

*By-Law V – Schedule 4 Indemnification Agreement*

**INDEMNIFICATION AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,

B E T W E E N:

**HUMAN RESOURCES PROFESSIONALS ASSOCIATION,**  
a not-for-profit corporation without share capital  
incorporated under the *Corporations Act* (Ontario)

(the “HRPA”)

and

\_\_\_\_\_  
of the City of \_\_\_\_\_,  
in the Province of Ontario

(the “Indemnitee”)

**WHEREAS** the Indemnitee is an existing director and/or officer of the HRPA, or the HRPA expects the Indemnitee to join it as a director and/or officer;

**AND WHEREAS** as a condition of the Indemnitee agreeing to act or continue to act as a director and/or officer of the HRPA (the “**Indemnified Capacity**”), the Indemnitee has requested, and the HRPA has agreed, that the HRPA will indemnify the Indemnitee to the fullest extent permitted by law against certain liabilities that the Indemnitee may incur in connection with the Indemnitee’s acting or continuing to act in an Indemnified Capacity;

**NOW THEREFORE** for good and valuable consideration, the parties agree as follows:

**SECTION 1 - INTERPRETATION**

**1.1 Definitions.** As used herein, the following terms shall have the following meanings:

“**Act**” means the *Registered Human Resources Professionals Act, 2013*, as amended from time to time;

“**Agreement**” means this Indemnification Agreement, as amended or supplemented from time to time;

“**Court**” means the Ontario Superior Court of Justice;

“**Derivative Action**” has the meaning ascribed thereto in Section 3; and

“**Regulations**” means regulations made pursuant to the Act, as amended from time to time.

1.2 **Rules of Interpretation.** The following rules of interpretation apply to this Agreement:

- (a) the singular includes the plural, and vice versa;
- (b) “including” means “including without limitation”;
- (c) a gender includes all genders;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) the headings contained in this Agreement are for convenience of reference only and do not modify or affect in any way the meaning or interpretation of this Agreement; and
- (f) time is of the essence of this Agreement.

## **SECTION 2 - INDEMNIFICATION**

**2.1 Indemnity.** The HSPA shall indemnify and save harmless the Indemnitee (which term includes the Indemnitee’s heirs and legal personal representatives), to the fullest extent permitted by law, against all liability, loss, harm, damage, cost or expense, including legal fees and expenses and amounts paid to settle a claim or action or satisfy a judgment or fine, reasonably incurred by the Indemnitee in respect of any threatened, pending, ongoing or completed claim or civil, criminal, administrative, investigative or other action or proceeding, formal or informal, made or commenced against the Indemnitee or in which the Indemnitee is or was involved by reason of acting in an Indemnified Capacity. Notwithstanding the foregoing, the HSPA will not indemnify the Indemnitee in respect of an action by or on behalf of the HSPA against the Indemnitee unless a Court so orders.

**2.2 Tax Gross-Up.** If the Indemnitee is required by law to pay any tax on account of the receipt by the Indemnitee of any amount under this Agreement, the HSPA shall increase the amount payable to the Indemnitee so that the amount received by the Indemnitee, after the deduction of all applicable taxes, is equal to the amount that the Indemnitee would have received under this Agreement had such tax not been payable. The Indemnitee agrees to take all reasonable steps to minimize the amount of such taxes.

**2.3 Limitation**

(1) **Limitation.** The HRPAs shall not be obligated to indemnify the Indemnitee under Section 2.1 unless:

- (a) the Indemnitee acted honestly and in good faith with a view to the best interests of the HRPAs; and
- (b) in the case of a criminal or administrative action or proceeding, the Indemnitee had reasonable grounds for believing that the Indemnitee's conduct was lawful.

## 2.4 Payment

(1) **Payment of Indemnity Claim.** Within 10 days after receipt by it of a claim for indemnification under Section 2.1 accompanied by reasonable evidence of the amount of the claim, the HRPAs shall pay or cause to be paid to the Indemnitee the amount of the claim unless the claim relates to a Derivative Action, in which case the provisions of Section 3 will apply. To the extent that the Indemnitee receives indemnification or reimbursement in respect of all or any part of a claimed amount from a source other than the HRPAs, the Indemnitee will forthwith notify the HRPAs and pay such amounts to the HRPAs to the extent that the Indemnitee has received indemnification or reimbursement for same from the HRPAs.

(2) **Notice of Dispute.** If the HRPAs believe that the Indemnitee is not entitled to indemnification under Section 2.1, the HRPAs shall so advise the Indemnitee in writing within the 10-day period referred to in Section 2.4(1).

**2.5 Determination of Right of Indemnification.** If the HRPAs contest the Indemnitee's right to indemnification under Section 2.1, the determination of the Indemnitee's right to indemnification shall be made by the Court and:

- (a) the burden of proving that the Indemnitee did not meet the standards set out in Section 2.3 shall be on the HRPAs; and
- (b) neither a determination by the HRPAs that the Indemnitee is not entitled, nor any failure of the HRPAs to determine that the Indemnitee is entitled, to indemnification because the Indemnitee did not meet the standards set out in Section 2.3 shall create a presumption that the Indemnitee did or did not meet such standards.

