

**Alberta Lawyers Indemnity
Association
600, 919 - 11th Avenue South West
Calgary, Alberta T2R 1P3**

**ALBERTA LAWYERS' PROFESSIONAL LIABILITY AND MISAPPROPRIATION
INDEMNITY GROUP POLICY**

DECLARATIONS

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. THERE IS NO COVERAGE FOR ANY **CLAIMS** WHICH ARE NOT BOTH FIRST MADE AGAINST THE **INDEMNIFIED PARTY** DURING THE **POLICY PERIOD**, AND REPORTED TO THE **INDEMNIFYING PARTY** DURING THE **POLICY PERIOD**.

1. POLICY NO.: AB006/20
2. INDEMNIFYING PARTY
(referred to in this Policy as the **Indemnifying Party**): Alberta Lawyers Indemnity Association (“**ALIA**”)
3. LOCAL ADMINISTRATIVE
OFFICE AND ADDRESS
FOR SERVICE: Alberta Lawyers Indemnity Association
600, 919 - 11th Avenue S.W.
Calgary, Alberta T2R 1P3
4. PART A - PROFESSIONAL
LIABILITY INDEMNITY
 - (a) INDEMNIFIED PARTIES:
 - (i) Members of the Law Society of Alberta (“**Law Society**”) who are required by the **Rules** of the **Law Society** to pay the professional liability assessment for indemnity under this Part A and who have paid such assessment.
 - (ii) others identified as **Indemnified Parties** in the policy
 - (b) POLICY PERIOD: July 1, 2019 to June 30, 2020
 - (c) LIMITS OF LIABILITY: **Occurrence Limit** - \$1,000,000
Aggregate Limit - \$2,000,000
 - (d) INDIVIDUAL DEDUCTIBLE: \$5,000 per **Occurrence**
 - (f) PREMIUM: As determined by the **ALIA** Board.

5. PART B - MISAPPROPRIATION INDEMNITY

- (a) INDEMNIFIED PARTIES
- (i) Members of the **Law Society** who are required by the **Rules** of the **Law Society** to pay the misappropriation assessment for indemnity under this Part B and who have paid such assessment
- (ii) others identified as **Indemnified Parties** in the policy
- (b) POLICY PERIOD: July 1, 2019 to June 30, 2020
- (c) LIMITS OF LIABILITY: **Misappropriation limit** - \$5,000,000
Profession-wide Annual Aggregate Limit - \$25,000,000
- (d) PREMIUM: As determined by the **ALIA** Board.

PART A - PROFESSIONAL LIABILITY INDEMNITY

I. DEFINITIONS

In this Part A:

Additional Indemnified Party means, with respect to a particular **Individual Indemnified Party**:

- (a) a present or former partner of the **Individual Indemnified Party**;
- (b) any **Law Firm** through which the **Individual Indemnified Party** has practised law, whether as partner, associate, employee, counsel, contract lawyer or otherwise; and
- (c) a present or former partner of any **Law Firm** through which the **Individual Indemnified Party** has practised law,

provided, however, **Additional Indemnified Party** does not include an **Indemnified Party** who committed or is alleged to have committed an **Error** that is the same as, or which is **Related** to, the **Error** committed by the **Individual Indemnified Party**.

Administrative Costs means:

- (a) **Costs** incurred by the **Indemnifying Party** in managing a **Claim**, including, without limiting the foregoing, **Costs** of coverage determinations, recovery and subrogation, and adjuster's fees incurred in managing a **Claim**;
- (b) post-judgement interest on that portion of Damages (or any part thereof) for which the **Indemnifying Party** is responsible under this Part A; and
- (c) out-of-pocket **Costs** of an **Indemnified Party** in connection with a **Claim** to the extent authorized for reimbursement by the **Indemnifying Party** in writing in advance, including, without limiting the foregoing, reasonable travel **Costs** to attend trial to the extent so authorized.

Adult Interdependent Partner has the same meaning as in the *Adult Interdependent Relations Act*, SA 2002, c. A-4.5.

Aggregate Limit has the meaning given by clause 2.5(c).

ALIA means the Alberta Lawyers Indemnity Association, a company incorporated under Part 9 of the *Companies Act*, RSA 2000, c. c-21.

Ancillary Activities means activities of a quasi-legal or non-legal nature (including, without limiting the foregoing, financial, investment, accounting and brokerage advice or services; and the carrying on of any business or undertaking that is not the provision of Professional Services including, without limiting the foregoing, real estate development and appraisal) that are ancillary to or independent of the practice of law and are provided by an **Indemnified Party** regardless of whether such activities are for compensation, personal benefit, or otherwise.

Claim means:

- (a) a written or oral allegation of an **Occurrence**; or
- (b) a written or oral demand for money, property or services arising out of an actual or alleged **Occurrence**;

including the threat or institution of a suit or other legal proceeding that is made against one or more **Indemnified Parties**.

For greater certainty, all **Claims** arising out of the same **Occurrence** are subject to a single **Occurrence Limit**, regardless of the fact that such **Claims** may have been made in different policy periods. Nothing in this clause relieves the **Indemnified Party** from the obligation to report such **Claims** in accordance with the requirements of Conditions 4.1 and 4.2 of this policy.

Claimant means a **Person** who has made or may make a **Claim**.

Costs includes fees, costs, charges, disbursements and expenses.

Counterfeit Certified Cheque or Counterfeit Bank Draft means a fraudulent instrument purported to be drawn upon a Canadian financial institution that resembles a certified cheque or bank draft to such an extent that it is reasonably capable of passing for a certified cheque or bank draft, but not a certified cheque or bank draft that has merely been altered or for which a signature of endorsement forged.

Damages means:

- (a) compensatory damages;
- (b) **Repair Costs**;
- (c) pre-judgement interest on that portion of **Damages** (or any part thereof) for which the **Indemnifying Party** is responsible under this Part A (other than Damages under this paragraph (c)); and
- (d) **Costs** of a **Claimant** that are taxed or fixed by a court;

but does not include:

- (i) fines or penalties;
- (ii) aggravated, punitive or exemplary damages (whether or not such damages are compensatory damages);
- (iii) billed or unbilled legal fees and disbursements, whether paid or not, even if claimed as special or general damages;
- (iv) any profit, remuneration or any other gain which the **Indemnified Party** has directly or indirectly received; or
- (v) the cost of complying with declaratory, injunctive or other non-monetary relief.

Defence Costs means **Costs** incurred by the **Indemnifying Party** in defending or settling a **Claim**, including, without limiting the foregoing, legal fees and disbursements of counsel appointed by the

Indemnifying Party and of **Repair Counsel**; notional legal fees and disbursements incurred by in-house defence counsel of the **Indemnifying Party**, if any, as determined by the **Indemnifying Party**; the fees and disbursements incurred for investigators, experts, appraisers and witnesses; **Costs** of alternative dispute resolution; and adjuster's fees incurred on the instructions of counsel in defending or settling a **Claim**.

Dishonest means conduct which a reasonable person would consider to be, in the context of the expected conduct of a lawyer:

- (a) deceptive and morally reprehensible;
- (b) untruthful and morally reprehensible; or
- (c) lacking in candour and integrity;

even in the absence of an actual dishonest purpose, motive or intent.

Enterprise means any proprietorship, partnership, limited partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm, trust, municipality, government, governmental or regulatory authority, university, court or other legal or commercial entity.

Error means an actual or alleged inadvertent error by act or omission.

Finding means a finding by the trier of fact in the case against the **Indemnified Party**, after the exhaustion of all appeals or, if no such appeals have been commenced, after the time for commencing such appeals has expired.

Incidental Services means services that are connected with and incidental to the practice of law, including, without limiting the foregoing, those services for which the **Indemnified Party** is responsible as a **Member** and which arise out of such **Indemnified Party's** activity as an executor, administrator, trustee, personal representative, committee, guardian, or patent or trademark agent.

Individual Deductible has the meaning given by clause 2.5(a).

Individual Indemnified Party means a **Member** who has caused or is alleged to have caused an **Occurrence** and who is one of the following:

- (a) a **Member** who is required by the **Rules** to pay the professional liability assessment for indemnity under this Part A and who has paid such assessment; or
- (b) a **Member** or former **Member** who was previously, but is no longer, insured or indemnified by the indemnity program mandated by the *Legal Profession Act* (Alberta), but only with respect to **Occurrences** that took place or are alleged to have taken place:
 - (i) while that **Member** was insured by mandatory insurance; or
 - (ii) before the date of commencement of mandatory insurance.

In this definition, "mandatory insurance" means professional liability insurance or indemnity for errors and omissions required by legislation or the **Rules** to insure or indemnify **Members**, in the form that was required at the relevant time; and "**Individual Indemnified Party**" includes a **Professional Corporation** through which the **Individual Indemnified Party** was practising law at the time of the Occurrence.

Ineligible Costs means:

- (a) **Costs** incurred and earnings lost by an **Individual Indemnified Party** or **Additional Indemnified Party** in connection with an attempt to correct an **Error** in the rendering of **Professional Services**, to prevent the threat, institution or advancement of a **Claim**, or to reduce or avoid any liability, damages or loss arising out of an **Error**, or in the defence or settlement of a **Claim**, including, without limiting the foregoing, those associated with:
 - (i) photocopying documents;
 - (ii) expending time and effort;
 - (iii) preparing for and attending questioning or cross-examinations, or interlocutory proceedings;
 - (iv) preparing for and attending alternate dispute resolution;
 - (v) preparing for court and testifying; and
 - (vi) otherwise cooperating with the **Indemnifying Party** in the repair, defence or settlement of a **Claim**;
- (b) out-of-pocket **Costs** of an **Individual Indemnified Party** or **Additional Indemnified Party** that are not authorized for reimbursement by the **Indemnifying Party** in advance, including, without limiting the foregoing, **Costs** of independent or personal counsel retained by the **Indemnified Party** (except in the circumstances set out in Exclusions 3.7, 3.9 and 3.10) and **Costs** of disputing issues relating to coverage, deductibles or apportionment of liability (subject to an award otherwise by a court or arbitrator); and
- (c) **Costs** awarded personally against an **Indemnified Party** as a result of the **Indemnified Party's** conduct in litigation, whether or not connected with an **Occurrence**.

