

Form #A&E-CI480 - Errors and Omissions Insurance for Architects and Engineers - Defence Costs Inclusive
(Rev. 30 October 2014)

***PLEASE READ CAREFULLY - THIS ERRORS AND OMISSIONS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS WITH ALL DEFENCE COSTS INCLUDED WITHIN THE LIMIT OF LIABILITY. PLEASE REFER TO THE CONDITIONS AND EXCLUSIONS CONTAINED IN THIS CONTRACT.**

Key words and phrases which appear in bold type and capitalized have special meanings. Refer to **Section 2 Definitions**.

1. INSURING AGREEMENT

1.1 Insuring Clause

Whereas the company, partnership or firm as stated in Item 1 of the **SCHEDULE** (the "Named Insured") has made to **UNDERWRITERS** a **PROPOSAL**, which is hereby agreed to be the basis of this **POLICY**, which shall be deemed to be incorporated herein.

We, the **UNDERWRITERS**, in consideration of the payment of the Premium stated in the **SCHEDULE**, agree, subject to all the terms and conditions of this **POLICY**, to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally liable to pay as **DAMAGES** and Claimants' costs, fees and expenses as a result of any **CLAIM** first made against the **INSURED** and notified to **UNDERWRITERS** during the Policy Period stated in Item 3 of the **SCHEDULE** or during the Extended Reporting Period arising out of any **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission by the **INSURED** or any by others for whom the **INSURED** is legally liable, in or about the conduct of the Named **INSURED'S PROFESSIONAL BUSINESS** as stated in Item 7 of the **SCHEDULE**.

1.2. Defence Costs

With respect to the coverage afforded by this **POLICY**, the **UNDERWRITERS** shall appoint legal counsel or other experts to take up the defence of the **INSURED** and pay those **DEFENCE COSTS**.

UNDERWRITERS may make such investigation and settlement of any **CLAIM** as they deem expedient and shall have the exclusive right to contest or settle any of said **CLAIM**. The **INSURED** shall not admit liability for or settle any **CLAIM** or incur any cost, charge or expense without the written consent of the **UNDERWRITER** as such action may render this coverage null and void.

The **UNDERWRITERS'** obligation to defend or continue to defend any **CLAIM** ends once the available Limit of Liability is exhausted. **DEFENCE COSTS** are a part of and not in addition to the Limit of Liability stated as such in the **SCHEDULE**. The payment of **DEFENCE COSTS** reduces and may exhaust the Limit of Liability.

1.3. Supplementary Payments

Provided that the Limits of Liability are not exhausted, the **UNDERWRITERS** will pay, for each claim, the following:

- (a) all reasonable expenses (other than those stated above) incurred by the **INSURED** at the **UNDERWRITERS'** request;
- (b) premiums on appeal bonds and bonds to release attachments. The **UNDERWRITERS** are not obligated to supply such bond but only to pay the premiums;
- (c) costs taxed against the **INSURED**, all court and arbitration costs owed by the **INSURED** and all interest upon that part of a judgment which falls within the remaining limits of liability at the time;
- (d) **INSURED'S** expenses incurred for emergency medical and surgical relief to others and which the **INSURED** deemed necessary following an accident which the **INSURED** honestly believed might have been the result of a **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission while the **INSURED** was acting within the scope of the **INSURED'S PROFESSIONAL BUSINESS**.

1.4 Disciplinary Proceedings Reimbursement

The **UNDERWRITERS** will reimburse the **INSURED**, upon written request, for legal fees and expenses up to \$15,000 incurred by the **INSURED** for the **POLICY PERIOD** with the prior written consent of **UNDERWRITERS** in response to a disciplinary proceeding brought directly against the **INSURED** during the **POLICY PERIOD** by an professional licensing body in relation to any **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission while the **INSURED** was acting within the scope of the **INSURED'S PROFESSIONAL BUSINESS**. The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

1.5 Occupational Health and Safety

The **UNDERWRITERS** will reimburse the **INSURED**, upon written request, for legal fees and expenses up to \$25,000 incurred by the **INSURED** for the **POLICY PERIOD** with the prior written consent of **UNDERWRITERS** in defence of a proceeding under an Occupational Health and Safety Act in relation to services that fall within the scope of the **INSURED'S PROFESSIONAL BUSINESS** provided to others. The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

1.6 Loss of Documents

In the event that any of the **INSURED'S DOCUMENTS** have been destroyed, damaged, lost or mislaid **UNDERWRITERS** will pay on the **INSURED'S** behalf all expenses incurred by the **INSURED** in replacing and /or restoring such **DOCUMENTS** up to \$50,000 for the **POLICY PERIOD**. The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