**2.6 Scope; Change in Applicable Law.** The intention of this Agreement is to provide the Indemnitee indemnification to the fullest extent permitted by law, and the HRPAs hereby agree to indemnify the Indemnitee to the fullest extent permitted by applicable law. In the event that the Act or the Regulations are amended to permit a broader scope of indemnification, this Agreement shall be deemed to be amended concurrently with the amendment to the Act or the Regulations, as the case may be, so as to increase the scope of the indemnity provided to the Indemnitee under this Agreement.

**3.1 Derivative Action.** If the HRP A or a third party on behalf of the HRP A commences an action to procure a judgment in favour of the HRP A (a “**Derivative Action**”) to which the Indemnatee is made a party by reason of the Indemnatee’s association with the HRP A, the HRP A shall, at the Indemnatee’s request, make application to the Court for approval of the Court to indemnify the Indemnatee under Section 2 and to advance monies to the Indemnatee under Section 3.

## SECTION 4 – INDEMNIFICATION PROCEDURE

### 4.1 Notice to HRP A

(1) ***Giving Notice.*** The Indemnatee shall give notice to the HRP A as soon as is practicable, and in any event not later than 10 days after the Indemnatee receives notice of any claim against the Indemnatee of any action or proceeding involving the Indemnatee that may give rise to a claim for indemnification under this Agreement. A copy of any documents which have been served upon the Indemnatee shall accompany such notice or, where this is not feasible, be delivered to the HRP A as soon as is practicable thereafter.

(2) ***Failure or Delay in Giving Notice.*** The failure or delay of the Indemnatee to give notice to the HRP A in accordance with Section 4.1(1) shall not relieve the HRP A of its obligations to the Indemnatee under this Agreement unless, and then only to the extent that, the HRP A is materially damaged or prejudiced as a result of such failure or delay.

### 4.2 Control of Claim, Action or Proceeding

(1) ***Assumption of Control by HRP A.*** The HRP A shall have the right, at its own expense, to assume control of any claim against the Indemnatee or any action or proceeding involving the Indemnatee, including employing legal counsel reasonably satisfactory to the Indemnatee, by giving notice to the Indemnatee of its intention to do so.

(2) ***Cooperation.*** If the HRP A exercises its right under Section 4.2(1), the Indemnatee shall cooperate with the HRP A and make available to it all information under the Indemnatee’s control that is relevant to the claim, action or proceeding, and the HRP A shall keep the Indemnatee informed on an ongoing basis of the progress of the claim, action or proceeding. If the HRP A does not exercise its right under Section 4.2(1), the HRP A shall cooperate with the Indemnatee and make available to the Indemnatee all information under its control that is relevant to the claim, action or proceeding and the Indemnatee shall keep the HRP A informed on an ongoing basis of the progress of the claim, action or proceeding.

(3) ***Indemnatee Retaining own Counsel.*** If the HRP A exercises its right under Section 4.2(1), the Indemnatee may:

- (a) at the Indemnatee’s own expense, employ legal counsel of the Indemnatee’s choosing to participate in any claim, action or proceeding in addition to legal counsel employed by the HRP A; and

- (b) at the expense of the HRPAs, employ legal counsel of the Indemnitee's own choosing to participate in any claim, action or proceeding in addition to legal counsel employed by the HRPAs if:
  - (i) the employment of such legal counsel has been approved in writing by the HRPAs;
  - (ii) the Indemnitee has received written legal advice (shared with the HRPAs) that there may be a conflict of interest between the HRPAs and the Indemnitee in respect of the claim, action or proceeding; or
  - (iii) the Indemnitee has reasonably concluded that the HRPAs has not assumed control of, or is not diligently dealing with, the claim, action or proceeding.

If the Indemnitee employs legal counsel of the Indemnitee's own choosing, the HRPAs and its legal counsel shall, to the extent practicable in the circumstances, cooperate with the Indemnitee and the Indemnitee's legal counsel in dealing with the claim, action or proceeding, including making documents, witnesses and other information relating to the claim, action or proceeding available to the Indemnitee and the Indemnitee's legal counsel.

(4) **Settlement.** Whether or not the HRPAs exercises its right under Section 4.2(1), the Indemnitee shall not enter into any settlement, or consent to the entry of any judgment with respect to the claim, action or proceeding without the prior written consent of the HRPAs, which consent shall not be unreasonably withheld or delayed.

If the HRPAs exercises its right under Section 4.2(1), the HRPAs shall not enter into any settlement, or consent to the entry of any judgment with respect to the claim, action or proceeding that would impose any penalty, financial obligation or limitation on the Indemnitee, other than a monetary obligation for which the Indemnitee is fully indemnified under this Agreement, or will involve a determination of fault on the part of the Indemnitee, without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed.