Indemnified Party means:

- (a) an **Individual Indemnified Party**;
- (b) an **Additional Indemnified Party**; or
- (c) a **Legal Services Organization Lawyer**.

Indemnifying Party means **ALIA**.

Law Firm means:

- (a) a sole proprietorship through which an **Individual Indemnified Party** practises law; or
- (b) two or more **Individual Indemnified Parties** who are, or appear to be, holding themselves out to the public as practising law together, whether or not a partnership exists in fact and regardless of the form or forms of business organization through which the practice is conducted.

Law Society means the Law Society of Alberta.

law society means a law society, barristers' society or similar organization of a jurisdiction other than Alberta.

Legal Services Organization Lawyer means a **Member** who is an employee of, or who is exempted from the requirement to pay a professional liability assessment pursuant to the **Rules** but who is otherwise acting within the scope of their duties in providing pro bono legal services as a volunteer through, an organization which has been designated by the Executive Director of the **Law Society** under the **Rules** as an approved legal services provider of pro bono services and such designation is in full force and effect at the time of the **Occurrence**.

Limits of Liability means the **Occurrence Limit** and **Aggregate Limit** set out in Item 4(c) of the Declarations.

Member means a lawyer who, at the date of the Occurrence, was enrolled with the **Law Society** pursuant to the *Legal Profession Act* (Alberta).

Misappropriation means, for the purposes of this Part A, a theft, wrongful taking, or wrongful conversion and may include multiple thefts, wrongful takings, or wrongful conversions concurrently, or over time, of **Money, Securities or Property**, whether to the use of an **Indemnified Party** or a third party, which was entrusted to or received by an **Individual Indemnified Party** or **Additional Indemnified Party** in their capacity as a barrister or solicitor or such other capacity as the **Law Society** may designate, regardless of the form or forms of business organization through which the practice as a barrister or solicitor is conducted.

Mobility Rules means those rules of a Canadian **law society** that govern the ability of members of other Canadian **law societies** to provide **Professional Services** in that jurisdiction on a temporary or permanent basis.

Money, Securities or Property means:

- (a) money including currency, coins, and bank notes having a face value and in current use;
- (b) securities including all negotiable and non-negotiable instruments or contracts representing money, debt, an equity interest or an interest in property and includes revenue and other stamps, tokens and tickets in current use; and
- (c) personal property including trust money, in cash or on deposit, and chattels, which have been entrusted.

Non-qualifying Services means advice or services provided or supervised by an **Indemnified Party** in relation to one or more **Ancillary Activities** conducted by that **Indemnified Party**.

Occurrence means an **Error** in the rendering of **Professional Services** to others, provided in either case that:

- (a) a sole **Error** shall be considered one **Occurrence** regardless of:
 - (i) the number of **Claimants** or **Claims** arising out of the **Error**;
 - (ii) the number of **Indemnified Parties** against whom **Claims** are made in connection with the **Error**; or
 - (iii) the fact that **Claims** arising out of the **Error** were made at different times or in different policy periods; and

- (b) two or more **Errors** that are the same or that are **Related** shall be considered a single **Occurrence**, regardless of:
 - (i) the number of **Claimants** or **Claims** arising out of the **Errors**;
 - (ii) the number of **Indemnified Parties** against whom **Claims** are made in connection with the **Errors**;
 - (iii) the fact that the **Errors** occurred in the same or different retainers for the same or different clients; or
 - (iv) the fact that the **Errors** took place, or that **Claims** arising out of the **Errors** were made, at different times or in different policy periods.

Occurrence Limit has the meaning given by clause 2.5(b).

Office means an office or place of business established by or for the benefit or use of an **Indemnified Party** or that **Person's Law Firm** and from which services are provided or are intended to be provided on an ongoing, but not necessarily regular or full-time basis.

Overdraft means a negative balance in the **Indemnified Party's** trust account to the extent directly caused by a **Counterfeit Certified Cheque or Counterfeit Bank Draft**.

Person includes an individual and an **Enterprise**.

Policy Period is that indicated in Item 4(b) of the Declarations.

Professional Corporation means a corporation to which a permit has been issued pursuant to subsection 131(3) of the *Legal Profession Act* (Alberta).

Professional Services means:

- (a) services normally provided or supervised by a lawyer within the scope of a usual lawyer-client relationship;
- (b) services rendered as an arbitrator or a mediator of legal disputes, or in an equivalent role with respect to such disputes; and
- (c) **Incidental Services** that are substantially **Related** to services described in paragraph (a);

but does not include:

- (i) **Ancillary Activities**; or
- (ii) the mere receipt and distribution of funds by an **Indemnified Party**, whether through that **Indemnified Party's** trust account or otherwise.

Reciprocal Jurisdiction means a Canadian jurisdiction the **law society** of which has adopted **Mobility Rules** that are not substantially more restrictive than the **Mobility Rules** of the **Law Society**.

Related includes factual relationships, logical relationships, causal relationships and any other relationship.

Related Party means, with respect to a particular **Individual Indemnified Party**:

- (a) a present or former partner of the **Individual Indemnified Party**;
- (b) any **Law Firm** through which the **Individual Indemnified Party** was practising at the time of the Occurrence, whether as partner, associate, employee, counsel, contract lawyer or otherwise;
- (c) a present or former partner of any **Law Firm** through which the **Individual Indemnified Party** has practised law; and
- (d) a **Spouse, Adult Interdependent Partner**, parent, child, sibling or other relative of the **Individual Indemnified Party** or any other individual set forth in the foregoing paragraphs (a) through (c).

Repair Costs means **Costs** incurred by the **Indemnifying Party** in an attempt to:

- (a) correct an **Error** in the rendering of **Professional Services**;
- (b) prevent the threat or institution of a **Claim** or legal proceeding against one or more **Indemnified Parties** arising out of an **Error** in the rendering of **Professional Services**; or
- (c) reduce or avoid any liability, damages or loss, including taxed costs and interest, arising out of an **Error** in the rendering of **Professional Services**.

Repair Counsel means counsel retained by the **Indemnifying Party** pursuant to clause 2.4(a).

Rules means the Rules of the **Law Society**, as amended.

Social Engineering Fraud includes the intentional misleading of:

- (a) an **Indemnified Party** or a **Law Firm**;
- (b) a client of an **Indemnified Party** or a **Law Firm**;
- (c) a partner, associate, employee, counsel, contract lawyer or other agent or representative of a **Law Firm**; or
- (d) a bank or other financial institution of any **Person** listed in clauses (a) to (c) above,

into sending or paying money based on fraudulent information that is provided to any such **Person** in a written or verbal communication.

Spouse means the husband or wife of a married individual.

II. INDEMNITY AGREEMENTS

In consideration of payment of the premium when due, and subject to the **Limits of Liability**, deductibles, exclusions, conditions and all other terms of this Part A, the **Indemnifying Party** agrees with each **Indemnified Party** as follows:

2.1 **Damages**

Subject to Conditions 4.1, 4.2 and 4.4 of this Part A, which are conditions precedent to coverage, and subject also to all other provisions of this Part A, the **Indemnifying Party** will pay on behalf of each **Indemnified Party** the **Damages** that the **Indemnified Party** becomes legally obligated to pay arising out of an **Occurrence**.

2.2 **Defence of Claims and Payment of Costs**

In respect of the indemnity coverage given by this Part A, the **Indemnifying Party** will:

- (a) defend that portion of any **Claim** against an **Indemnified Party** alleging an **Occurrence** and seeking **Damages** that would fall within the coverage provided by this Part A. As part of this obligation to defend such a **Claim**, the **Indemnifying Party** shall have complete and exclusive control over the conduct of the defence of a **Claim**, including the appointment and instruction of counsel;
- (b) pay all **Administrative Costs** incurred by the **Indemnifying Party** in connection with the **Claim**, it being understood that the payment of **Administrative Costs** by the **Indemnifying Party** will not erode the **Limits of Liability** provided in this Part A;
- (c) pay all **Defence Costs**, incurred by the **Indemnifying Party**, in connection with that part of the **Claim** that falls within the coverage provided by this Part A, it being understood that the payment of **Defence Costs** by the **Indemnifying Party** will erode the **Limits of Liability** provided in this Part A; and
- (d) pay all premiums on appeal bonds and on bonds to release attachments, for bond amounts not exceeding the applicable **Limit of Liability** (as such **Limit of Liability** may be eroded in accordance with this policy from time to time), in connection with the **Claim** that have been authorized in advance by the **Indemnifying Party**, it being understood that the payment of such premiums will erode the **Limits of Liability** provided in this Part A and that the **Indemnifying Party** will have no obligation to furnish, apply for or give security for any such bonds.

