

Form #EO-MSC-CA-QC (Rev. September 16, 2016)
Errors and Omissions Insurance – Costs In Addition

***PLEASE READ CAREFULLY - THIS PROFESSIONAL LIABILITY INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS WITH ALL DEFENCE COSTS IN ADDITION TO THE LIMIT OF LIABILITY – SEE 1.3 Limit of Underwriters' Liability for limitations. PLEASE REFER TO THE CONDITIONS AND EXCLUSIONS CONTAINED IN THIS CONTRACT.**

Key words and phrases which appear 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 **Period of Insurance** 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 others for whom the **Insured** is legally liable, in or about the conduct of the Named Insured's professional business as stated in the **Proposal**. 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

Underwriters agree to pay, in addition to the Limit of Liability as stated in Item 4 of the **Schedule**, all **Defence Costs** as defined below, however, if a payment in excess of the amount of indemnity available under this **Policy** is necessary to dispose of a **Claim** made against the **Insured**, the **Underwriters'** liability in respect of such **Defence Costs** shall be such proportion of the total **Defence Costs** incurred as the amount of the indemnity available under this **Policy** bears to the total amount necessary to dispose of the **Claim**.

1.3. Limit of Underwriters' Liability

Underwriters' total liability under this **Policy**, excluding **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**.

1.4 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.

1.5 Jurisdiction:

This **Policy** only applies to any **Claims** brought against the **Insured** under the laws of Canada, and any other jurisdiction as stated on the **Schedule**.

2. DEFINITIONS

2.1 "Claim(s)" shall mean any written or oral demand received by the **Insured** for **Damages** including a civil action or suit or institution of arbitration proceedings. 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 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 **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 "Insured" shall mean the Named Insured stated in Item 1 of the **Schedule** and any past, present or future employee or officer 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**).

- 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 “**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 one or more of those services provided for others as listed on the **Proposal**, accepted by **Underwriters**, and listed on the **Schedule**.
- 2.15 “**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**.

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**
any actual or alleged negligent act, negligent error, negligent omission, circumstance or event which occurred or commenced 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 **Products**
the design, specification, formulation, manufacture, construction, installation, sale, supply, distribution, treatment, service, alteration or repair of any goods or products.
- 3.4 **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.
- 3.5 **Pollution and Contamination**
Any actual or alleged pollution or contamination of the atmosphere or of any water, land or other tangible property.
- 3.6 **Recourse Rights**
or 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 **Fines, Penalties and Punitive Damages**
awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.

3.10 Dishonesty & Criminal Acts

any dishonest, fraudulent, criminal or malicious act or omission. 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.

3.11 Insolvency or Bankruptcy of Insured

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

3.12 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.

3.13 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.

3.14 Correction of Insured's Services

Claims for costs to correct, re-perform or complete any of the **Insured's Professional Business**.

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

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) disputes involving the **Insured's** fees or charges; or
- (e) estimates of profit, return on capital or economic return or other estimates giving rise to forecasts of economic return.

3.16 Personal Injury

Any actual or alleged Personal Injury. Personal Injury shall mean:

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.

3.17 Breach of Confidentiality

The unauthorised use, dissemination or publication of financial or confidential information concerning an individual, business, client lists, trade secrets, ideas or concepts. However, this exclusion shall not apply to any **Insured** who did not commit, participate in or have any knowledge of such conduct.

3.18 Investment Tax Shelters

Any liability arising from any investment offering which contains or purports to contain tax advantages or are offered wholly or in part as a tax shelter, tax haven, or tax avoidance investment scheme.

3.19 Financial Offering (Public or Private)

The advising or securing of any financing or monies for the **Insured's** clients.

3.20 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, restraint of trade, unfair or deceptive trade practice, employment, unfair competition or consumer protection law.

3.21 False Advertising

Claims arising from false advertising.

3.22 Infringement of Copyright

Any actual or alleged infringement of copyright, patent, registered design, trade mark or passing-off.

3.23 Directors and Officers

any person acting in their capacity as a director or officer of the **Insured** or of any firm or company.

3.24 Employers' Liability

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.

3.25 Care, Custody and Control

Any **Claim** resulting from the damage caused to property in the care, custody or control of the **Insured** or property over which the **Insured** is for any purpose exercising control.

3.26 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 twenty five percent (25%).

3.27 Sexual Abuse

This policy does not insure any claims which are caused by, arise out of or are resulting from any actual, threatened or alleged "sexual abuse and/or molestation" committed or alleged to have been committed. For the purpose of this policy: "Sexual Abuse and/or molestation" is defined as any or all of the following:

- sexual misconduct
- psychological, emotional or mental abuse of a sexual nature
- molestation
- sexual harassment

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 **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**, 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 **Period of Insurance**.

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.
625 Howe Street, Suite 650
Vancouver, BC V6C 2T6
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 **Period of Insurance** 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 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.

4.11 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.

4.12 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. 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.

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**.

4.13 Cancellation

This **Policy** may be cancelled by the **Underwriters** if the **Insured** does not pay the premium when due by delivering to the **Insured** or by mailing to the **Insured** by registered, certified or other first class mail, at the **Insured's** address, 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 **Period of Insurance** 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 **Period of Insurance** during which the **Policy** was in effect.

4.14 Assignment

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

4.15 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**.

4.16 Stacking of Limits

Any claim(s) that is recoverable under any other Liability Policy issued by the **Underwriter** or issued by the **Underwriters Managing General Agent** is excluded under this policy.