

Form #EO-MM-100 (Rev. January 31, 2011)

Multi-Media and Technology Professionals - Errors and Omissions Insurance - Costs Inclusive

***PLEASE READ CAREFULLY - THIS PROFESSIONAL LIABILITY 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 capitalized and in bold type have special meanings. Refer to SECTION 2 DEFINITIONS.

1. INSURING AGREEMENTS

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** or **INFRINGEMENT** by the **INSURED** or any negligent act, negligent error or negligent omission by others for whom the **INSURED** is legally liable, in or about the conduct of the **INSURED'S PROFESSIONAL BUSINESS**. However, coverage is not afforded to services or operations that are not specifically listed in the definition of **INSURED'S PROFESSIONAL BUSINESS** as contained in this **POLICY**.

1.2. Defence Costs

With respect to the coverage afforded by this **POLICY**, the **UNDERWRITERS** have the right to appoint legal counsel or other experts to take up the defence of the **INSURED** and pay those **DEFENCE COSTS**. **DEFENCE COSTS** are included in the **Limit of Liability** for each **CLAIM**.

It is further agreed that **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 **CLAIMS**. The **INSURED** shall not admit liability for or settle any **CLAIM** or incur any cost, charge or expense without the written consent of the **UNDERWRITERS** 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. The **Limit of Liability** is reduced by every **CLAIM** payment made under this **POLICY**. **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. Limit of Liability

UNDERWRITERS' total liability under this **POLICY**, including **DEFENCE COSTS**, 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**. It is further agreed that 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 Underwriter's Liability.

More than one **CLAIM** arising out of the same **WRONGFUL ACT** or **INFRINGEMENT** committed by one or more **INSURED** shall be considered a single **CLAIM** and only one Self-Insured Excess stated in Item 5 of the **SCHEDULE** shall be applied to each such **CLAIM**.

1.4 Territory:

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

1.5 Jurisdiction:

This **POLICY** applies only to **CLAIMS** brought against the **INSURED** first made under the laws of Canada or the United States of America, its territories or possessions.

2. DEFINITIONS

2.1 "CLAIM(S)" shall mean written or oral notice received by the **INSURED** for **DAMAGES**, including a civil action or suit or institution of arbitration proceedings, or from any party advising that it is the intention of such party to hold the **INSURED** responsible for a **WRONGFUL ACT** or **INFRINGEMENT**.

A **CLAIM** does not include criminal or regulatory proceedings or a request or demand seeking non-pecuniary relief including declaratory or injunctive relief or any other provisional remedy. The **UNDERWRITERS**, at their sole discretion, may choose to defend any regulatory proceedings brought against the **INSURED**.

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 fees, commissions, expenses or costs for the **INSURED'S PROFESSIONAL BUSINESS** except where required by law.

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, non-monetary, or declaratory relief, liability, or damage.

DAMAGES shall also not include any fees, expenses, or other charges of the **INSURED** such as production costs, lost profits, costs of correcting, recalling, reproducing, or reprinting of materials and matter or any related costs of any of those services as related to the **INSURED'S PROFESSIONAL BUSINESS**.

2.3 "DEFENCE COSTS" shall mean reasonable costs and expenses incurred by the **INSURED** with **UNDERWRITERS'** prior consent in the investigation, negotiation, mediation or 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**.

(a) "**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;

- (b) **"DEFENCE COSTS"** also shall include reimbursement for time and expenses incurred by an employee of the **INSURED** for attendance at examination for discovery and the trial or hearing to determine the **INSURED'S** liability on the **CLAIM**. Reimbursement for time shall be for actual hours in attendance at discovery and trial and shall be limited to 50% of the customary hourly billing rate or \$100.00 per hour, whichever is less, and reimbursement for expenses shall be limited to those amounts reasonably incurred for travel, accommodation and meals, for actual attendance at discovery and trial;
 - (c) all costs taxed against the **INSURED** in any civil action defended by the **UNDERWRITERS** and any interest accruing after entry of judgment (or, in those jurisdictions where state prescribes interest for some other date, from such prescribed date) upon that part of the judgment which is within the limit of liability;
 - (d) all reasonable expenses (other than those stated above) incurred by the **INSURED** at the **UNDERWRITERS** request.
- 2.4 (a) **"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 and legal representatives of each **INSURED**, in the event of death, incapacity or bankruptcy, but only as respects liability arising out of professional services rendered 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**).
- "INSURED"** shall also mean the **NAMED INSURED'S** spouse, but only with respect to the conduct of a business of which the **NAMED INSURED** is the sole owner and an individual.
- "INSURED"** shall also mean an independent contractor for which the **NAMED INSURED** has agreed in writing to provide this insurance, but only with respect to **INSURED'S PROFESSIONAL BUSINESS** performed by such independent contractor on behalf of the **NAMED INSURED**.
- "INSURED"** shall also mean a person leased to the **NAMED INSURED** by a labour leasing firm under a written agreement between the **NAMED INSURED** and the labour leasing firm, to perform duties for the **NAMED INSURED** related to the conduct of the **NAMED INSURED'S** business.
- (b) **"NAMED INSURED"** shall mean the person(s) or entity(ies) listed as such in the **SCHEDULE**.
- 2.5 **"POLICY"** shall mean this wording and the **SCHEDULE** and all endorsements appended hereto.
- 2.6 **"POLICY PERIOD"** shall mean the period of time between the Effective Date and Expiration Date specified in Item 3 of the **SCHEDULE** or the earlier termination date, if any, but shall specifically exclude any Extended Reporting Period.
- 2.7 **"POLLUTION"** shall mean any contamination of the atmosphere or of any water, land, or other tangible property arising out of the actual, alleged or threatened discharge, dispersal, or release or escape of **"POLLUTANTS"**.
- POLLUTANTS** means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.
- 2.8 **"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 10 of the **SCHEDULE**.
- 2.9 **"RETROACTIVE DATE"** shall mean the date specified in Item 8 of the **SCHEDULE**.
- 2.10 **"SCHEDULE"** shall mean the document so-entitled which is appended to this **POLICY**.
- 2.11 **"UNDERWRITERS"** shall be listed on the Schedule as the Insurance Company.
- 2.12 **"WRONGFUL ACT"** shall mean any actual or alleged breach of duty, 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**.
- "WRONGFUL ACT"** shall include any actual or alleged unauthorized use or violation by the **INSURED** of any copyright, trademark, service mark, trade name, or trade secret in the performance of the **INSURED'S PROFESSIONAL BUSINESS**, but does not include any actual or alleged unauthorized use or violation of any domestic or foreign patent or patent-related rights.
- "WRONGFUL ACT"** shall also include **PERSONAL INJURY** solely in the performance of the **INSURED'S PROFESSIONAL BUSINESS**.
- 2.13 **"BODILY INJURY"** means physical injury, sickness, disease, mental anguish, mental suffering or shock, including death resulting from any of these at any time.
- 2.14 **"PROPERTY DAMAGE"** means physical injury to tangible property, including any resulting loss of use of that property. Tangible property does not include computer data.
- 2.15 **"PERSONAL INJURY"** means injury, including consequential **BODILY INJURY**, arising out of one or more of the following:
- (a) false arrest, detention or imprisonment;
 - (b) malicious prosecution;
 - (c) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
 - (d) oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - (e) oral, written or electronic publication of material that violates a person's right of privacy.
- 2.16 **"INSURED'S PROFESSIONAL BUSINESS"** shall mean one or more of the following:

- (a) **ADVERTISING, BROADCASTING, and PRINTING AND PUBLISHING** as defined herein
- i. **ADVERTISING:** including without limitation, any publicity or promotion on the **INSURED'S** behalf or for others, including related graphic design services;
 - ii. **BROADCASTING:** including without limitation, distribution of information by means of cable, independent network, public television, wireless devices, satellite television, radio, webcast, or Internet;
 - iii. **PRINTING AND PUBLISHING:** including without limitation, publication of books, educational materials, films, music, directories, magazines, newspapers, screenplays, scripts, training materials, plays, and media containing audio and video. **PRINTING AND PUBLISHING** includes exhibition, display and distribution of such material.
- (b) the development, design, installation, modification or maintenance of computers, computer hardware, firmware and/or software, computerized networks or Internet services; or
- (c) the provision of computer system consulting, analysis, programming, training or support; or
- (d) the provision of data processing, data storage and retrieval services; or
- (e) the sale, leasing, licensing, distribution of computers or computer hardware, firmware and software; or
- (f) any other computer related services provided for others as listed on the **SCHEDULE** and accepted by **UNDERWRITERS**; or
- (g) any service or operation stated in the **SCHEDULE**.

However, **INSURED'S PROFESSIONAL BUSINESS** does not include the manufacture of any electronic or computer hardware, or any physical product or devices by the **INSURED**.

2.17 "INFRINGEMENT" shall mean:

- (a) any defamation including libel, slander, or trade libel;
- (b) any disparagement or harm to character, reputation or feelings;
- (c) any product disparagement;
- (d) 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;
- (e) outrage, outrageous conduct or infliction of emotional distress;
- (f) plagiarism or misappropriation of information or ideas;
- (g) infringement, misappropriation or unlawful use of copyrighted material;
- (h) breach of agreement, breach of confidentiality or promissory estoppels, in connection with the failure to maintain the confidentiality of a source or materials furnished by a source or the failure to portray a source or a subject in a certain light;
- (i) failure to attribute authorship or provide credit under any agreement to which the **NAMED INSURED** is a party;
- (j) infringement or dilution of title, slogan, trademark, trade name, service mark or service name; and
- (k) the invasion, misuse, misappropriation or infringement of literary, artistic, or musical property rights of another pertaining to and alleged in conjunction with a claim of plagiarism, misappropriation of information or ideas, unlawful use of copyrighted material, infringement of copyright, title, slogan, trademark, trade name, service mark, or service name.

This does not include use or violation of any domestic or foreign patent or patent-related rights.

3. EXCLUSIONS

UNDERWRITERS shall not be liable to pay any **DEFENCE COSTS** or indemnify the **INSURED** against any claim or claims arising directly or indirectly out of or in respect of:

3.1 Retroactive Date / Prior Acts

- (a) any actual or alleged negligent act, negligent error, negligent omission, circumstance, event, **WRONGFUL ACT** or **INFRINGEMENT** which occurred or commenced before the **RETROACTIVE DATE** stated in Item 8 of the **SCHEDULE**.
- (b) any actual or alleged negligent act, negligent error, negligent omission, circumstance, event, **WRONGFUL ACT** or **INFRINGEMENT** arising out of any **ADVERTISING, BROADCASTING, and PRINTING AND PUBLISHING** that first appeared or was first disseminated in any form prior to the **RETROACTIVE DATE** stated in Item 8 of the **SCHEDULE**.

3.2 Circumstances Known at Inception

- (a) any circumstance which could give rise to a **CLAIM** under this **POLICY** of which the **INSURED'S** 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. With exception to when this **POLICY** replaces, without interruption, a policy previously issued by Premier Marine Insurance Managers Group, this exclusion applies only to **CLAIMS** previously known to the **INSURED** before the inception date of the policy which was replaced.
- (b) any notice which has been given under any prior or subsequent policy for any **WRONGFUL ACT** or **INFRINGEMENT**.

3.3 Associated Companies

Any action brought by any entity not named in the **SCHEDULE** which is or was owned or controlled by the **INSURED**, or which is or was affiliated with the **INSURED** through common ownership. This exclusion shall not apply where the interest held by such an entity in the **INSURED**, or interest held by the **INSURED** in such an entity, whether held as equity, ownership or voting rights, is less than or equal to ten percent (10%).

3.4 Bodily Injury or Property Damage

Any actual or alleged **BODILY INJURY** or **PROPERTY DAMAGE** unless:

- (a) the **CLAIM** results directly from an actual or alleged **WRONGFUL ACT** and **INFRINGEMENT** in communicative or informational content regardless of the nature or form of such content, including content disseminated electronically and/or digitally when authorized or controlled by the **INSURED** (e.g. via websites, chat rooms, bulletin boards, databases and blogs) committed solely in performance of the **INSURED'S PROFESSIONAL BUSINESS** for a fee; and
- (b) the **INSURED** maintains Commercial General Liability insurance in place during the policy period; and
- (c) this **POLICY** does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** claims for which coverage is provided under another insurance policy, including but not limited to Commercial General Liability insurance, or which would have been provided but for the exhaustion of its limit of liability.

3.5 Pollution and Contamination

- (a) any actual or alleged **POLLUTION** or contamination of the atmosphere or of any water, land or other tangible property.
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction, or request.

3.6 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.

3.7 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.

3.8 Contractual Liability

any liability assumed by the **INSURED** under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the **INSURED** in the absence of such clause, warranty, contract, agreement or guarantee.

3.9 Dishonesty & Criminal Acts

any dishonest, fraudulent, criminal, malicious or intentional **WRONGFUL ACT** or **INFRINGEMENT**.

However, the **UNDERWRITERS** shall defend **CLAIMS** alleging the foregoing conduct until there is a final judgement, 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. However, this exclusion shall not apply to any **INSURED** who did not commit, participate in or have any knowledge of such conduct.

3.10 Insolvency or Bankruptcy of Insured

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

3.11 War and Terrorism

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

3.12 Radioactive Contamination and Explosive Nuclear Assemblies

ionising 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.

3.13 Currency and Financial Securities

Any liability resulting from **ADVERTISING, BROADCASTING, and PRINTING AND PUBLISHING** involving currency, financial securities, or investment funds including but not limited to stocks and bonds.

3.14 Ceasing to Provide Support

Any liability resulting from the decision of any **INSURED** to cease providing or supporting the Insured's services.

3.15 Product Recall

Any costs or expenses incurred by the **INSURED** or others to withdraw or recall the **Insured's** products or services or any part of such products or services from the marketplace or from use.

3.16 Delays, Warranties, Cost Estimates, and Fee Disputes

Any **CLAIM** based upon or arising out of:

- (a) delay in the performance of any contract or agreement, unless such delay is due to a **WRONGFUL ACT** on the part of the **INSURED**;
- (b) express or implied warranty or guarantee;
- (c) cost guarantee or cost estimate;
- (d) estimates of economic return;
- (e) economic forecast;
- (f) disputes involving the **INSURED'S** fees or charges; or

3.17 Employment Related Practices

- (a) any employer-employee relations, policies, practices, acts or omissions or any actual or alleged refusal to employ a person or misconduct with respect to employees, whether such **CLAIM** is brought by an employee, former employee, applicant for employment, or relative of such person.
- (b) any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy.

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.

3.18 Securities and Similar Laws

The actual or alleged violation of any federal, provincial, state or local statute, regulation order or directive, including but not limited to, any securities, antitrust, monopolization, telecommunications, restraint of trade, unfair or deceptive trade practice, predatory pricing, price fixing, employment, unfair competition or consumer protection law.

3.19 Unauthorized Access

Any actual or alleged failure to prevent unauthorized access to or use of any computer, software, network or electronic information system or the unauthorized introduction of a computer virus or similar program. However, this exclusion does not apply if such unauthorized access or introduction arises from a **WRONGFUL ACT** or **INFRINGEMENT**.

3.20 Contest and Lotteries Over Redemption

Any liability resulting from over redemption, meaning awarding in any form in excess of the total contracted or expected amount, of coupons, awards, or prizes from advertisements, promotions, games, sweepstakes, contests and games of chance; or violation of or noncompliance with any law or regulation governing or pertaining to gambling, gaming, lotteries or games of chance and any other wrongful act associated with any such violation or noncompliance.

3.21 Employers' Liability

Any liability directly or indirectly arising out of death, bodily injury, illness or disease of or 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.

3.22 Asbestos

Any liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any asbestos containing materials. This also includes any obligation to defend any claim or suit against the **INSURED** alleging liability resulting from asbestos nor to **UNDERWRITERS'** liabilities for **DEFENSE COSTS** arising therefrom.

3.23 Fiduciary Duty:

Any liability arising out of the breach of any fiduciary duty or fiduciary relationship, including but not limited to duties concerned with media credits, licensing fees, royalty payments, or fund which the **INSURED** collects, holds and/or disburses for another party.

3.24 Directors and Officers

Any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **CLAIM** is brought by the **NAMED INSURED**, a subsidiary, or any directors, officers, stockholders, or employees of the **NAMED INSURED** or a subsidiary in his or her capacity as such.

3.25 Mould

Any liability arising out of or relating to mold, mildew, fungus, spores or other micro-organism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is

- (a) any physical loss or damage to property;
- (b) any insured peril or cause, whether or not contributing concurrently or in sequence;
- (c) any loss of use, occupancy, or functionality; or
- (d) any action required, including but not limited to repair, replacement, removal, clean-up, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

3.26 Bond, Suretyship or Insurance

Any **CLAIM** based upon or arising out of the **INSURED'S** advising, requiring, obtaining or failure to advise, require or obtain any bond, suretyship or any form of insurance.

3.27 Trademark or Passing Off

Any **CLAIM** arising out of trademark, infringement or matters of passing off regarding the Corporate name of the **INSURED**.

3.28 False Advertising and Deceptive Trade Practices

Any liability based upon, arising from or in consequence of any actual or alleged intentional or wilful false advertising or any actual or alleged unfair or deceptive trade practices, with respect to the advertising or sale of the **INSURED'S** own goods, publications or services.

3.29 Tobacco, Alcohol, Pharmaceutical, and Firearm Products

BODILY INJURY caused by the use of any product, including but not limited to tobacco, alcohol, pharmaceutical, or firearm products

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 Claim Notification

The **INSURED** shall give to **UNDERWRITERS** prompt notice in writing during the **Period of Insurance** of:

- 4.2.1 any **CLAIM** made against any **INSURED** 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, INFRINGEMENT**, negligent act, negligent error or negligent omission;
- 4.2.3 any **WRONGFUL ACT** or **INFRINGEMENT** 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 Marine Insurance Managers Group (WEST) Inc.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8
Attention: Claims Department

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 application 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 of 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** bearing the date stated in Item 10 of the **SCHEDULE**. 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 and, where **DEFENCE COSTS** are inclusive within the Limit of Liability, less any associated **DEFENCE COSTS** already paid. 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 any **CLAIM** under this **POLICY** is in any respect fraudulent this **POLICY** shall become void ab initio. 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 or non-renew for non-payment of premium or for 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 or two years. The required additional premium for the Extended Reporting Period Endorsement shall not exceed: 75% of the current annual premium for a one year reporting period and 150% for a two year reporting period.

Extended Reporting Period endorsement is also available if Premier Marine Insurance Managers Group renews or replaces this **POLICY** with insurance that has a retroactive date later than the date shown in the **SCHEDULE** of this **POLICY** or does not apply to any **WRONGFUL ACT(S)** or **INFRINGEMENT(S)** on a claims-made and reported basis.

The **INSURED** must give the **UNDERWRITERS** or **UNDERWRITERS'** representative (Premier Marine Insurance Managers Group) 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 an 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**;
- (c) The **POLICY PERIOD** is not extended when the **UNDERWRITERS** provide an Extended Reporting Period;
- (d) The Extended Reporting Period will not reinstate or increase the Limit of Liability specified in Item 4 of the **SCHEDULE**.

4.14 Cancellation

This **POLICY** may only be cancelled by the **UNDERWRITERS** if the **INSURED** does not pay the premium when due. In the event of non-payment of premium by the **INSURED**, the **UNDERWRITERS** may cancel this **POLICY** by delivering 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) 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 of the **POLICY 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 Insurer

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**.

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