2.3 **Limits on Defence and Payment of Costs**

- (a) *Uncovered Claim.* The **Indemnifying Party** has no duty to defend, and has no duty to pay any **Defence Costs**, **Administrative Costs** or other amounts, regarding a **Claim** or a part of a **Claim** that falls within an Exclusion of this Part A or that otherwise is not covered by this Part A.
- (b) *Ineligible Costs.* The **Indemnifying Party** is not responsible for and will not pay any **Ineligible Costs**.
- (c) *Uncovered portion of defence:* The **Indemnifying Party** has no obligation to pay any **Defence Costs** or other amounts with respect to parties, allegations, or **Damages** that are

not covered by this Part A, and such **Defence Costs** or other amounts are the sole responsibility of the **Indemnified Party**. If there are uncovered parties, allegations or **Damages** in the **Claim**, the following shall apply:

With respect to payment of Defence Costs:

- (i) the **Indemnifying Party** and **Indemnified Party** will use reasonable efforts to agree upon an allocation of the cost of defending the covered and uncovered parties, allegations or **Damages**. If the **Indemnifying Party** and **Indemnified Party** cannot reach such an agreement, then the **Indemnifying Party** is entitled to decide the appropriate percentage, acting reasonably, for the cost of defending the covered parties, allegations or **Damages** and shall be entitled to pay only that percentage;
- (ii) if the **Indemnified Party** disagrees with the **Indemnifying Party's** determination of that percentage, then the disagreement shall be resolved by arbitration in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator. In resolving the dispute, the arbitrator shall consider the relative legal and relative factual exposure of the **Indemnifying Party** and the **Indemnified Party** with respect to the covered and uncovered parties, allegations or **Damages**. The arbitration shall be final and binding, with no right of appeal;
- (iii) any determination of such a percentage allocation, whether by agreement or by arbitration, shall apply only to **Defence Costs** and shall not apply to or be considered with respect to allocation of **Damages**;
- (iv) if the **Indemnifying Party** pays **Defence Costs** or other amounts that would be allocated to an **Indemnified Party** hereunder, the **Indemnified Party** shall pay such amounts to the **Indemnifying Party** on demand;

With respect to payment of Damages:

- (v) the allocation between covered and uncovered **Damages** may proceed after judgment in, or settlement of, the **Claim** and will be based on the relative legal and relative factual exposure of the **Indemnifying Party** and the **Indemnified Party** with respect to the covered and uncovered **Damages**.

2.4 **Repair of Errors**

The **Indemnifying Party** may determine, in its sole discretion, whether an attempt should be made to repair an **Error** in the rendering of **Professional Services**; however, the **Indemnifying Party** has no obligation or duty to attempt to repair an **Error**. If the **Indemnifying Party** determines that an attempt should be made to repair an **Error**, then as between the **Indemnifying Party** and the **Indemnified Party**, the **Indemnifying Party** shall be entitled to have complete and exclusive control over the repair. Such exclusive control includes, without limiting the foregoing, the **Indemnifying Party's** ability to:

- (a) retain counsel to act on behalf of the **Indemnifying Party**, which retainer may provide that such counsel may be exclusively instructed by the **Indemnifying Party** and may contain such other terms and conditions (including that it may be a joint retainer) as the **Indemnifying Party** may determine in its sole discretion;
- (b) incur **Repair Costs**;

- (c) take such steps as the **Indemnifying Party** decides are appropriate to prevent the threat or institution of a **Claim** or legal proceeding against one or more **Indemnified Parties** arising out of an **Error** in the rendering of **Professional Services**; and
- (d) take such steps as the **Indemnifying Party** deems appropriate to reduce or avoid any liability, loss or damages arising out of an **Error** in the rendering of **Professional Services**.

The payment of **Repair Costs** by the **Indemnifying Party** will erode the **Limits of Liability** provided in this Part A.

2.5 **Deductibles and Limits of Liability**

- (a) ***Individual Deductible.***
 - (i) Each **Indemnified Party** against whom one or more **Claims** are made in respect of an **Occurrence** shall be liable for **Defence Costs** and **Damages** (including **Repair Costs**) for that **Occurrence** up to a maximum amount of \$5,000.00 in the aggregate (the **Individual Deductible**).
 - (ii) The **Indemnifying Party** does not have any obligation to pay to a **Claimant** an amount attributable to an **Individual Deductible** although the **Indemnifying Party** may pay all or part of the **Individual Deductible** amount to a **Claimant** to effect settlement of a claim or to pay **Repair Costs**. If the **Indemnifying Party** pays any part or all of the **Individual Deductible** amount to a **Claimant** to effect settlement of a claim or to pay **Repair Costs**, the **Indemnified Party** shall promptly reimburse the **Indemnifying Party** the amount paid.
 - (iii) If a **Claim** is made against more than one **Indemnified Party** from the same **Law Firm** in respect of the same **Occurrence**, only one **Individual Deductible** will be charged for that **Occurrence**. The **Indemnifying Party** has the sole discretion to decide which of such **Indemnified Parties** is responsible for paying the **Individual Deductible**. If any of such **Indemnified Parties** disagrees with **Indemnifying Party's** determination of who is responsible for paying the **Individual Deductible**, then the **Indemnified Parties** and the **Indemnifying Party** agree that such disagreement shall be resolved by arbitration in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator. The arbitration shall be final and binding, with no right of appeal.
- (b) ***Occurrence Limit.*** For each **Occurrence**, the maximum amount payable by the **Indemnifying Party** collectively for **Damages** (including **Repair Costs**) and **Defence Costs** combined is \$1,000,000.00 (the **Occurrence Limit**) less the applicable **Individual Deductible**.
- (c) ***Aggregate Limit.*** The maximum amount payable by the **Indemnifying Party** collectively for **Damages** (including **Repair Costs**) and **Defence Costs** combined on behalf of any **Individual Indemnified Party**, including all **Additional Indemnified Parties**, for all **Claims** made during the **Policy Period**, regardless of the number of **Occurrences**, is \$2,000,000.00 (the **Aggregate Limit**) less the applicable **Individual Deductibles**.

The **Aggregate Limit** applicable to an **Individual Indemnified Party** shall not be eroded by **Claims** made against that **Individual Indemnified Party** in their role as an **Additional Indemnified Party** in respect of the same **Occurrence**.

- (d) *Application of Occurrence Limit and Aggregate Limit to Multiple Claims, Claimants, Indemnified Parties and policy periods.* The maximum liability of the **Indemnifying Party** for each **Occurrence** and for **Claims** made during the entire **Policy Period** is as set forth in clauses 2.5(b) and 2.5(c) above, regardless of: the number of **Claims** or **Claimants** arising out of a particular **Occurrence**; the number of **Indemnified Parties** against whom **Claims** are made in connection with the **Occurrence**; the fact that the **Occurrence** occurred in the same or different retainers for the same or different clients; or the fact that the **Occurrence** took place, or that **Claims** arising out of the **Occurrence** were made, at different times or in different policy periods. Multiple **Claims, Claimants, Indemnified Parties, retainers, or policy periods** involved in a single **Occurrence** will not increase or cumulate the **Occurrence Limit** or the **Aggregate Limit**.

However, if one or more **Claims** arising out of the same **Occurrence** are made jointly, severally, or jointly and severally, against two or more **Law Firms**, then the **Individual Deductible** and the **Occurrence and Aggregate Limits** shall apply separately to each **Law Firm** unless the involvement of more than one **Law Firm** is attributable solely to the fact that an **Individual Indemnified Party** causing the **Occurrence** has relocated from one **Law Firm** to another.

- (e) *Exhaustion of Limits of Liability.* The **Indemnifying Party** shall not be obligated to pay any **Damages** (including **Repair Costs**), **Defence Costs**, or any other amounts, or to undertake or continue the repair of any **Error** or the defence of any proceeding, after the respective **Limits of Liability** have been exhausted, or after deposit of the applicable **Limits of Liability** into a court of competent jurisdiction. In such a case, the **Indemnifying Party** shall have the right to withdraw from further defence or repair by tendering control of the defence or repair to the **Indemnified Party**.

III. EXCLUSIONS

The indemnity coverage given by this Part A does not apply to a **Claim** arising out of or from:

- 3.1 **Professional Services** provided from an **Office** or other location outside Canada, unless the **Professional Services** provided are in respect of Alberta or Canadian law and are incidental to the **Indemnified Party's** Alberta practice;
- 3.2 **Professional Services** provided in an **Indemnified Party's** capacity as a member of a non-Canadian **law society**;
- 3.3 **Non-qualifying Services**;
- 3.4 the mere receipt and distribution of funds by an **Indemnified Party**, whether through that **Indemnified Party's** trust account or otherwise;
- 3.5 the theft or **Misappropriation** of trust funds or property or in any way **Related** to such theft or **Misappropriation**;
- 3.6 a **Dishonest**, fraudulent or criminal act or omission that does not fall within Exclusion 3.5;

- 3.7 a malicious act or omission, except that the **Indemnifying Party** will reimburse to an **Indemnified Party** reasonable legal fees and disbursements incurred by independent counsel retained by the **Indemnified Party** in the defence of allegations of an allegedly malicious act or omission, if there is a **Finding** that the **Indemnified Party** did not commit the malicious act or omission. However, such legal fees and disbursements will only be reimbursed if the **Claim** against the **Indemnified Party** otherwise would have been covered under this Part A, but for the existence of this exclusion. In addition, such reimbursement is subject to allocation between covered and uncovered amounts in accordance with clause 2.3(c);
- 3.8 any loss due to **Misappropriation** which is covered under Part B of this policy, or which would have been covered under Part B but for:
- (a) the exhaustion of the limits set out in clauses 2.4(a) or 2.4(b) of Part B; or
 - (b) the failure of any **Indemnified Party** to comply with any term of Part B including, without limiting the generality of the foregoing, the Conditions set out in Section IV of Part B;
- 3.9 a penalty assessed against an **Indemnified Party** under section 163.2 of the *Income Tax Act*, except that the **Indemnifying Party** will reimburse to the **Indemnified Party** reasonable legal fees and disbursements incurred by independent counsel retained by the **Indemnified Party** in the successful appeal of such penalty, if there is a **Finding** that the **Indemnified Party** did not commit the acts or omissions which gave rise to the potential penalty. However, such legal fees and disbursements will only be reimbursed if the **Claim** against the **Indemnified Party** seeks **Damages** against the **Indemnified Party** as a result of the same or **Related** conduct of the **Indemnified Party** which gives rise to the **Indemnified Party's** potential liability under s. 163.2 of the *Income Tax Act* and such **Damages** would otherwise would have been covered under this Part A.
- In addition, such reimbursement is subject to allocation between covered and uncovered amounts in accordance with clause 2.3(c);
- 3.10 a fine or penalty assessed against an **Indemnified Party** under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, except that the **Indemnifying Party** will reimburse to the **Indemnified Party** reasonable legal fees and disbursements incurred by independent counsel retained by the **Indemnified Party** in the defence of a prosecution of an offence under such *Act*, if there is a **Finding** that the **Indemnified Party** did not commit the acts or omissions which gave rise to the potential fine or penalty. However, such legal fees and disbursements will only be reimbursed if the **Claim** against the **Indemnified Party** seeks **Damages** against the **Indemnified Party** as a result of the same or **Related** conduct of the **Indemnified Party** which gives rise to the **Indemnified Party's** potential liability under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and such **Damages** otherwise would have been covered under this Part A.
- In addition, such reimbursement is subject to allocation between covered and uncovered amounts in accordance with clause 2.3(c);
- 3.11 the bodily injury, sickness, disease or death of any person (other than mental illness, emotional distress, or humiliation of a claimant that is the direct result of an **Occurrence**);
- 3.12 physical damage to tangible property, including, without limiting the foregoing, physical damage that results in the loss of use of the property, unless such damage is the direct result of an **Occurrence**;
- 3.13 an **Indemnified Party's** acting in the capacity of director or officer of any **Enterprise**; or

- 3.14 damage to or loss of use of tangible or intangible property, alteration or loss of data, disclosure of confidential information, theft or other loss of money or property, or any other loss which arises, directly or indirectly, from:
- (a) the receipt or transmission of a computer virus or other program via the internet or in any other electronic manner;
 - (b) the failure or violation of the security of computer, telecommunication or other devices, systems, or networks;
 - (c) computer code or programming, including but not limited to a computer virus, that does or which is intended to:
 - (i) delete, distort, corrupt, manipulate, or prevent access to: internet connections or systems; computer programming; computer, telecommunication or other devices, systems or networks; or electronic data;
 - (ii) impair the performance of computer, telecommunication or other devices, systems or networks;
 - (iii) obtain or disclose electronic data without the consent or authority of the **Indemnified Party**;
 - (iv) gain remote control of or access to computer, telecommunication or other devices, systems or networks for uses other than those intended for authorized users of such devices, systems or networks; or
 - (v) **Social Engineering Fraud**.

In addition, the coverage given by this Part A does not apply to:

- 3.15 a **Claim** made against a **Member** who is an employee of, or who contracts with, a government, municipality, university, person or **Enterprise**, other than a **Law Firm**, and who practises law solely within the scope of that employment or contract. This exclusion applies whether the **Member** is employed, or contracts to provide services, individually or through a **Professional Corporation**, and whether or not the **Member's** employment agreement or contract permits the **Member** to provide **Professional Services** outside of the scope of the **Member's** employment or contract. This exclusion does not apply to a **Member** who is a **Legal Services Organization Lawyer**;
- 3.16 a **Claim** made against a **Member** who is an employee of, or who contracts with, a government, municipality, university, person or **Enterprise**, other than a **Law Firm**, except to the extent such **Claim** arises from **Professional Services** provided outside the scope of such employment or contract;
- 3.17 any **Claim** in any way relating to or arising out of any undertaking, agreement or promise by an **Indemnified Party**, in which the **Indemnified Party** assumes responsibility for the **Indemnified Party's** own or another's performance of an undertaking, agreement, promise or payment of a debt, including but not limited to an **Overdraft** relating to or arising out of a **Counterfeit Certified Cheque or Counterfeit Bank Draft**;
- 3.18 a **Claim** against an **Indemnified Party** made by the **Indemnified Party's** employer at the time the **Claim** was made or the **Occurrence** happened;

- 3.19 a **Claim** against an **Indemnified Party** made by the **Indemnified Party's Law Firm** at the time the **Claim** was made or the **Occurrence** happened;
- 3.20 a **Claim** against an **Individual Indemnified Party** by an **Additional Indemnified Party**;
- 3.21 a **Claim** for which proper notice has not been given in accordance with Conditions 4.1 and 4.2, or which was reported to the **Indemnifying Party** after the **Policy Period**;
- 3.22 a **Claim** made, or deemed to have been made, prior to or after the **Policy Period**;
- 3.23 a **Claim** excluded under *Nuclear Incident Exclusion Clause* (attached); or
- 3.24 a **Claim** made by or in any way **Related** to an **Enterprise** in which the **Individual Indemnified Party** or **Related Parties** of the **Individual Indemnified Party**, or any combination thereof, held, directly or indirectly, at the time of the **Occurrence** or at any time thereafter, beneficial ownership in an amount greater than ten per cent (10%), to the extent that the damages the **Individual Indemnified Party** is legally obligated to pay represent the share of ownership in such Enterprise held by the **Individual Indemnified Party** or **Related Parties** of the **Individual Indemnified Party** or any combination thereof.

IV. **CONDITIONS**

The coverage afforded by this Part A is subject to the following Conditions:

4.1 **Claims First Made and Reported**

- (a) This Part A gives the described coverage to an **Indemnified Party** for an **Occurrence** only if the **Claim** is first made against the **Indemnified Party**, and reported in writing to the **Indemnifying Party**, during the **Policy Period**.
- (b) A **Claim** is first made against the **Indemnified Party** during the **Policy Period**:
 - (i) if, during the **Policy Period**, the **Indemnified Party** becomes aware of:
 - (A) a **Claim**;
 - (B) any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious; or
 - (C) any circumstance which could reasonably be expected to constitute an **Occurrence**; or
 - (ii) a **Claim** is made against an **Indemnified Party** for **Damages** that are or might be covered under Part A of this policy,

provided, in either case, that the **Indemnified Party** had no knowledge before the commencement of the **Policy Period** of the **Claim** or any such circumstance as set out in Condition 4.1(b)(i)(B) or 4.1(b)(i)(C) and could not reasonably have foreseen before the commencement of the **Policy Period** that a **Claim** might arise; and provided further, that where a **Claim** is first made against an **Individual Indemnified Party** but has not, at that time, been made against their **Additional Indemnified Parties**, the **Claim** shall be deemed to have been first made against their **Additional Indemnified Parties** at the same time that the **Claim** was first made against the **Individual Indemnified Party**.

- (c) When the **Policy Period** expires, the **Indemnifying Party** shall be free of liability for **Occurrences** except for those in respect of which a **Claim** has been both first made and reported in accordance with Condition 4.2(a) during the **Policy Period**, and except to the extent that a **Claim** has not, at such expiry, been first made against an **Individual Indemnified Party** who has not had a **Claim** first made in respect of the same **Occurrence** during the **Policy Period**.

4.2 **Notice Requirements**

- (a) *Written notice.* Each **Indemnified Party** shall, as soon as practicable after becoming aware of:
 - (i) a **Claim**;
 - (ii) any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious; or
 - (iii) any circumstance which could reasonably be expected to constitute an **Occurrence**;

give written notice thereof, during the **Policy Period**, to the **Indemnifying Party** at the local address for service shown in the Declarations. This requirement of providing written notice of such **Claim** or circumstance (as applicable) to the **Indemnifying Party** is a condition precedent to the **Indemnifying Party's** liability for the **Claim** or **Occurrence** under this Part A. The **Indemnifying Party** may, in its discretion, deem notice of such circumstances by an **Individual Indemnified Party** to be notice of such circumstances by their **Additional Indemnified Parties**.

- (b) *Information.* After notification, the **Indemnified Party** shall submit, as soon as practicable, to the **Person(s)** designated by the **Indemnifying Party** all information reasonably required by the **Indemnifying Party** that the **Indemnified Party** is reasonably capable of providing. In addition, the **Indemnified Party** shall immediately forward to the **Person(s)** designated by the **Indemnifying Party** any demand, notice, summons or other process received by the **Indemnified Party** in connection with the **Claim** or **Occurrence**. If an **Indemnified Party** fails without reasonable excuse to comply with this paragraph, the **Indemnifying Party** may withdraw coverage under the **Policy** for that **Indemnified Party**. If an **Indemnified Party** is unable by reason of death or mental or physical incapacity to comply with this paragraph, the **Indemnifying Party** may, at its option, take the place of the **Indemnified Party** to ensure compliance but is not obliged to do so.
- (c) *Acceptance of notice from other Persons.* The **Indemnifying Party** has the discretion, but is not required, to accept notice of:
 - (i) a **Claim**;

- (ii) any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious the **Claim** or potential **Claim** may be; or
- (iii) any circumstance which could reasonably be expected to constitute an **Occurrence**;

which is provided to the **Indemnifying Party** during the **Policy Period** by a **Person** other than the **Indemnified Party** who was required to give it.

4.3 **Cooperation, Admissions and Settlement**

- (a) *Co-operation.* The **Indemnified Party** shall co-operate fully with the **Indemnifying Party**. Without limiting the generality of this requirement to cooperate fully, this includes the requirements that the **Indemnified Party** shall respond promptly to all communications from the **Indemnifying Party** and any **Person** appointed by and acting on its behalf, and shall, upon request:
 - (i) assist in investigations;
 - (ii) assist in settlement attempts;
 - (iii) attend at questionings and other interlocutory proceedings;
 - (iv) attend at alternative dispute resolution;
 - (v) assist in enforcing any right of contribution or indemnity against any third party;
 - (vi) attend at hearings and trials;
 - (vii) assist in securing the attendance of witnesses; and
 - (viii) otherwise assist in the repair, defence or settlement in all other reasonable respects.
- (b) *Non-compliance.* If an **Indemnified Party** fails without reasonable excuse to comply with Condition 4.3(a), the **Indemnifying Party** may withdraw coverage under the **Policy** for that **Indemnified Party**. If an **Indemnified Party** is unable by reason of death or mental or physical incapacity to comply with Condition 4.3(a), the **Indemnifying Party** may, at its option, take the place of the **Indemnified Party** to ensure compliance but is not obliged to do so.
- (c) *Admission of liability.* The **Indemnified Party** shall not make any admission, make any offer to settle or take any other action with respect to a **Claim** or **Occurrence** (including an attempt to correct an **Error** in the rendering of **Professional Services**, prevent the threat, institution or advancement of a **Claim**, or reduce or avoid any liability, damages or loss arising out of an **Error**) unless the **Indemnifying Party** is aware of and consents in writing to the admission, offer or action in advance. Any such admission, offer to settle or other action taken without the consent referred to in this Condition 4.3(c) shall be at the sole risk of the **Indemnified Party**. However, this clause shall not apply to any such admission, offer or other action that occurs after the **Indemnifying Party** has granted the permission referred to in Condition 4.3(e).