## SECTION 5 - EXCEPTIONS TO INDEMNITY AND ADVANCES

**5.1 Exceptions.** The obligation of the HRPAs to indemnify the Indemnitee pursuant to Section 2.1 and to make advances pursuant to Section 2.4(1) shall not apply in respect of any proceeding initiated by the Indemnitee:

- (a) against the HRPAs, unless it is brought to establish or enforce any right under this Agreement;
- (b) against any other director or officer of the HRPAs, unless the HRPAs has joined in or consented to the initiation of such proceeding; or

- (c) against any other entity or person, unless it is a counterclaim, cross-claim, third party claim or claim to recover contribution or indemnity in connection with a claim or proceeding that may give rise to a claim for indemnification by the Indemnitee under this Agreement.

**SECTION 6 - GENERAL**

**6.1 Effective Date.** This Agreement shall be deemed to have effect as and from the first date that the Indemnitee became a director or officer of the HRP, and shall apply to all actions and proceedings, whether such action or proceeding is in respect of facts arising before or subsequent to the effective date of this Agreement.

**6.2 Compliance with the Act.** To the extent that the terms of this Agreement are contrary to the provisions of the Act or the Regulations, or other applicable laws, the terms of this Agreement shall be deemed to be amended to comply therewith (it being understood that nothing contained herein shall be considered to impose an obligation upon the HRP which it is prohibited from complying with by virtue of such legislation).

**6.3 Notice.** All notices or other communications required or permitted by this Agreement shall be effective upon receipt and shall be in writing and shall be delivered personally or by courier or sent by email addressed as follows:

- (a) in the case of the HRP:

Human Resources Professionals Association  
 150 Bloor Street West, Suite 200  
 Toronto ON M5S 2X9  
 Attention: Louise Taylor Green, CEO  
 E-mail: LTaylorGreen@hrpa.ca

- (b) in the case of the Indemnitee:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**6.4 Continuation of Indemnity and Access.** The indemnification provided to the Indemnitee under this Agreement shall continue after the Indemnitee ceases to serve in an Indemnified Capacity. The Indemnitee and the Indemnitee’s advisors may review during regular business hours all documents, records and other information with respect to the HRP which are under the HRP’s control and which may be reasonably necessary in order for the Indemnitee to defend himself against any claim, action, investigation or proceeding that relates to, arises from or is based on the Indemnitee acting in an Indemnified Capacity, provided that the Indemnitee and the Indemnitee’s advisors shall maintain all such information in strictest confidence except to the extent necessary for the Indemnitee’s defence in any such claim, action, investigation or proceeding.

**6.5 Independent Legal Advice.** The Indemnitee acknowledges that the Indemnitee has had sufficient opportunity to seek, and was not prevented nor discouraged from seeking, independent legal advice prior to the execution and delivery of this Agreement and that, in the event that the Indemnitee did not avail himself of that opportunity prior to signing this Agreement, the Indemnitee did so voluntarily without any undue pressure from the HRP.

**6.6 Amendment and Waiver.** This Agreement may not be amended except by a written agreement signed by the parties hereto. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions of this Agreement or constitute a continuing waiver. Any waiver of any of the provisions of this Agreement must be in writing and signed by the HRP or the Indemnitee, as applicable. A party's failure to enforce any of the provisions of this Agreement shall not constitute a waiver of such provision or prevent the party from thereafter enforcing such provision or any of the other provisions of the Agreement.

**6.7 Binding Effect.** This Agreement shall be binding upon the HRP and its successors and assigns and enure to the benefit of the Indemnitee and the Indemnitee's heirs, executors, successors and personal representatives.

**6.8 Severability.** The invalidity or unenforceability of any part of this Agreement shall not affect the validity or enforceability of any other part of this Agreement.

**6.9 Not Exhaustive.** This Agreement shall not operate to abridge or exclude any other rights to which the Indemnitee may be entitled in connection with the Indemnitee acting in an Indemnified Capacity, at law or in equity, under the Act, the Regulations, or the letters patent or by-laws of the HRP.

**6.10 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to any choice of law or conflicting provision or rule that would cause the laws of any jurisdiction to be applied other than the laws of the Province of Ontario and the laws of Canada applicable therein.

**6.11 Consent to Jurisdiction.** All actions and proceedings arising in any manner out of or in connection with this Agreement or to interpret the provisions of this Agreement shall be brought only in the courts of the Province of Ontario. Each of the HRP and the Indemnitee irrevocably:

- (a) consents and submits to the jurisdiction of the courts of the Province of Ontario for the purposes of any such action or proceeding;
- (b) waives any objection that it may have, now or hereafter, to having any such action or proceeding take place in the courts of the Province of Ontario; and
- (c) waives any claim that the courts of the Province of Ontario are not a convenient forum for any such action or proceeding.

**6.12 Counterparts, Facsimile and Electronic Signatures.** This Agreement may be executed in one or

more counterparts, each of which shall constitute an original. This Agreement may be transmitted by facsimile or electronically, and it is the intent of the parties that the facsimile or electronic copy of any signature shall be considered an original signature and shall have the same force and effect as an original signature.

The parties have executed this Agreement as of the date first written above.

**Human Resources Professionals Association**

by: \_\_\_\_\_

Louise Taylor Green,  
CEO

**INDEMNITEE**

\_\_\_\_\_  
Name:  
Title: