.1 C; and
 - iii) investigation costs or public relations costs covered under 1.2 b) and c).

- (b) With respect to any other loss covered under this policy, Liberty's obligation is only to pay the amount which is excess of the applicable deductible stated in Item VI of the declarations. The insured entity must bear the deductible uninsured and at its own risk.
- (c) If a loss results from more than one claim type stated in Item IV of the declarations, the deductibles applicable to each claim type stated in Item VI of the declarations apply separately to each part of the loss. However, the largest deductible is the maximum deductible applicable for all loss arising from such claim.
- (d) The insured entities must indemnify the insured individuals to the full extent permitted or required by applicable law and with respect to any advisory board member or board observer, the insured entities will be expected to indemnify such individuals in the same manner and Liberty will apply the deductible in the same manner as outlined in paragraph 5.2 (b) to any advisory board member or board observer. However, if the insured entities are financially unable to pay the deductible under this policy due to bankruptcy or insolvency or any insured entity refuses to indemnify the insured individuals, Liberty will advance the deductible to the insured individuals on behalf of the insured entities, with a full right of recovery against the insured entities, no later than 60 days after Liberty has received in writing details of such refusal or failure.

5.3 DISCOVERY PERIOD

- (a) If Liberty terminates or refuses to renew this policy other than for non-payment of premium or if the insured terminates or fails to renew this policy, coverage under this policy is automatically extended for 60 days following the effective date of termination, but only for any wrongdoing which happens before the effective date of termination of this policy and only if there is no replacement policy obtained providing coverage anytime during this 60 day period.
- (b) If Liberty terminates or refuses to renew this policy, other than for non-payment of premium, the insured can extend coverage under the policy for 12 months following the effective date of termination by written notice to Liberty and by paying an additional premium equal to the Unilateral Discovery Percentage amount stated in Item VIII of the declarations of the annual premium stated in Item X of the declarations, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to wrongdoing that occurred before the effective date of termination. If the insured chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(b).

- (c) If the insured terminates or refuses to renew this policy, the insured can extend coverage under the policy for 12 months following the effective date of termination by giving written notice to Liberty, and paying an additional premium equal to the Bilateral Discovery Percentage amount stated in Item VIII of the declarations of the annual premium stated in Item X of the declarations, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to wrongdoing that happened before the effective date of termination. If the insured chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(c).

- (d) The discovery period is part of the last policy period and does not increase the limits under paragraph 5.1.
- (e) An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to renewal is not a "refusal to renew" by Liberty under paragraphs 5.3 (a) or (b).

5.4 SPOUSAL BENEFIT & ESTATE ENUREMENT

- (a) If a claim against the insured for wrongdoing includes a claim against an executive's spouse solely because he/she is the executive's spouse, or to recover the spouse's assets, anything which the spouse is legally obliged to pay as a result of the claim (including defence costs) is a loss attributed to the

insured under this policy. However, there is no coverage for the spouse if the claim alleges a wrongful act on the part of the spouse.

- (b) This policy is binding upon and applies to the benefit of the insured's estate, heirs, executors, administrators and legal representatives, but only in respect of wrongdoing on the insured's part.

5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

- (a) If during the policy period the company merges or amalgamates with another entity, the company must give prompt notice of the merger or amalgamation to Liberty.
- (b) If during the policy period the company acquires or creates a new entity which becomes its subsidiary, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the company on a consolidated basis, coverage under this policy extends to the new entity and to any plan connected with the new entity but only with respect to any wrongdoing occurring after such acquisition or creation.
- (c) If during the policy period the company acquires or creates a new entity which becomes its subsidiary and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the company on a consolidated basis, then:
 - i) coverage under this policy extends to the new entity and to any plan connected with the new entity for 90 days but only with respect to any wrongdoing occurring after such acquisition or creation;
 - ii) the coverage for the new entity and for any plan connected with the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the company has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the company has paid any additional premium required by Liberty.

- (d) If the company or any subsidiary is sold or dissolved during the policy period this policy will continue to apply to claims involving:

the sold or dissolved entity and/or its executives, and any plan sponsored by or connected with the sold or dissolved entity, and any fiduciary or administrator of that plan until the termination date of this policy or any renewal policy, but only for wrongdoing occurring before the sale or dissolution. Sale of the company means: a change in the control of the company within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a subsidiary means: a sale of more than 50% of any issued and outstanding securities or other interest of the subsidiary that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of managerial control of the subsidiary.

5.6 SEVERABILITY

For the purpose of assessing:

- (a) whether or not there is a material misrepresentation or non-disclosure in the application, or
 - (b) whether or not exclusions or limitations of coverage apply,
- no knowledge or statement by any insured individual will be imputed to any other insured individual. However, any knowledge or statement by the chairperson, president, chief executive officer or chief financial officer will be imputed to the company or plan.

5.7 TERMINATION AND PREMIUM REFUND

- (a) This policy terminates at the earliest of the following times:

- i) on the date stated in Item III (B) of the declarations;
 - ii) the later of the date of receipt or deemed receipt by Liberty of written notice of termination from the company or the date specified in such notice;
 - iii) for non-payment of premium, fifteen (15) days after receipt or deemed receipt by the company of Liberty's written notice of termination;
 - iv) on any other date mutually agreed upon by the company and Liberty.
- (b) If this policy is terminated under paragraph 5.7 (a) (ii) or (iii), Liberty will refund any unearned premium on a pro rata basis.

5.8 TERRITORY AND CURRENCY

- (a) Coverage under this policy applies to wrongdoing which takes place and to claims anywhere in the world.
- (b) Unless the declarations expressly state otherwise, all dollar amounts in this policy refer to Canadian currency and all loss is payable in Canadian currency. If any Items stated in the declarations stipulate a currency other than Canadian dollars, all monetary amounts in the policy shall refer to such stipulated currency and all loss is payable in that stipulated currency.

5.9 ARBITRATION AND APPLICABLE LAW

- (a) If requested by either party, any dispute about coverage under this policy, including any dispute as to allocation, will be submitted to mediation and/or arbitration. Except as regards the choice of arbitrator or arbitration panel, the mediation and/or arbitration will be governed by the law of the province or territory of the address of the company stated in Item II of the declarations, unless the company and Liberty expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the company, one arbitrator selected by Liberty and one arbitrator selected by the first two arbitrators. None of the arbitrators can be former or present insureds or shareholders, partners or principals of or otherwise affiliated in business with any insureds or Liberty.
- (b) This policy is governed by the law of the jurisdiction in which it was issued without giving effect to the choice of law rules of that jurisdiction.

5.10 AUTHORIZATION

The company stated in Item I of the declarations is appointed as the agent of all insureds for all purposes under this policy, and by accepting this policy the company represents and warrants to Liberty that it is authorized to act on behalf of all insureds. The company is not an agent of Liberty.

5.11 AMENDMENT OR ASSIGNMENT

No amendment or change to, or assignment in whole or in part of an interest in, this policy is effective unless made in writing and signed by an authorized representative of Liberty.

5.12 INTERPRETATION

In this policy:

- (a) words and expressions shall be read with such changes in gender or number as the context shall require.
- (b) the headings and titles to the table of contents and paragraphs are meant to make it easier to read, and do not create or affect coverage.
- (c) a reference to an act, statute or any applicable law is deemed to extend to and include any amendments and successor acts, statutes or applicable laws and any rules, regulations, orders or directives issued thereunder.

5.13 NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.

RH

Liberty Private Advantage Liability (PAL)



While this policy is in effect, the company first named in Item I of the declarations is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The company first named in Item I of the declarations shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this policy. The amount of such company's participation is determined by the decision of Liberty Mutual Holding Company Board of Directors in compliance with any laws that apply.

5.14 NOTICE OF NON RENEWAL

Liberty has no obligation to renew this policy. However, if Liberty refuses to renew this policy, Liberty shall provide written notice of non-renewal to the company no less than 90 days prior to the effective date of termination of this policy. This notice applies only if the company submits a completed application in advance of the prescribed notice date. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

5.15 GLOBAL LIBERALIZATION

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

In regard to claim(s) brought and maintained solely in a foreign jurisdiction against an insured entity formed and operating in such foreign jurisdiction or insured individual thereof for any wrongdoing committed in such foreign jurisdiction, Liberty shall apply to such claim(s) those terms and conditions (and related provisions) of the foreign policy registered with the appropriate regulatory body in such foreign jurisdiction that are more favourable to such insured than the terms and conditions of this policy. However, this paragraph shall apply only to Paragraphs 1, 2, 3, 4.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10 and 5.11 of this policy and the comparable provisions of the foreign policy. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of this policy.

Handwritten signature of David McInerney in black ink.

President

Handwritten signature of Michael A. G. in black ink.