1.7 Libel and Slander Extension

It is hereby agreed that the **UNDERWRITERS** will pay on behalf of the **INSURED** up to \$50,000 for the **POLICY PERIOD** all sums which the **INSURED** shall become legally liable to pay as a result of any **CLAIM(S)** arising or resulting from:

- a. any defamation including libel, slander, or trade libel;
- b. any disparagement or harm to character, reputation or feelings;
- c. any invasion or infringement or interference with the right of privacy or publicity including but not limited to, intrusion, public disclosure of private facts, unwarranted or wrongful publicity, false light or the use of name or likeness for profit; and
- d. outrage, outrageous conduct or infliction of emotional distress.

The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

1.8 Breach of Copyright Extension

It is hereby agreed that the **UNDERWRITERS** will pay on behalf of the **INSURED** up to \$100,000 for the **POLICY PERIOD** all sums which the **INSURED** shall become legally obligated to pay in respect of any **CLAIM** arising or resulting from with any breach or alleged breach of patent, design, trademark, trade name, copyright or action for passing off any product, or for any breach or alleged breach of confidence.

This extension does not cover liability for **CLAIMS** arising by reason or in consequence of the suspension or cancellation of registration or other rights or privileges by virtue of which the products are distributed or sold. The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

1.9 Privacy Failure Expense Coverage

It is hereby agreed that the **UNDERWRITERS** will indemnify the **INSURED** for **PRIVACY FAILURE EXPENSE**, up to \$50,000 for the **POLICY PERIOD**, resulting from a **PRIVACY FAILURE** of the Insured's computer network, provided that:

- a. **UNDERWRITERS** have provided prior consent of such expenditure;
- b. the **UNDERWRITERS** shall only be liable for **PRIVACY FAILURE EXPENSE** arising out of any one originating cause under this coverage, which exceeds the amount of the Self-Insured Excess stated in the **SCHEDULE**; and
- c. the **INSURED** has provided the **UNDERWRITERS** written notice within Thirty (30) days of the **PRIVACY FAILURE**.

The limit shown for this extension of coverage on the Declarations page is the most Underwriters will pay during any one policy period regardless of the number of claims made.

Exclusions

UNDERWRITERS shall not be liable to pay any **PRIVACY FAILURE EXPENSE** of any claim or claims arising directly or indirectly out of or in respect of:

Infrastructure Malfunction

The malfunction, stoppage, or crash of telephone lines, data transmission lines or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under the **INSURED'S** operational control.

Reasonable Care

Any circumstance which could give rise to a claim under this Policy of which the Insured failed to take steps to use, maintain, or upgrade the Insured's computer network in a reasonable manner. Including circumstances arising out the use of or performance of, software that is: due to expire, been cancelled, or been withdrawn, is still in testing or *beta* phase, or that has not been proven to perform correctly for daily operations.

Adequate Notice – Purpose for Data Collection

Any actual or alleged failure to provide adequate notice regarding the purposes for which the sensitive personal information is collected.

Official Confiscation

Any liability based upon, arising from, or in consequence of any seizure, confiscation, nationalization, or destruction of the Insured's computer network by order of any governmental or public authority.

Definitions

"PRIVACY FAILURE EXPENSE" shall mean those reasonable and necessary expenses incurred by the **INSURED**, or on the **INSURED'S** behalf:

- i. to provide notice to third party or parties of any actual or alleged compromise of personal information;
- ii. to recover information which has been accessed without the individual's permission;
- iii. to provide credit monitoring to minimize any **DAMAGES** otherwise covered under this **POLICY** for a period not greater than twelve (12) months from the date of the **PRIVACY FAILURE**;
- iv. to conduct an investigation, also known as cyber investigation, of the **INSURED'S** computer network from which sensitive personal information has been accessed in order to determine the manner in which and the date and time such information was accessed;
- v. to pay a public relations, law, or crisis management firm(s) to perform crisis management services to minimize the potential harm to an individual(s) resulting from unauthorized disclosure or access to sensitive personal information;
- vi. legal expenses to defend the Insured in any Privacy Commission Hearing or Inquest by a government body.