- (d) *Payments, etc.* Any payment, obligation or expense in connection with a **Claim** or **Occurrence** that is made, assumed or incurred by the **Indemnified Party**, without obtaining the prior consent of the **Indemnifying Party**, shall be the sole responsibility of the **Indemnified Party**.
- (e) *Compromise or settlement.* The decision to settle or compromise a **Claim** is within the sole discretion of the **Indemnifying Party**, which has the exclusive right and authority to enter into a compromise or settlement without the consent of the **Indemnified Party**. If the **Indemnified Party** objects to a compromise or settlement, the **Indemnified Party** may request that the **Indemnified Party** be permitted to contest or continue legal proceedings in connection with the **Claim**. The **Indemnifying Party** has no obligation to grant such permission but may do so within the exercise of its sole discretion. Any permission so granted shall be in writing and is subject to the express condition that the amount payable under this Part A in respect of the relevant **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Defence Costs** up to the date of the **Indemnified Party's** objection, subject to the other Conditions of this Part A.

4.4 **Innocent Additional Indemnified Party Provisions**

- (a) *Fraud or malice.* Subject to Condition 4.4(d), if coverage under this Part A is excluded, suspended or lost for an **Individual Indemnified Party** due to the operation of Exclusion 3.6 or 3.7 (that is, a **Dishonest**, fraudulent, criminal or malicious act or omission by the **Individual Indemnified Party** other than one relating in any way to theft or **Misappropriation** of trust funds or property), coverage shall continue to apply for the benefit of any **Additional Indemnified Party** against whom a **Claim** is made arising out of the **Occurrence** caused by the **Individual Indemnified Party**
- (b) *Failure to notify, provide information or cooperate.* Subject to Condition 4.4(d), if coverage under this Part A is excluded, suspended or lost for an **Individual Indemnified Party** due to that **Individual Indemnified Party's** failure to notify the **Indemnifying Party** of the **Claim** or circumstance as required by Conditions 4.1 and 4.2(a), to provide information or copies of any demand, notice, summons, statement of claim or other process as required by Condition 4.2(b), or to cooperate with the **Indemnifying Party** in accordance with Condition 4.3(a), coverage shall continue to apply for the benefit of any **Additional Indemnified Party** against whom the **Claim** in question, or a **Claim** arising out of the **Occurrence** in question, is made; provided, for greater certainty, that nothing in this paragraph shall be construed as providing coverage to an **Additional Indemnified Party** where such coverage was not available to the **Additional Indemnified Party** pursuant to Conditions 4.1 or 4.2.
- (c) *Non-Qualifying Services.* Subject to Condition 4.4(d), if coverage under this Part A is excluded, suspended or lost for an **Individual Indemnified Party** under Exclusion 3.3 because the **Individual Indemnified Party** has rendered **Non-Qualifying Services**, coverage shall continue to apply for the benefit of any **Additional Indemnified Party** against whom a **Claim** is made arising out of the **Occurrence** caused by the **Individual Indemnified Party**.
- (d) *Condition of coverage.* It is a condition precedent to the coverage referred to in this Condition 4.4 that the relevant **Additional Indemnified Party** shall not have concealed or acquiesced or participated in the conduct that has disqualified the **Individual Indemnified Party**, nor have breached any other provision of this Part A.

4.5 **Other Insurance**

- (a) If an **Indemnified Party** has or had at any time insurance (other than excess insurance) under another Canadian **law society's** policy (or Canadian **law societies'** policies) that applies to a **Claim** covered by this Part A, the total amount of insurance and indemnity provided under these policies together will not exceed the total value of the **Claim** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies will respond, or as to any allocation between (or amongst) the policies, will be made by the **Law Society** together with that other **law society** (or, if more than one, with those other **law societies**) and the **Indemnified Party** agrees to be bound by that decision. However, the aggregate coverage provided under all applicable policies will not exceed the applicable **Limits of Liability** regardless of the number of policies involved.
- (b) Except to the extent that Conditions 4.5(a) or 4.6(a) apply, if an **Indemnified Party** has or had at any time insurance (other than excess insurance) placed with another indemnifier or insurer that applies to a **Claim** covered by this Part A, this Part A will apply only as excess coverage over the other insurance to the extent that the other insurance is valid and collectible. This is regardless of whether:
 - (i) this policy is in any way, whatsoever, described (specifically or otherwise) as anything other than excess indemnity or insurance, in any such other insurance; or
 - (ii) that other insurance is primary, contingent, excess, umbrella, or contains any form of excess or escape “other insurance” clause, condition or provision.

Further, the **Indemnifying Party** will not be called upon to contribute or otherwise pay any amounts, whatsoever, where any such amounts are covered under or are otherwise included in other valid and collectible insurance.

4.6 **Inter-jurisdictional Coverage**

- (a) Subject to Condition 4.5(a), if a **Claim** is made against an **Indemnified Party** in a **Reciprocal Jurisdiction** in connection with **Professional Services** rendered in that jurisdiction pursuant to the Mobility Rules, and the professional liability provided to the **Indemnified Party** by this Part A is narrower in scope than that required of the members of the **law society** of the **Reciprocal Jurisdiction**, then the **Indemnifying Party** shall provide in respect of such **Claim** the same scope of coverage under this Part A as that of the **Reciprocal Jurisdiction's** policy; subject to an **Occurrence Limit** of \$1,000,000.00 and an **Aggregate Limit** of \$2,000,000.00. This Condition applies for the benefit only of an **Indemnified Party** who was a **Member** at the time the **Professional Services** were rendered.
- (b) For clarity, if a **Member** (other than a **Legal Services Organization Lawyer**) is exempt under the **Rules** from the requirement to pay the professional liability assessment, whether pursuant to the **Mobility Rules** or otherwise, this Part A will not respond or be applicable to a **Claim** arising out of an **Occurrence** taking place during the period of exemption.

4.7 **Cancellation**

- (a) *For all Indemnified Parties.* This Part A may be cancelled at any time by the **Indemnifying Party**. Such cancellation shall terminate the coverage provided under this Part A to all **Indemnified Parties** without prior notice to any **Indemnified Party**.

- (b) *For any **Indemnified Party**.* The **Indemnifying Party** may, with the consent of the **Law Society**, terminate the coverage provided by this Part A to a particular **Indemnified Party** on 60 days' written notice given to that **Indemnified Party** delivered by personal delivery or registered mail to the last address of the **Indemnified Party** shown on the records of the **Law Society**. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB after the registered letter is delivered by the **Indemnifying Party** to the post office in the case of registered mail.
- (c) *No return of premium.* There shall be no return of premium to any **Indemnified Party** on the cancellation or termination of this Part A.

4.8 **Subrogation**

- (a) *General.* If any payment is made under this Part A on behalf of an **Indemnified Party**, the **Indemnifying Party** shall be subrogated to all of that party's rights of recovery against any **Person** in respect of the payment.
- (b) *Exercise against **Indemnified Party**.* The **Indemnifying Party** will not exercise its subrogation rights against any **Indemnified Party**, except the **Indemnifying Party** may exercise such rights against an **Individual Indemnified Party**:
 - (i) whose conduct has caused payments to be made on behalf of one or more **Additional Indemnified Parties** by virtue of the operation of Condition 4.4(a) or 4.4(b) of this Part A;
 - (ii) who has failed to comply with Conditions 4.3(a) or 4.3(c) of this Part A; or
 - (iii) who committed the **Error** in rendering **Professional Services** while not authorized by the **Law Society** to practice law, or while not authorized by the **Law Society** to practice law in that practice area.
- (c) *Preservation of rights.* The **Indemnified Party** shall do nothing to prejudice the **Indemnifying Party's** subrogation rights and, in addition, shall execute and deliver all documents and take any other action that the **Indemnifying Party** considers necessary or appropriate, acting reasonably, to secure those subrogation rights.
- (d) *Application of amounts recovered.* Any amounts recovered through exercise of the **Indemnifying Party's** subrogation rights, net of recovery **Costs**, shall be applied as follows:
 - (i) first, to repay an **Indemnified Party** or an excess **Indemnifying Party** who, pursuant to an agreement with the **Indemnifying Party**, has paid an amount on the **Indemnified Party's** behalf in respect of the **Claim** over and above payments under this Part A;
 - (ii) second, to reimburse the **Indemnifying Party** (and, on a *pro rata* basis, any other insurers who have contributed to the **Claim** pursuant to an agreement with the **Indemnifying Party**, except for those referred to in Condition 4.5(b) for **Damages** and **Defence Costs** paid in respect of the **Claim**;
 - (iii) third, to reimburse the **Indemnifying Party** for **Damages** and **Defence Costs** paid in respect of the **Claim**; and

- (iv) fourth, to reimburse the **Indemnified Party** for deductibles paid that are referable to the Claim.