Secretary

Endorsement No. 1

FIDUCIARY WRONGDOING EXCLUSION

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Paragraphs 1.1A, 1.1B, 1.1C, 1.1D, 4.3(b) are amended by deleting the words, **fiduciary wrongdoing**, wherever such words are used.
2. Paragraph 2.1, **EXCLUSIONS APPLICABLE TO ALL INSUREDS**, is amended by adding the following:

FIDUCIARY WRONGDOING: based on any fiduciary wrongdoing.

3. Paragraph 2.5, **EXCLUSIONS FOR FIDUCIARY WRONGDOING**, is deleted in its entirety.
4. Paragraph 3 **DEFINITIONS** "insured individual," "insured entity" and "wrongdoing" are deleted and replaced with the following:
"insured individual" means an executive, an administrator, an employee, an advisory board member or board observer of the insured entity.
"insured entity" means the company.
"wrongdoing" means any executive wrongdoing, wrongful employment practices or insured entity wrongdoing.
5. Paragraph 5.5, **EXPOSURE CHANGES- MERGERS, ACQUISITIONS, SALE** is deleted and replaced with the following:
5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE
 - (a) If during the policy period the company merges or amalgamates with another entity, the company must give prompt notice of the merger or amalgamation to Liberty.
 - (b) If during the policy period the company acquires or creates a new entity which becomes its subsidiary, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the company on a consolidated basis, coverage under this policy extends to the new entity, but only with respect to any wrongdoing occurring after such acquisition or creation.
 - (c) If during the policy period the company acquires or creates a new entity which becomes its subsidiary and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the company on a consolidated basis, then:



- i) coverage under this policy extends to the new entity for 90 days but only with respect to any wrongdoing occurring after such acquisition or creation,
 - ii) the coverage for the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the company has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the company has paid any additional premium required by Liberty.
 - (d) If the company or any subsidiary is sold or dissolved during the policy period this policy will continue to apply to claims involving:

the sold or dissolved entity and/or its executives until the termination date of this policy or any renewal policy, but only for wrongdoing occurring before the sale or dissolution. Sale of the company means a change in the control of the company within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a subsidiary means: a sale of more than 50% of any issued and outstanding securities or other interest of the subsidiary that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of managerial control of the subsidiary.
6. Paragraph 5.6 SEVERABILITY is amended by deleting the words "or plan."

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

 Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

 Date

RH



Endorsement No. 2

PRIOR KNOWN WRONGFUL ACTS EXCLUSION

(Application/warranties not received)

Effective Date: April 25, 2019
 Policy Number: B2BPAL113736001
 Issued To: GS E&R Canada Inc.
 By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 2.1, EXCLUSIONS APPLICABLE TO ALL INSUREDS, is amended by adding the following:

PRIOR KNOWN WRONGFUL ACTS: based on any wrongdoing by any insured individual or insured entity that prior to April 25, 2019 any insured individual or insured entity was aware could reasonably give rise to a claim.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date



RH



Endorsement No. 3

MULTI-YEAR POLICY ENDORSEMENT

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Wherever the term "policy period" appears in this policy (other than Item III and Item X of the declarations, and "policy period" in Paragraph 3. DEFINITIONS) it shall be replaced with the term "policy instalment term".
2. Paragraph 3, DEFINITIONS, "policy period" is deleted in its entirety and replaced with the following:

"policy period" means the period from the date specified in Item III of the declarations to the date of termination of this policy under paragraph 5.7 and shall include up to three (3) policy instalment terms as specified in Item III of the declarations under the heading entitled, Instalment Terms.

3. Paragraph 3, DEFINITIONS, is amended by adding the following:
"policy instalment term" means the applicable period specified in Item III of the declarations.
The discovery period is deemed to be part of the most recent policy instalment term.
4. Notwithstanding paragraph 5.7 of this policy, it is further understood and agreed that in the event Liberty is notified of a claim, pursuant to paragraph 4.1 of this policy, before the end of any policy instalment term specified in Item III of the declarations, Liberty shall have the right to terminate coverage under this policy for any subsequent policy instalment term specified in Item III of the declarations by giving written notice of termination to the company no less than 60 days prior to such termination. If such 60 day notice of termination period extends past the expiry of the applicable policy instalment term in which the claim was made, Liberty shall extend such policy instalment term to satisfy the 60 day notice of termination requirement but without increasing or reinstating the applicable Limits of Liability.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.



J. Todd Armstrong

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date

RH

Endorsement No. 4

DEFENCE COSTS IN ADDITION TO THE LIMIT (CANADA ONLY AND WITH REMOVAL OF INSURED CONSENT TO SETTLEMENT)

Effective Date: April 25, 2019
Policy Number: B2BPAL113736001
Issued To: GS E&R Canada Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Solely for a claim occurring within Canada, the policy is amended as follows:

1. Paragraph 4.2(b) is deleted and replaced with the following:

(b) Liberty may, at its sole discretion, settle any claim for which coverage is available in whole or in part under this policy.

2. Paragraph 4.2 (d) is deleted and replaced with the following:

(d) Defence costs incurred by Liberty or by the insured with Liberty's consent are in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs does not reduce the applicable Limits of Liability stated in Item IV of the declarations. However, defence costs incurred under paragraph 2.1(g)v are part of and not in addition to the applicable Limits of Liability stated in Item IV of the declarations and the payment by Liberty of defence costs reduces and may exhaust the Limits of Liability.

3. Paragraph 5.1 (a) is deleted in its entirety and replaced with the following:

(a) Liberty's obligation to pay any one loss and all loss under this policy during the policy period, not including defence costs, is limited to the Total Limits of Liability stated in Item IV of the declarations and the additional Limits of Liability provided in paragraph 1.1D and 4.2(d). The Sub-Limits of Liability stated in Item V of the declarations are part of and not in addition to the Total Limits of Liability stated in Item IV of the declarations.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

J. Todd Armstrong

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date



P.A.L.60b (04/16)

Liberty Mutual Insurance Company

RH



Endorsement No. 5

AUTOMATIC DISCOVERY PERIOD FOR RETIRED EXECUTIVES

Effective Date: April 25, 2019
 Policy Number: B2BPAL113736001
 Issued To: GS E&R Canada Inc.
 By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 5.3(a) of this policy is amended to include the following:

If Liberty refuses to renew or the insured terminates or refuses to renew this policy, then with respect to executive(s) who are retired, whose employment has been terminated, and/or who have not been re-elected as a director of the insured entity prior to the date of termination of this policy, there shall be an automatic extension of the coverage granted by this policy for a period of 36 months following the effective date of termination of this policy, but only for any wrongdoing occurring prior to the effective date of such executive(s) retirement, termination of employment, and/or failure to be re-elected, but only if there is no replacement policy obtained providing coverage for such retired, terminated or non-re-elected insured person(s) anytime during such 36 month period, in which case the automatic extension provided for in this paragraph shall terminate at the inception date of such replacement policy.

The automatic extension provided for in the above paragraph shall apply only to Insuring Agreement 1.1A.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative of Liberty Mutual Insurance Company

April 25, 2019

Date

1

PAL 77 (01/18)

Liberty Mutual Insurance Company

RH

CERTIFICATE OF COMMISSIONER OF OATHS

As described by the Alberta Chief Justice and Associate Chief Justices in the Notice to the Profession and Public dated March 25, 2020 (NPP#2020-02), the process I followed for notarizing the attached Affidavit of Jungho Park, sworn on March 18, 2021 is as follows:

1. (the “**Deponent**”) appeared in front of me by way of video technology (the “**Video Call**”) on March 18, 2021.

2. While connected by way of the Video Call:
 - a. The Deponent showed me the front and back of the Deponent’s driver’s license. I have retained a scanned copy of the front and back of the driver’s license.
 - b. I compared the driver’s license to the video image of the Deponent, and I am satisfied that the person appearing before me via the Video Call was the same person as shown on the driver’s license.
 - c. The Deponent and I each had a paper copy of the Affidavit before each of us, during the Video Call.
 - d. The Deponent and I reviewed each page of our affidavits to ensure that both my paper copy and the Deponent’s paper copy of the Affidavit were identical. Both the Deponent and I initialled each page of our respective copies when satisfied that they were identical.
 - e. Upon the conclusion of reviewing and initialling each page of the Affidavit, I administered the solemn declaration and the Deponent swore the solemn declaration. I then witnessed the Deponent sign their paper copy of the Affidavit.

3. Immediately following the Video call, the Deponent sent me the electronic copy of their sworn Affidavit, which I compared to my initialed paper copy of the Affidavit. Upon my review, I am satisfied that the two versions of the Affidavit are identical.

4. Upon being satisfied that the electronic copy from the Deponent was identical to the initialed copy I had before me during the Video Call, I affixed my name to the jurat.

5. I, Robert Hamilton, a Commissioner of Oaths in and for the Province of Alberta am satisfied that the process of utilizing video technology for remote notarizing of statutory

declarations was necessary because it was impossible or unsafe, for medical reasons, for the Deponent and any commissioner of oaths to be physical present together.

Robert Hamilton

Robert Hamilton