"PRIVACY FAILURE" shall mean:

- 1) unauthorized use, collection, or dissemination of private information that may include social insurance number, healthcare information, drivers' license, passport number and or any other information that is customarily deemed to be private and sensitive.
- 2) any resulting breach of federal, provincial, state or local identity theft and privacy protection laws requiring commercial entities that collect personal information to post privacy policies, adopt specific privacy controls, or notify individuals in the event that personal information has potentially been compromised, which includes the Personal Information and Electronic Documents Act (PIPEDA).
- 3) the actual failure and inability of the Insured to prevent by all reasonable means:
 - i. the unauthorized use of or access to the **INSURED'S** computer network;
 - ii. transmittance or reception of unauthorized corrupting or harmful piece of code, computer virus or similar program; or
 - iii. the physical theft of hardware or firmware controlled by the **INSURED** on which data is stored from premises occupied and controlled by the **INSURED**.

1.10 Limit of Liability

UNDERWRITERS' total liability under this **POLICY** shall not exceed in the aggregate the Limit of Liability stated in Item 4 of the **SCHEDULE** in respect of all **CLAIMS** indemnified by this **POLICY**. If the **POLICY PERIOD** is extended for a period, then the extension period shall be deemed to be part of the preceding **POLICY PERIOD** and shall not increase the Limit of **UNDERWRITERS'** Liability. The Limit of Liability in the aggregate stated in Item 4 of the **SCHEDULE** is reduced by every **CLAIM** payment and **DEFENCE COSTS** made under this **POLICY**.

1.11 Territory:

This **POLICY** applies to any **WRONGFUL ACT**, or negligent act, negligent error, or negligent omission which was committed or was alleged to have been committed anywhere in the world.

1.12 Jurisdiction:

This **POLICY** only applies to any **CLAIMS** brought against the **INSURED** under the laws of Canada. Under the laws of any other jurisdiction, the **UNDERWRITERS** have no obligation to defend or continue to defend any **CLAIMS**.

2. DEFINITIONS

- 2.1 **"CLAIM(S)"** shall mean any written or verbal demand received by the **INSURED** for **DAMAGES** including a civil action or suit or institution of arbitration proceedings in relation to the conduct of the **INSURED'S PROFESSIONAL BUSINESS** and resulting from a **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission in the conduct of the **INSURED'S PROFESSIONAL BUSINESS**.

Where more than one **CLAIM(S)** arises from a **CLAIM** a **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission all such **CLAIMS** shall be deemed a single **CLAIM** regardless of the number of **INSUREDS** or the number of persons or organizations making a **CLAIM**.

- 2.2 **"DAMAGES"** shall mean any compensatory sum which the **INSURED** is legally obligated to pay for any **CLAIM** to which this insurance applies and shall include judgments and settlements, negotiated with the **UNDERWRITERS'** written consent.

"DAMAGES" shall not include fines, penalties, punitive or exemplary damages, sanctions or any other damages resulting from the multiplication of compensatory damages, nor the return of fees, commissions, expenses or costs for the professional business of the **INSURED**. **"DAMAGES"** shall also not include any matter, sum or award that is uninsurable under the law pursuant to which this **POLICY** shall be construed nor any form of injunctive or declaratory relief.

- 2.3 **"DEFENCE COSTS"** shall mean reasonable costs and expenses incurred by the **UNDERWRITERS** or **INSURED** with **UNDERWRITERS'** prior consent in the investigation, negotiation, mediation, defence or settlement of any **CLAIM** made against the **INSURED** or the investigation of any circumstances of which the **INSURED** shall become aware which might reasonably be expected to give rise to a **CLAIM** being made against the **INSURED**, providing such **CLAIMS** are indemnifiable under this **POLICY**.

"DEFENCE COSTS" shall include all premiums on bonds to release attachments, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

- 2.4 **"INSURED"** shall mean the Named Insured stated in Item 1 of the **SCHEDULE** and any past, present or future employee or officer of or director of or any stockholder or any partner of the Named **Insured**;

"INSURED" shall also mean any heir, executors, administrators or legal representative of each **INSURED**, in the event of death, incapacity or bankruptcy, but only as respects liability arising out of the **INSURED'S PROFESSIONAL BUSINESS** conducted prior to such **INSURED's** death, incapacity or bankruptcy;

"INSURED" shall also mean any individuals or personal corporations who from time to time have been retained under personal services contracts or personal services agreements; employees on loan from others; only while acting within the scope of their duties for the **INSURED**, including contract employees for work completed on behalf of the **INSURED** (subject to fees being declared in the **PROPOSAL**).

- 2.5 **"POLICY"** shall mean this wording and the **SCHEDULE** and all endorsements appended hereto.

- 2.6 **"POLICY PERIOD"** shall mean the period specified in Item 3 of the **SCHEDULE** or the earlier termination date, if any, but shall specifically exclude any Extended Reporting Period.

- 2.7 **"PROPOSAL"** shall mean a written **PROPOSAL** made by or on behalf of the **INSURED** to the **UNDERWRITERS** for the insurance evidenced by this **POLICY**, including any statements, declarations, application forms, warranties, or information upon which the **UNDERWRITERS** have relied and, where a special form or presentation has been used for the purpose, bearing the date stated in Item 6 of the **SCHEDULE**.

- 2.8 **"RETROACTIVE DATE"** shall mean the date specified in Item 8 of the **SCHEDULE**.

- 2.9 **"SCHEDULE"** shall mean the document so-entitled which is appended to this **POLICY**.

- 2.10 **"UNDERWRITERS"** shall be those Insurers in this Policy.

- 2.11 **"WRONGFUL ACT"** shall mean any actual or alleged breach of duty, single fault, neglect, error, negligent misstatement, misleading statement or omission committed by the **INSURED** or on the **INSURED's** behalf solely in the conduct of the **INSURED'S PROFESSIONAL BUSINESS** as stated in Item 7 of the **SCHEDULE**.

- 2.12 **"BODILY INJURY"** means physical injury, sickness, disease, mental anguish, mental suffering or shock, including death resulting from any of these at any time

- 2.13 **"PROPERTY DAMAGE"** means physical injury to tangible property, including any resulting loss of use of that property. Tangible property does not include computer data

- 2.14 **"INSURED'S PROFESSIONAL BUSINESS"** shall mean those services specifically described in the **SCHEDULE** or other services as defined by endorsement to this **POLICY** that are rendered by the **INSURED** while acting within the scope of the **INSURED'S** duties.

- 2.15 **"DOCUMENTS"** means those used in the rendering of the **INSURED'S** professional services that are usual or customary for the **INSURED'S PROFESSIONAL BUSINESS**

3. EXCLUSIONS

UNDERWRITERS shall not be liable to pay any **DEFENCE COSTS** or **CLAIM** or make **Supplementary Payments** to the **INSURED** against any **CLAIM** or **CLAIMS** arising directly or indirectly out of or in respect of:

3.1 **RETROACTIVE DATE**

any actual or alleged a **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission committed or alleged to have been committed before the **RETROACTIVE DATE** stated in Item 8 of the **SCHEDULE**.

3.2 **Circumstances Known at Inception**

any circumstance which could give rise to a **CLAIM** under this **POLICY** of which the **INSUREDS** were aware or ought reasonably to have been aware at or prior to the inception date of this **POLICY** stated in Item 3 of the **SCHEDULE**, whether notified under any other insurance or not.

3.3 Associated Companies and Joint Ventures

any action brought by any entity not named in the **SCHEDULE** which is or was owned, operated, managed or controlled by the **INSURED**, or which is or was affiliated with the **INSURED** through common ownership.

This exclusion shall not apply where the ownership interest held by such an entity in the **INSURED**, or ownership interest held by the **INSURED** in such an entity, whether held as equity, ownership or voting rights, is less than or equal to twenty-five percent (25%).

This exclusion shall also include **CLAIMS** resulting from the **INSURED'S** involvement in a joint venture, partnership, or any other entity which has not been endorsed on this policy as an additional Named **INSURED** unless this **POLICY** was specifically issued for this purpose. This exclusion shall not apply with respect to the **INSURED'S** participation in a joint venture or partnership established with another architectural or engineering firm for the performance of professional services coverage under the terms of this **POLICY**.

3.4 Recourse Rights

where and to the extent the **UNDERWRITERS** have or would have rights of recourse in respect of such **CLAIM** but the **INSURED** has granted without **UNDERWRITERS'** prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

3.5 Cross Liability

where the **CLAIM** is made by one **INSURED** or an entity financially associated with the **INSURED** against another **INSURED**, unless the **CLAIM** originally emanates from an independent third party.

3.6 Contractual Liability

any liability assumed by the **INSURED** under any contract or agreement with exception to:

- (a) the extent that such liability would have attached to the **INSURED** in the absence of such contract or agreement; or
- (b) any **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission arising out of the **INSURED'S PROFESSIONAL BUSINESS** conducted by or on behalf of the **INSURED**.

3.7 Dishonesty & Criminal Acts

any dishonest, fraudulent, criminal or malicious act or omission including the knowing, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body, however, the **UNDERWRITERS** shall defend **CLAIMS** alleging the foregoing conduct until there is a final judgment, final adjudication, adverse admission or finding of fact against the **INSURED** as to such conduct at which time the **INSURED** shall reimburse the **UNDERWRITERS** for **DEFENCE COSTS**. **UNDERWRITERS** will not cover any such **CLAIM** to which the **INSURED** pleads *nolo contendere* or no contest. This exclusion shall not apply to any **INSURED** who did not commit, participate in or have any knowledge of such conduct.

3.8 Insolvency or Bankruptcy of INSURED

the administration, receivership, insolvency or bankruptcy of the **INSURED**.

3.9 Other Insurance

any expense or liability covered under or indemnified by any other policy of insurance, however, this exclusion shall not apply to any expense or liability in excess of the limit of indemnity in such other policy of insurance.

3.10 War

war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

3.11 Radioactive Contamination and Explosive Nuclear Assemblies

ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. Also includes those **CLAIMS** resulting from and liability imposed by or arising under the Nuclear Liability Act. This exclusion shall not be construed to apply in any commercial or medical radioactive isotopes.

3.12 Bond, Suretyship or Insurance

the **INSURED'S** advising, requiring, obtaining or failure to advise, require or obtain any bond, suretyship or any form of insurance.

3.13 Faulty Workmanship and Design

any actual or alleged:

- (a) faulty workmanship, construction or work which is alleged or in fact is not constructed in accordance with the design of the project or the construction documents where such construction or work is performed by or on behalf of the **INSURED** with exception to any **CLAIM** arising solely out of field services performed by the **INSURED** in their capacity as an architect or engineer in relation to **INSURED'S PROFESSIONAL BUSINESS**.
- (b) design or manufacture of any goods or products sold or supplied by the **INSURED** or designed, manufactured, sold or supplied by others under license from the **INSURED**.

3.14 Delays, Warranties, Cost Estimates, Fee Disputes, and Estimates of Economic Return

any actual or alleged:

- (a) delay in the performance of any contract or agreement including any delays in the completion of drawings, plans, specifications, reports or schedules on time or the **INSURED'S** failure to act upon shop drawings on time, unless such delay is due to a **WRONGFUL ACT** on the part of the **INSURED**;
- (b) express or implied warranty or guarantee with exception to any **CLAIM** that would have resulted in the absence of such express warranty or guarantee;
- (c) disputes involving the **INSURED'S** fees or charges; or
- (d) any **CLAIM** based upon or arising out of estimates of profit, returns on capital or economic return or other estimates giving rise to forecasts of economic return.

3.15 Employment Related Practices

any actual or alleged:

- (a) refusal to employ;
- (b) termination of employment; or

(c) coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, emotional distress, discrimination or other employment-related practices, policies acts or omissions.
This exclusion applies whether the **INSURED** may be held liable as an employer or in any other capacity and to any obligation to share **DAMAGES** with or repay someone else who must pay **DAMAGES** because of such injury.

3.16 Directors and Officers

any person acting in their capacity as a director or officer of the **INSURED** or of any firm or company with exception to any firm or company stated in Item 1 of the **SCHEDULE**.

3.17 Employers' Liability and Workers' Compensation

BODILY INJURY to any person in the course of his or her employment by the **INSURED** under any contract of service or apprenticeship or for any breach of any obligation owed by the **INSURED** as an employer to any employee. This includes any obligation for which an **INSURED** or any party may be held liable under any employment workers' compensation, disability benefits, or other similar laws.

3.18 Asbestos

liability for loss, injury, **DEFENCE COSTS** or **DAMAGES** or make Supplementary Payments for any **CLAIM** arising out of any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense caused by, resulting from, in consequence of or in any way involving asbestos in whatever form or quantity.

3.19 Microbial Matter

Liability for loss, injury, **DEFENCE COSTS** or **DAMAGES** or make Supplementary Payments for any **CLAIM** arising directly or indirectly from any, **BODILY INJURY**, or **PROPERTY DAMAGE** related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part by **MICROBIAL MATTER**. For the purposes of this Exclusion, the following definition is added to the Policy:

MICROBIAL MATTER means fungi, bacterial or viral matter which reproduces through the release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such **MICROBIAL MATTER** is living.

3.20 Terrorism

liability for loss, injury, **CLAIMS**, **DAMAGES**, **DEFENCE COSTS** or expense of whatsoever nature directly caused by, resulting from or in connection with any **ACT OF TERRORISM** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purposes of this Exclusion, the following definition is added to the Policy:

ACT OF TERRORISM means an act including but not limited to the use of force or violence at thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also includes liability for loss, injury, **CLAIMS**, **DAMAGES**, **DEFENCE COSTS** or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any **ACT OF TERRORISM**.

If the **UNDERWRITERS** allege that by reason of this exclusion, any liability for loss, injury, **CLAIMS**, **DAMAGES**, **DEFENCE COSTS** or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **INSURED**. In the event any portion of this is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.21 Pollution Exclusion with Time Element Coverage

CLAIM arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, seepage, release or escape of **POLLUTANTS** or **HOSTILE FIRE** except to the extent that the Insured can demonstrate that the **POLLUTANTS** or **HOSTILE FIRE** were the direct result of a sudden, specific and identifiable event occurring during the **POLICY PERIOD** provided that:

- it was a direct result of a **WRONGFUL ACT** in the performance of the **INSURED'S PROFESSIONAL BUSINESS**;
- it is detected within 120 hours after the commencement of the discharge, dispersal, release or escape;
- it is reported to the Insurer within 120 hours of being detected; and
- it results in the injurious presence of any **POLLUTANTS** in or upon land, the atmosphere, drainage or sewage system, watercourse or body of water requiring **CLEAN-UP**

For the purposes of this Exclusion, the following definitions are added to the Policy:

POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

CLEAN-UP means reasonable and necessary costs, charges, and expenses, including legal expenses with our written consent, incurred in the investigation, removal, neutralization, remediation, or immobilization of **POLLUTANTS** including associated monitoring or disposal of soil, surface water, groundwater or other contamination to the extent required by environmental law, or that have been incurred by the federal or any provincial, territorial or local government within Canada, or by third parties.

HOSTILE FIRE means one which becomes uncontrollable or breaks out from where it was intended to be.

3.22 Automobile, Watercraft, Aircraft, or other mechanically propelled vehicles

the ownership, possession, or use by, or on behalf of, the Insured of any aircraft, watercraft, or other mechanically propelled vehicle.

4. CONDITIONS

Conditions 4.2 to 4.4 inclusive are conditions precedent to any indemnity being granted under this **POLICY**. If any breach of such conditions should occur, there shall be excluded from the indemnity hereunder any **CLAIM** which has arisen or may arise in connection with such breach.

4.1 Self-Insured Excess

UNDERWRITERS shall only be liable for that part of each **CLAIM** or series of such **CLAIMS** arising out of any one originating cause under this **POLICY**, excluding **DEFENCE COSTS**, which exceeds the amount of the Self-Insured

Excess stated in Item 5 of the **SCHEDULE**. The **INSURED** shall retain the Self-Insured Excess for their own account and shall not insure it elsewhere.

4.2 Claims Notification

The **INSURED** shall give to **UNDERWRITERS** prompt notice in writing during the **POLICY PERIOD** of:

- 4.2.1 any **CLAIM** made against any **INSURED** during the **POLICY PERIOD** which may fall within the scope of this **POLICY**;
- 4.2.2 the receipt of notice, whether written or oral, from any person or entity of their intention to make such a **CLAIM** against the **INSURED** for any **WRONGFUL ACT**, negligent act, negligent error or negligent omission;
- 4.2.3 any circumstances of which the **INSURED** shall become aware which might reasonably be expected to give rise to such a **CLAIM** being made against the **INSURED**, giving reasons for the anticipation of such **CLAIM**.

If the **INSURED** gives notice as required by 4.2.2 or 4.2.3 above, any **CLAIM** subsequently made against the **INSURED** shall be deemed to have been made during the **POLICY PERIOD**.

Notice of any **CLAIM** must be given in writing to the **UNDERWRITERS'** representative directly at the following address:

Premier Canada Assurance Managers Ltd.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8
Attention: Claims Department

All notices shall include:

- 4.2.4 information sufficient to identify the **INSURED**, the names of persons with knowledge of the offence, **CLAIM**, **WRONGFUL ACT** by the **INSURED** or any negligent act, negligent error or negligent omission and all reasonably obtainable information with respect to the time, place, cause, nature and other circumstances thereof, and the names and addresses of the claimant(s) and available witnesses;
- 4.2.5 all correspondence between the **INSURED** and any third party claimant, including, but not limited to, any governmental agency or organization, and all demands, summonses, notices, or other process or papers filed with a court of law, administrative agency, governmental agency, governmental organizations or investigative body; and
- 4.2.6 other information in the **INSURED'S** possession or in the possession of experts hired by the **INSURED** that the **UNDERWRITERS** reasonably deem necessary, including, but not limited to, technical reports, investigations, invoices, and correspondence.

4.3 Claims Handling

No admission, offer, promise or payment shall be made or given by or on behalf of the **INSURED**, nor shall any costs be incurred by the **INSURED** without the written consent of the **UNDERWRITERS**; and the **UNDERWRITERS** shall be entitled to take over and conduct, in the name of the **INSURED**, the defence or settlement of any **CLAIM** or to prosecute in the name of the **INSURED** for their own benefit any **CLAIM** for indemnity or **DAMAGES** or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any **CLAIM**.

The **INSURED** shall at all times give **UNDERWRITERS** such information and co-operation as **UNDERWRITERS** may reasonably require.

4.4 Subrogation

UNDERWRITERS shall become subrogated to all rights of recourse and remedies of the **INSURED**, before as well as after any payment by **UNDERWRITERS** to the extent of any such payment and the **INSURED** shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this **POLICY** and **UNDERWRITERS** are thereupon subrogated to the **INSURED'S** rights of recovery in relation thereto, **UNDERWRITERS** agree not to exercise any such rights against any director or employee of the **INSURED** unless the **CLAIM** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or employee.

The **INSURED** shall give all such assistance in the exercise of rights of recovery as **UNDERWRITERS** may reasonably require.

4.5 Settlement

The **UNDERWRITERS** shall not settle any **CLAIM** without the consent of the Named **INSURED**. If, however, the Named **Insured** shall refuse to consent to any settlement recommended by the **UNDERWRITERS** and shall elect to contest the **CLAIM** or continue any legal proceedings in connection with such **CLAIM**, then the **UNDERWRITERS'** liability for the **CLAIM** shall not exceed the amount for which the **CLAIM** could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal.

4.6 Other Insurance

This **POLICY** is in excess of all other valid and collectible insurance and shall not be called upon in contribution. This does not apply to insurance which is purchased by the Named **INSURED** specifically to apply in excess of this insurance.

4.7 Changes

Notice to any authorized representative of the **UNDERWRITERS** or knowledge possessed by an authorized representative of the **UNDERWRITERS** or by any other person shall not effect a waiver or a change in any part of this **POLICY** or stop the **UNDERWRITERS** from asserting any right under the terms of this **POLICY**, nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form part of this **POLICY**, signed by the authorized representative of the **UNDERWRITERS**.

4.8 Declarations

By acceptance of this **POLICY**, the Named **Insured** agrees that the statements in the **PROPOSAL** for this insurance, which is signed on behalf of the Named **Insured**, are his agreements and representations that this **POLICY** is issued in reliance upon the truth of such representations and that this embodies all agreements existing between itself and the **UNDERWRITERS** or any of their representatives relating to this insurance.

4.9 Material Information

In the event of **UNDERWRITERS** being at any time entitled to void this **POLICY** by reason of any inaccurate or misleading information given by the **INSURED** in the **PROPOSAL**, the **UNDERWRITERS** may at their election, instead of voiding this **POLICY**, give notice in writing to the **INSURED** that they regard this **POLICY** as in full force and effect, save there shall be excluded from the indemnity afforded hereunder any **CLAIM** which has arisen or which may arise which is related to such information.

The **INSURED** shall throughout the **POLICY PERIOD** give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the **PROPOSAL**. In the event of **UNDERWRITERS** being at any time entitled to void this **POLICY** by reason of the **INSURED** failing to give notice in accordance with this Condition, the **UNDERWRITERS** may at their election, instead of voiding this **POLICY**, give notice in writing to the **INSURED** that there shall be excluded from the indemnity afforded hereunder any **CLAIM** which has arisen or may arise which is related to such facts, activities or circumstances.

4.10 Dispute

This **POLICY** shall be governed by Canadian Law unless stated to the contrary. If any dispute arises in connection with the formulation, validity or interpretation of this **POLICY**, it is understood and agreed by both the **INSURED** and **UNDERWRITERS** that the dispute will be referred to non-binding Mediation at a convenient venue for both parties (failing agreement on this, the Mediation shall be held in Vancouver or Toronto). Mediation shall be initiated by the delivery of a written notice of request for Mediation by one party to the other. Each party shall bear the expenses of its own presentation and shall jointly and equally bear with the other party the expenses of the Mediation. Failing mutual agreement on a suitable Mediator, a Mediator shall be appointed by application to the President of the provincial Law Society where the **INSURED** is situated.

If Mediation cannot resolve the dispute then such dispute shall be submitted to the exclusive jurisdiction of the provincial courts where the **INSURED** is situated. Both parties agree to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

4.11 Relinquishment

The **UNDERWRITERS** may at any time pay to the **INSURED** in connection with any **CLAIM** or series of **CLAIMS** under this **POLICY** the amount of the Limit of Liability remaining under this **POLICY** or any lesser amount for which such **CLAIM** or **CLAIMS** can be settled less any sums already paid inclusive of **DEFENCE COSTS**. Upon such payment being made, the **UNDERWRITERS** shall relinquish the conduct and control of and be under no further liability in connection with such **CLAIMS** or associated **DEFENCE COSTS** incurred after the date of such relinquishment.

4.12 Fraudulent CLAIMS

If the **INSURED** shall make any **CLAIM** knowing the same to be false or fraudulent, as regards amount or otherwise, this **POLICY** shall become void and all **CLAIM** hereunder shall be forfeited. However, for greater certainty, this clause shall not apply to any other **INSURED** who is neither the author of such act nor an accomplice thereto.

4.13 Extended Reporting Period

The **UNDERWRITERS** will provide an automatic, non-cancellable Extended Reporting Period of sixty (60) days starting at the end of the **POLICY PERIOD** if no other insurance purchased by the **INSURED** to replace this **POLICY** applies or would apply but for the exhaustion of its applicable Limit of Liability.

If the **UNDERWRITERS** cancel or do not renew this **POLICY** for any reason except if the **UNDERWRITERS** cancel for non payment of premium or non-compliance with the **POLICY** terms or conditions and if no other insurance is purchased by the **INSURED** to replace this **POLICY**, the above sixty (60) days reporting period may be substituted by an Extended Reporting Period Endorsement for a period of one year. The required additional premium for the Extended Reporting Period Endorsement shall not exceed: 75% of the current annual premium for the one year reporting period.

The **INSURED** must give the **UNDERWRITERS** or **UNDERWRITERS'** representative (Premier Canada Assurance Managers Ltd.) a written request and pay the additional premium for the Extended Reporting Period endorsement within sixty (60) days after the end of the **POLICY PERIOD**. Otherwise, the Extended Reporting Period Endorsement will not go into effect. The entire premium for the Extended Reporting Period Endorsement shall be deemed fully earned and non-refundable at the commencement of the Extended Reporting Period.

The Extended Reporting Period Endorsement (if purchased) does not extend the **POLICY PERIOD** or change the scope of coverage provided nor does it reinstate or increase the Limit of Liability as stated in the **SCHEDULE**.

If the **UNDERWRITERS** provide an Extended Reporting Period, the following provisions are added to the Insuring Agreements of this **POLICY**:

- (a) A **CLAIM** first made during the Extended Reporting Period will be deemed to have been made on the last day of the **POLICY PERIOD** provided that the **CLAIM** arose from a covered incident which took place before the end of the **POLICY PERIOD** and after the **RETROACTIVE DATE**;
- (b) The Extended Reporting Period shall not be construed to be a new **POLICY** and shall otherwise be governed by all of the Insuring Agreements, Conditions, Exclusions and Definitions of this **POLICY**;

4.14 Cancellation

This **POLICY** may only be cancelled by the **UNDERWRITERS** if the **INSURED** does not pay the premium when due or does not comply with the terms or conditions of this Policy. In the event the **UNDERWRITERS** cancel this **POLICY** they shall deliver to the **INSURED** or by mailing to the **INSURED** by registered, certified or other first class mail, at the **INSURED's** address as shown in Item 2 of the **SCHEDULE**, written notice stating when, not less than fifteen (15 days) thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **POLICY PERIOD** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **UNDERWRITERS** shall have the right to the premium amount for the period during which the **POLICY** was in effect.

4.15 Assignment

Assignment or transfer of any interest under this **POLICY** shall not bind the **UNDERWRITERS** without their prior written consent.

4.16 Action against the UNDERWRITERS

Except as otherwise permitted by statute, no action shall be asserted against the **UNDERWRITERS** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this **POLICY**.

4.17 Suspension of Licensing, Permit, or Provisional Administration

If the Named **INSURED** has its permit or license to practice suspended by virtue of the laws governing its practice, or if a provisional administration is imposed by governmental authority, notice must be given to the **UNDERWRITERS'** representative directly within, and not exceeding, thirty (30) days from such suspension or provisional administration at the following address:

Premier Canada Assurance Managers Ltd.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8
Attention: Claims Department