4.9 **Miscellaneous Conditions**

- (a) *Effect of bankruptcy or insolvency.* The bankruptcy or insolvency of an **Indemnified Party** shall not affect the obligations of the **Indemnifying Party** under this Part A and shall not relieve an **Indemnified Party** of personal responsibility for their obligations under this Part A.
- (b) *Effect of death or incapacity.* The death or incapacity of an **Indemnified Party** shall not affect the obligations of the **Indemnifying Party** under this Part A with respect to **Occurrences** before the death or incapacity. The legal or personal representatives of the **Indemnified Party** shall be entitled to enforce any coverage provided by this Part A for the benefit of the **Indemnified Party**, but shall be bound by the conduct of the **Indemnified Party** in connection with the **Occurrence(s)** in question.
- (c) *Notice to Indemnifying Party.* Notice to the **Indemnifying Party** shall be given to the **Indemnifying Party** at the local address for service shown in Item 3 of the Declarations and shall be delivered by personal delivery or registered mail. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB after the registered letter is delivered by the sender to the post office in the case of registered mail. Notice to any other **Person** (including the **Law Society**), or knowledge by that **Person**, of such matters does not constitute notice to the **Indemnifying Party**, does not affect the **Indemnifying Party** or its rights under this Part A, and does not affect the applicability of the terms and conditions of this Part A.
- (d) *Notice to Indemnified Party.* Subject to Condition 4.7, notice to any **Indemnified Party** (other than the **Law Society**) must be given to the **Indemnified Party** at the last address of the **Indemnified Party** shown in the records of the **Law Society** and shall be delivered by personal delivery or registered mail. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB. after the registered letter is delivered by the sender to the post office in the case of registered mail.
- (e) *Waiver.* Any waiver of or change to the terms and conditions of this Part A must be made by written endorsement forming part of this Part A and signed by a duly authorized representative of the **Indemnifying Party**.
- (f) *Action against Indemnifying Party.* The following are conditions precedent to an action against the **Indemnifying Party** by an **Indemnified Party**:
 - (i) the **Indemnified Party** must have complied in all respects with the terms and conditions of this Part A; and
 - (ii) the amount payable in respect of the **Claim** must have been finally determined by a court of competent jurisdiction or by written agreement or settlement.
- (g) *Arbitration.* Except as provided elsewhere in this Policy, this provision applies to any dispute as to:
 - (i) the interpretation of this Part A;

- (ii) the validity or existence of this Policy; or
- (iii) the payment of an **Individual Deductible**,

that arises between an **Indemnified Party** and one or more of the following:

- (iv) the **Indemnifying Party**; or
- (v) another **Indemnified Party** who is not presently at the same **Law Firm** as the **Indemnified Party** and was not at the same **Law Firm** at the time of the **Occurrence**.

Such a dispute may be adjudicated by arbitration if all **Indemnified Parties** and the **Indemnifying Party** agree to such arbitration. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator and may be initiated by any party to the dispute on written notice to all other parties at any time after the expiration of 90 days from the date the dispute arose. The parties agree that such an arbitration will be confidential, and that they will not disclose any aspect of the arbitration, including, without limiting the foregoing, the facts, the issues, the evidence, or the result.

- (h) *Assignment*. The rights of an **Indemnified Party** under this Part A that are exercisable against the **Indemnifying Party** cannot be assigned to any other **Person**.
- (i) *Service*. Service of any action to enforce the obligations of the **Indemnifying Party** under this Part A shall be made on the **Indemnifying Party** at the local address for service shown in the Declarations.
- (j) *Currency*. All **Limits of Liability** and deductibles under this Part A are stated in lawful currency of Canada and all payments under this Part A shall be made in the same currency.
- (k) *Information Sharing*. Personal information collected from the Indemnified Party, whether pursuant to Part A or Part B, will be used by the Indemnifying Party for one or more purposes contemplated by the *Legal Profession Act* (Alberta), the Rules, the Law Society's Code of Conduct, and/or any resolution of the Benchers of the Law Society or the Board of Directors of ALIA; and may be accessible to all departments of the Law Society. Without limiting the generality of the foregoing, the information may be used or disclosed by ALIA, now or in the future, for regulatory purposes including Law Society investigations and proceedings.
- (l) *Governing law*. This Part A shall be governed by and construed in accordance with the laws of the Province of Alberta.

PART B - MISAPPROPRIATION INDEMNITY

I. DEFINITIONS

In this Part B:

Adult Interdependent Partner has the same meaning as in the *Adult Interdependent Relations Act*, SA 2002, c. A-4.5.

ALIA means the Alberta Lawyers Indemnity Association, a company incorporated under Part 9 of the *Companies Act*, RSA 2000, c. C-21.

Claim means a demand for money, an action, or institution of proceedings against an **Indemnified Party** arising from an alleged **Loss**.

Claimant means a **Person** who has made or may make a **Claim**.

Compensation Program means the Assurance Fund as provided under the *Legal Profession Act* (Alberta).

compensation program means:

- (a) any statutory program, as provided for by a legislative act; and
- (b) any fund established by a **law society** to pay for **Losses** from any misappropriation, wrongful conversion or dishonesty by members of a **law society** as may now or subsequently be established.

Costs includes costs, charges, disbursements and expenses.

Defence Costs means Costs incurred by the **Indemnifying Party** in defending or settling a **Claim**, including, without limiting the foregoing, legal fees and disbursements of counsel appointed by the **Indemnifying Party**; notional legal fees and disbursements incurred by in-house defence counsel of the **Indemnifying Party**, if any, as determined by the **Indemnifying Party**; the fees and disbursements incurred for investigators, experts, appraisers and witnesses; **Costs** of alternative dispute resolution; and adjuster's fees incurred on the instructions of counsel in defending or settling a **Claim**.

Dishonest means conduct which a reasonable person would consider to be:

- (a) deceptive and morally reprehensible;
- (b) untruthful and morally reprehensible; or
- (c) lacking in candour and integrity;

even in the absence of an actual dishonest purpose, motive or intent.

Enterprise means any proprietorship, partnership, limited partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm, trust, municipality, government, governmental or regulatory authority, university, court or other legal or commercial entity.

Ineligible Costs means:

- (a) **Costs** incurred and earnings lost by a **Subject Lawyer** or an **Innocent Indemnified Party** in connection with investigation, defence, or settlement of a **Claim**, including, without limiting the foregoing, those associated with:
 - (i) photocopying documents;
 - (ii) expending time and effort;
 - (iii) preparing for and attending questioning or cross-examinations;
 - (iv) preparing for and attending alternate dispute resolution;
 - (v) preparing for court and testifying; and
 - (vi) otherwise cooperating with the Indemnifying Party in the investigation, defence or settlement of a **Claim**;
- (b) out-of-pocket **Costs** of a **Subject Lawyer** or **Innocent Indemnified Party** that are not authorized for reimbursement by the **Indemnifying Party** in advance, including, without limiting the foregoing, **Costs** of independent or personal counsel retained by the **Indemnified Party** and **Costs** of disputing issues relating to coverage; and
- (c) **Costs** awarded personally against an **Indemnified Party** as a result of the **Indemnified Party's** conduct in litigation, whether or not connected with a **Misappropriation**.

Innocent Indemnified Party, with respect to one or more **Subject Lawyer(s)**, means:

- (a) a present or former partner of the **Subject Lawyer(s)**;
- (b) any **Law Firm** through which the **Subject Lawyer(s)** have practised law, whether as partners, associates, employees, counsel, contract lawyers or otherwise; and
- (c) a present or former partner of any **Law Firm** through which the **Subject Lawyer(s)** have practised law;

provided that the **Innocent Indemnified Party** did not conceal, acquiesce, or participate in the conduct of the **Subject Lawyer(s)** that gave rise to a **Loss**.

Indemnified Party means:

- (a) the **Law Society**;
- (b) an **Innocent Indemnified Party**; and
- (c) a **Subject Lawyer**.

Indemnifying Party means **ALIA**.

Law Firm means:

- (a) a sole proprietorship through which a **Subject Lawyer** practises law; or

- (b) two or more **Members** who are, or appear to be, holding themselves out to the public as practising law together, whether or not a partnership exists in fact and regardless of the form or forms of business organization through which the practice is conducted.

Law Society means the Law Society of Alberta.

law society means a law society, barristers' society or similar organization of a jurisdiction other than Alberta.

Limits of Liability means the **Misappropriation Limit** and the **Profession-wide Annual Aggregate Limit**.

Loss means direct financial loss sustained by a **Person** of no more than the value, at the time of the **Misappropriation**, of **Money** or the equivalent cash value of **Securities and Property** that is the subject of a **Misappropriation** by a **Subject Lawyer(s)**, but does not include any amount which the **Claimant** or **Indemnified Party** has or is entitled to claim under any other policy or form of indemnity, insurance, title insurance, or any **compensation program**.

Member means a **lawyer** who, at the date of the **Misappropriation**, was enrolled with the **Law Society** pursuant to the *Legal Profession Act* (Alberta).

Misappropriation means, for the purposes of this Part B, a theft, wrongful taking, or wrongful conversion and may include multiple thefts, wrongful takings, or wrongful conversions concurrently, or over time, by a **Subject Lawyer** of **Money, Securities or Property**, whether to the use of the **Subject Lawyer** or a third party, which was entrusted to or received by that **Subject Lawyer** or by another **Member** in the **Subject Lawyer's Law Firm**, in their capacity as a barrister or solicitor or such other capacity as the **Law Society** may designate, regardless of the form or forms of business organization through which the practice as a barrister and solicitor is conducted. All such thefts, wrongful takings, or wrongful conversions shall be deemed to be one **Misappropriation** and shall be subject to one **Limit of Liability**, even if such thefts, wrongful takings, or wrongful conversions may have occurred or been reported during more than one policy period.

Misappropriation Limit has the meaning given by clause 2.4(a).

Money, Securities or Property means:

- (a) money including, without limiting the foregoing, currency, coins, and bank notes having a face value and in current use;
- (b) securities including, without limiting the foregoing, all negotiable and non-negotiable instruments or contracts representing money, debt, an equity interest, or an interest in property and includes revenue and other stamps, tokens and tickets in current use; and
- (c) personal property, including, without limiting the foregoing, trust money, in cash or on deposit, and chattels, which have been entrusted.

Occurrence has the same meaning as in Part A of this policy.

Person includes an individual and an **Enterprise**.

Policy Period is that indicated in Item 5(b) of the Declarations.

Profession-wide Annual Aggregate Limit has the meaning given by clause 2.4(b).

Related includes factual relationships, logical relationships, causal relationships and any other relationship.

Spouse means the husband or wife of a married person.

Subject Lawyer means a **Member** who has committed or is alleged to have committed a **Misappropriation**.

II. INDEMNITY AGREEMENTS

In consideration of payment of the premium when due, and subject to the **Limits of Liability**, exclusions, conditions and all other terms of this Part B, the **Indemnifying Party** agrees with each **Indemnified Party** as follows:

2.1 Payment of Loss

The **Indemnifying Party** will pay to the **Claimant**:

- (a) the amount of the **Loss** suffered by a **Claimant** as determined by a court; or
- (b) the amount of the **Loss** suffered by a **Claimant** as determined by the **Law Society** or the **Indemnifying Party** and, in the case of a determination by the **Law Society**, subject to the approval of the **Indemnifying Party**.

Such payments shall be subject to the **Claimant** providing a release on such terms as required by the **Indemnifying Party** (which may include an assignment of the **Claim**) and may be made in whole or in part by payment to a custodian appointed in respect of the **Subject Lawyer's** practice.

2.2 Defence of Claims

In respect of the indemnity coverage given by this Part B:

- (a) the **Indemnifying Party** has the right, but not the duty, to defend any **Claim** against an **Indemnified Party** alleging a **Loss** that would fall within the coverage provided by this Part B;
- (b) if the **Indemnifying Party** elects to defend a **Claim** against an **Indemnified Party** alleging a **Loss** that would fall within the coverage provided by this Part B, the **Indemnifying Party** has the right to:
 - (i) investigate the **Claim** alleged to have caused the **Loss**;
 - (ii) select and instruct defence counsel; and
 - (iii) withdraw from the defence of the **Claim** without seeking the consent of the **Indemnified Party**; and
- (c) the decision to settle or compromise a **Claim** is within the sole discretion of the **Indemnifying Party**, who has the exclusive right and authority to enter into a compromise or settlement without the consent of the **Indemnified Party**.

2.3 **Limits on Payment of Costs**

The **Indemnifying Party** is not responsible for and will not pay any **Ineligible Costs**.

2.4 **Coverage Limits**

- (a) **Misappropriation Limit:** The maximum amount payable by the **Indemnifying Party** collectively for all **Losses** and **Defence Costs** in respect of any **Misappropriation** is \$5,000,000, regardless of the number of: **Claims** made; **Losses** arising from the **Misappropriation**; **Claimants** or retainers; or **Subject Lawyers** or **Innocent Indemnified Parties** involved, or alleged to be involved, in the **Misappropriation**. For clarity, multiple **Claims**, **Losses**, **Claimants**, **Subject Lawyers** or **Innocent Indemnified Parties** involved in any **Misappropriation** will not increase or cumulate the **Misappropriation Limit**, even if such **Misappropriation** took place during more than one policy period;
- (b) **Profession-wide Annual Aggregate Limit:** The maximum amount payable by the **Indemnifying Party** collectively for all **Losses** and **Defence Costs** on an aggregate basis for all **Losses** and **Claims** made and reported in the policy period is \$25,000,000. For clarity, all payments by the **Indemnifying Party** of all **Losses** and **Defence Costs** incurred during the **Policy Period** will reduce the **Profession-wide Annual Aggregate Limit** for that **Policy Period** in the amount of those payments.

III. **EXCLUSIONS**

The indemnity coverage given by this Part B does not apply to:

- 3.1 any **Claim** or **Loss** that falls within Part A of this policy;
- 3.2 an **Occurrence** to which Part A of this policy responds, or would have responded had there been compliance with the Conditions set out in Section IV of Part A, regardless of: the **Limits of Liability** of Part A of this policy; compliance, or lack thereof, with the notice and/or reporting requirements of Part A of this policy; and whether Part A of this policy has been cancelled;
- 3.3 bodily injury, sickness, disease or death of any person;
- 3.4 physical damage to tangible property, including, without limiting the foregoing, physical damage that results in the loss of use of the property;
- 3.5 a **Claim** or **Loss**:
 - (a) resulting from a **Misappropriation** reported to the **Law Society**; or
 - (b) which formed the basis of a claim for compensation under the **Compensation Program** or any other **compensation program**;prior to July 1, 2014.
- 3.6 a **Claim** or **Loss** that arises out of or is in any way **Related** to, in whole or in part, the **Dishonest** or unlawful conduct, fault or neglect committed by or on behalf of the **Claimant**; the **Claimant's**

Spouse; the **Claimant's Adult Interdependent Partner**, or any parent, child, sibling or other relative, or agent, of the **Claimant**.

- 3.7 a **Claim** by an **Enterprise** that arises out of or is in any way **Related** to, in whole or in part, the wrongful or unlawful conduct, fault or neglect of a director, officer, employee or agent of the **Enterprise**; or a **Person** who had, at the time of the **Loss**, directly or indirectly, effective control of the **Enterprise** or beneficial ownership of the **Enterprise** in an amount greater than ten per cent (10%) or any **Spouse, Adult Interdependent Partner** or parent, child, sibling or other relative, or agent, of any individual referred to in this clause.
- 3.8 a **Claim** brought by a **Claimant** who knew prior to the time of the **Misappropriation** of any **Dishonest** act by the **Subject Lawyer(s)**;
- 3.9 a **Claim** or **Loss** sustained by any **Person** or **Persons** who committed, participated in committing, consented to (expressly or implicitly), or acquiesced in the **Misappropriation**, or who were reckless or wilfully blind to the **Misappropriation**;
- 3.10 a **Claim** or **Loss** sustained by any **Person** or **Persons** who had unlawfully obtained the **Money, Securities or Property** that was the subject of the **Misappropriation**;
- 3.11 a **Loss** that does, or is alleged to arise out of or from, a purported investment, or a Ponzi or similar investment scheme, in which the **Subject Lawyer** or the **Subject Lawyer's Law Firm** merely received and distributed money, whether through their trust account or otherwise;
- 3.12 a **Claim** against a **Subject Lawyer** made by or on behalf of the **Subject Lawyer's Law Firm** or its current or former partners; and
- 3.13 a **Claim** against a **Subject Lawyer** made by or on behalf of the **Responsible Lawyer's** employer, or made by or on behalf of any government, municipality, university, person or **Enterprise** by whom the **Subject Lawyer** is contracted to practise law solely within the scope of that contract.
- 3.14 a **Claim** or **Loss** for which proper notice has not been given in accordance with Conditions 4.1 and 4.2 (other than notice by a **Subject Lawyer**).

IV. **CONDITIONS**

The coverage afforded by this Part B is subject to the following Conditions:

4.1 **Claims First Made and Reported**

- (a) Coverage under this Part B shall only apply to **Claims** or **Loss** arising out of **Misappropriations** that occurred while the **Subject Lawyer** was a **Member** and provided that a **Claim** is first made against the **Subject Lawyer**, and reported in writing to the **Indemnifying Party**, during the **Policy Period**. All **Claims** arising from a **Misappropriation**, whenever made (including if made during different policy periods), shall be deemed for purposes of this policy to have been made and reported on the date the first such **Claim** is made and reported.

If, during the **Policy Period**, an **Indemnified Party**, other than a **Subject Lawyer**, learns of a **Claim** or becomes aware of any **Misappropriation** or of circumstances that might constitute a **Misappropriation** or which could reasonably be expected to give rise to a

Claim, however unmeritorious, that **Indemnified Party** shall give written notice to the **Indemnifying Party** of such **Misappropriation** or circumstances during the **Policy Period**. For the purposes of this policy, the date upon which such written notice is given by that **Indemnified Party** to the **Indemnifying Party** shall be the date on which any resulting **Claim** or **Loss** is deemed to be first made and reported to the **Indemnifying Party**.

- (b) Subject to Condition 4.1(a), when the **Policy Period** expires, the **Indemnifying Party** shall be free of liability for all **Losses** except for those in respect of which a **Claim** has been both made during the **Policy Period** and reported during the **Policy Period** in accordance with Condition 4.2.

4.2 **Notice Requirements**

- (a) *Notice by **Indemnified Party**.* The **Indemnified Party** shall, as soon as practicable after learning of a **Claim** or becoming aware of any **Misappropriation** or of circumstances that might constitute a **Misappropriation** or which could reasonably be expected to give rise to a **Claim**, however unmeritorious, give written notice to the **Indemnifying Party** at the local address for service shown in the Declarations. Subject to Condition 4.1(a), this is a condition precedent to the **Indemnifying Party**'s liability under this Part B.
- (b) *Acceptance of notice from other **Persons**.* The **Indemnifying Party** has the discretion, but is not required, to accept notice of any **Claim**, **Misappropriation** or of circumstances that might constitute a **Misappropriation** or which could reasonably be expected to give rise to a **Claim**, however unmeritorious, which is provided to the **Indemnifying Party** during the **Policy Period** by a person other than the **Indemnified Party**.
- (c) *Information.* After notification, the **Indemnified Party** shall submit promptly to the **Person(s)** designated by the **Indemnifying Party** all information reasonably required by the **Indemnifying Party** that the **Indemnified Party** is reasonably capable of providing. In addition, the **Indemnified Party** shall immediately forward to the person(s) designated by the **Indemnifying Party** any demand, notice, summons or other process received by the **Indemnified Party** in connection with the **Claim** or **Misappropriation**.

4.3 **Co-operation of Indemnified Party**

The **Indemnified Party** shall co-operate fully with the **Indemnifying Party**. Without limiting the generality of this requirement to fully cooperate, this includes the requirements that the **Indemnified Party** shall respond promptly to all communications from the **Indemnifying Party** and any **Person** appointed by and acting on its behalf, and shall, upon request:

- (a) assist in investigations;
- (b) assist in settlement efforts;
- (c) attend at questionings and other interlocutory proceedings;
- (d) attend at alternative dispute resolution;
- (e) assist in enforcing any right of contribution or indemnity against any third party;

- (f) attend at hearings and trials;
- (g) assist in securing the attendance of witnesses; and
- (h) otherwise assist in any investigation, defence or settlement efforts in all other reasonable respects.

4.4 **Other Insurance**

- (a) If a **compensation program** (or programs) provided by another Canadian **law society** (or Canadian **law societies**) other than the **Law Society** applies to a **Loss** covered by this Part B, the total amount of coverage provided under this Part B and those **compensation programs** together will not exceed the total value of the **Loss** or the most that is available under either (any one) of this Part B or those **compensation programs** alone, whichever is less. The decision as to which policy or **compensation program** will respond, or as to any allocation between (or amongst) them, will be made by the **Indemnifying Party** together with the other **law society** (or, if more than one, with those other **law societies**) and the **Indemnified Party** agrees to be bound by that decision.
- (b) Except to the extent that Condition 4.4(a) applies, if there is available to an **Indemnified Party** or a **Claimant** any other insurance or indemnity against the **Loss**, this Part B will apply only as excess coverage over the amount recoverable or recovered under such other insurance or indemnity and will not be called upon in contribution.

4.5 **Cancellation**

- (a) *For all **Indemnified Parties**.* This Part B may be cancelled at any time by agreement between the **Indemnifying Party** and the **Law Society**. Such cancellation shall terminate the coverage provided to all **Members** without prior notice to any **Member**.
- (b) *For any **Indemnified Party**.* The **Indemnifying Party** may, with the consent of the **Law Society**, terminate the coverage provided by this Part B to a particular **Indemnified Party** on 60 days written notice to that **Indemnified Party** delivered by registered mail to the last address of the **Indemnified Party** shown on the records of the **Law Society**. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB after the registered letter is delivered by the **Indemnifying Party** to the post office in the case of registered mail.
- (c) No return of *premium*. There shall be no return of premium paid for this Part B coverage to any **Member** on the cancellation or termination of this Part B.

4.6 **Indemnifying Party's Right to Recover Payments (Subrogation)**

- (a) If a **Subject Lawyer** is determined to have committed a **Misappropriation**, it is agreed between the **Indemnifying Party** and the **Indemnified Parties** that the **Indemnifying Party** has the right to recover from that **Subject Lawyer** all **Losses** and **Defence Costs** paid by the **Indemnifying Party**.
- (b) In the event of any payment under this Part B the **Indemnifying Party** shall be subrogated to and entitled to an assignment of:

- (i) all of the **Claimant's** rights of recovery therefore against any **Person**, including, without limiting the foregoing, the **Subject Lawyer(s)**, in respect of said payment and the **Claimant** shall execute and deliver instruments and papers and render assistance to secure such rights. The **Claimant** shall do nothing after the **Loss** to prejudice such rights;
- (ii) all of the **Innocent Indemnified Party's** rights of recovery against any **Person**, including, without limiting the foregoing, the **Subject Lawyer(s)**, in respect of said payment, and the **Innocent Indemnified Parties** shall execute and deliver instruments and papers and render assistance to secure such rights. The **Innocent Indemnified Parties** shall do nothing after the **Loss** to prejudice such rights. The **Innocent Indemnified Party's** rights to which the **Indemnifying Party** is subrogated or entitled to an assignment, shall extend to the value of any **Subject Lawyer's** interest in any **Law Firm** as determined by the **Law Firm's** books as of the date of the discovery of the **Loss** by an **Indemnified Party**, including, without limiting the foregoing, any amounts owing to the **Subject Lawyer** by the **Law Firm**. The **Indemnifying Party** acknowledges that it waives all rights of recovery against any **Innocent Indemnified Party(ies)** in respect of the **Misappropriation** resulting in any **Loss** paid under this Part B, unless the **Loss** was caused or contributed to by the fault or neglect of the **Innocent Indemnified Party(ies)**.
- (c) The **Subject Lawyer** shall, upon payment by the **Indemnifying Party** of any amount to a **Claimant** or other **Person** hereunder be deemed to have irrevocably waived any limitation period applicable to the **Claim** in respect of which such payment has been made.
- (d) Any amounts recovered through exercise of the **Indemnifying Party's** subrogation rights and/or by salvage net of recovery **Costs**, shall be applied as follows:
 - (i) first, to reimburse the **Indemnifying Party** for payments under this Part B; and
 - (ii) second, to the satisfaction of the **Losses** which would have been paid but for the fact that the **Loss** is in excess of the **Limit of Liability** under this Part B.

4.7 **Miscellaneous Conditions**

- (a) *Effect of bankruptcy or insolvency.* The bankruptcy or insolvency of any **Subject Lawyer** or **Innocent Indemnified Party(ies)** will not affect the obligations of the **Indemnifying Party** under this Part B and will not relieve the **Indemnifying Party** of responsibility for its obligations under this Part B.
- (b) *Effect of death or incapacity.* The death or incapacity of any **Subject Lawyer** or **Innocent Indemnified Party** will not affect the obligations of the **Indemnifying Party** under this Part B with respect to **Misappropriations** before the death or incapacity.
- (c) *Notice to Indemnifying Party.* Notice to the **Indemnifying Party** must be given to the **Indemnifying Party** at the local address for service shown in item 3 of the Declarations and shall be delivered by personal delivery or registered mail. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB after the registered letter is delivered by the sender to the post office in the case of registered mail. Notice to any other **Person**, or knowledge by

that **Person**, of such matters does not constitute notice to the **Indemnifying Party**, does not affect the **Indemnifying Party** or its rights under this Part B, and does not affect the applicability of the terms and conditions of this Part B.

- (d) *Notice to Indemnified Party.* Subject to Condition 4.5, notice to any **Indemnified Party** (other than the **Law Society**) must be given to the **Indemnified Party** at the last address of the **Indemnified Party** shown in the records of the **Law Society** and shall be delivered by personal delivery or registered mail. Such notice shall be deemed to have been given on the day of delivery in the case of personal delivery or three (3) business days in Calgary, AB after the registered letter is delivered by the sender to the post office in the case of registered mail.
- (e) *Waiver.* Any waiver of or change to the terms and conditions of this Part B must be made by written endorsement forming part of this Part B and signed by a duly authorized representative of the **Indemnifying Party**.
- (f) *Arbitration.* This provision applies to any dispute that arises between the **Indemnifying Party** and the **Indemnified Party** under this Part B. Such a dispute may be adjudicated by arbitration if all **Indemnified Parties** and the **Indemnifying Party** agree to such arbitration. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator and may be initiated by any party to the dispute on written notice to the other party at any time after the expiration of 90 days from the date the dispute arose.
- (g) *Assignment.* The rights of the **Indemnified Party** under this Part B that are exercisable against the **Indemnifying Party** cannot be assigned to any other Person.
- (h) *Service.* Service of any action to enforce the obligations of the **Indemnifying Party** under this Part B shall be made on the **Indemnifying Party** at the local address for service shown in the Declarations.
- (i) *Currency.* All **Limits of Liability** under this Part B are stated in lawful currency of Canada and all payments under this Part B shall be made in the same currency.
- (j) *Governing law.* This Part B shall be governed by and construed in accordance with the laws of the Alberta.

In Witness Whereof the Indemnifying Party has caused this policy to be executed the 1st day of July, 2019.

**ALBERTA LAWYERS INDEMNITY
ASSOCIATION**

Per: 
Name: David Weyant, QC
Title: President and Chief Executive Officer

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)- CANADA

It is agreed that this policy does not apply:

- (b) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; nor
- (c) to bodily injury or property damage with respect to which an indemnified party under this policy is also insured under a contract of nuclear energy liability insurance (whether the Indemnified Party is unnamed in such contract and whether or not it is legally enforceable by the Indemnified Party) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (d) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
 - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Indemnified Party;
 - (ii) the furnishing by an Indemnified Party of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
 - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Indemnified Party.

As used in this policy:

- I. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
2. The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
3. The term "nuclear facility" means:
 - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;

- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if, at any time, the total amount of such material in the custody of the Indemnified Party at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

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

- 4. The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- 5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

ENDORSEMENT NO.

1

**(Applies to Part A
Only)**

It is understood and agreed that, for the purposes of Condition 4.6(a), coverage provided under (a) "Part B: Trust Protection" of the Law Society of British Columbia's professional liability insurance policy, (b) any trust protection indemnification or other coverage provided by a policy issued by the Canadian Lawyers Insurance Association ("CLIA") in respect of any law society, which policy provides coverage for misappropriation, theft or wrongful conversion, and (c) similar coverage provided by any law society or by any entity providing coverage to members of any such law society, shall not be considered to be insurance or indemnification required of the members of the law societies of British Columbia, any law society in respect of which a policy is issued by CLIA, or any other law society, respectively. For greater certainty, it is understood and agreed that Condition 4.6(a) shall not apply to broaden coverage under Part A as a result of the provisions of any of the foregoing policies.

All other terms, conditions, exclusions and limitations remain unchanged.

Attached to and forming part of Policy Number AB006/20 of the Alberta Lawyers Indemnity

Association. This endorsement shall be effective from July 1, 2019, 12:01 a.m. at Calgary, Alberta.

ALBERTA LAWYERS INDEMNITY ASSOCIATION

Per: 

Name: David Weyant, QC

Title: President and Chief Executive Officer