

# Errors and Omissions Liability Insurance Design and Build

## QBE PI 10 D&B (CAN)



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THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

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# 1 Our agreement in general

## 1.1 Parties to this agreement

This Errors and Omissions liability insurance for Design and Build business is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

## 1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **insured** in clause 1.1 above, have specific meanings attached to them as set out in clause 5, the General definitions and interpretation section of this document.

## 1.3 Policy structure

1.3.1 Clause 2 sets out the scope of main coverage; additional **defence costs**; extra coverage and the **circumstances** in which the **insurer's** liability to the **insured** is limited or may be excluded. Finally this clause sets out the **insurer's** other terms and conditions.

1.3.2 Clauses 3 - 6 set out the **insurer's**:

- a) claims handling terms and conditions, including conditions precedent;
- b) general terms and conditions, including further conditions precedent;
- c) definitions;
- d) complaints procedure.

## 1.4 Policy period and premium

1.4.1 The **policy** will provide insurance as described in clause 2 for the **period of insurance** provided the premium and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. The premium is deemed paid and accepted on receipt by the **insurer** or on receipt by the intermediary appointed to place this insurance with the **insurer**.

1.4.2 Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

1.4.3 All instalments of premium must be paid by the **insured** and accepted by

the **insurer** on or before its payment date shown in the **schedule**, failing which the **insurer** can give written notice to the **insured** at its address shown on the **schedule** cancelling the **policy** with effect from the seventh (7<sup>th</sup>) day after the notice has been served, but that cancellation will be prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

## 1.5 Basis for the policy

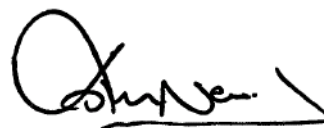
1.5.1 All information supplied by the **insured** in connection with the application for insurance including any **application** form, application form or otherwise and supplied by or on behalf of the **insured** will be incorporated into and form the basis of the **policy**. It shall be a condition of the **policy** that all such information is true so far as is within the **insured's** knowledge or could, with reasonable diligence, have been ascertained.

1.5.2 It is a further condition of the **policy** that any material change in, or material addition to, the information mentioned in clause 1.5.1, either before or during the **period of insurance**, shall immediately be notified in writing as soon as practical after the **insured** becomes aware of any such change or addition, to the **insurer** who will continue the **policy** on such terms and conditions as it may determine.

1.5.3 In the event of a breach of any provision of this clause 1.5, and without prejudice to any other rights of the **insurer**, the **insurer** may reject or reduce claims connected with the breach and continue the **policy** on such terms as it may determine.

## 1.6 Signature

1.6.1 In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Underwriting Officer below.



## 2 Insured section – Errors and omission liability

### 2.1 Errors and omission liability cover

#### 2.1.1 Negligent act, error or omission

The **insurer** agrees to pay on behalf of the **insured** any compensatory damages or awards (including where applicable claimants' legal defence costs and **defence costs** as set out in 2.1.2 and 2.1.3 below) in respect of any **claim**:

- a) first made against the **insured**; and
- b) arising out of any **circumstance(s)** which the **insured** shall first notify;

during the **period of insurance** and notified to the **insurer** in accordance with the terms of this **policy**, as a result of any negligent act, error or omission in the conduct of the **professional business** incurred by:

- a) the **insured**; or
- b) an **employee** of the **insured**; or
- c) any consultant, sub-contractor or agent the **insured**.

#### 2.1.2 Duty to defend

- a) The **insurer** will be under a duty to defend any **claim** and to undertake the conduct of any proceedings in connection with such **claim** in accordance with the civil law of the relevant province in which the **claim** is brought against the **insured**.
- b) The **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the **claim** can be settled and will relinquish the conduct and control of the **claim** and be under no further liability except as set out above under the **insurer's** duty to defend.
- c) The **insurer's** duty to defend ceases:
  - i) where **defence costs** in addition to the **limit of indemnity** paid by the

**insurer** in settlement of the **claim**,

- ii) where **defence costs** inclusive within the **limit of indemnity** paid by the **insurer** in settlement of the **claim** including any associated **defence costs**,

equals or exceeds the **limit of indemnity** available under the **policy** in respect of such **claim**.

- d) This extension only applies where the claimant makes a written allegation of a **claim** in which the primary allegation is properly pleaded and is covered by this **policy**.

#### 2.1.3 Defence costs

For any **claim** the subject of indemnity under this **policy** the **insurer** agrees to pay on behalf of the **insured** for **defence costs** incurred with the written consent of the **insurer** provided that nothing in this clause 2.1.3 increases the **limit of indemnity**.

Notwithstanding clause 2.1.3, if the **limit of indemnity** in the **schedule** is stated to be exclusive of **defence costs**, the **insurer** will pay **defence costs** in addition to the **limit of indemnity**, provided that if the **limit of indemnity** is exhausted by the payment or settlement of any **claim** the **insurer's** liability to pay **defence costs** in respect of that **claim** shall be limited to such proportion of those **defence costs** as the **limit of indemnity** available for payment or settlement of that **claim** bears to the total payment (including where applicable claimants' costs) required to dispose of that **claim**.

### 2.2 Additional errors and omission defence costs

#### 2.2.1 Court attendance compensation

The **insurer** agrees to pay on behalf of the **insured**, with the prior written consent of the **insurers**, in the event that the legal advisers acting on behalf of the **insured** require any of the **insured**, any **employees** or any other relevant party (not including expert witnesses), to attend court or any arbitration or adjudication hearing as a witness of fact in connection with a **claim** made against the **insured** for which cover is afforded under this

policy at the following rates for each day or part thereof on which attendance is required:

- a) any member or director of the **insured** up to CAD1000;
- b) any **employee** up to CAD500;
- c) other relevant party up to CAD500;

up to a maximum of CAD50,000 in the aggregate for all claims under this **policy**.

## 2.3 Errors and omission liability extensions

### 2.3.1 Dishonesty

The **insurer** agrees to pay on behalf of the **insured** any **claim** arising out of the **insured's professional business** and against the **insured** and notified to the **insurer** during the **period of insurance** by reason of any actual dishonest or fraudulent act(s) or omission(s) committed by any **employee** of the **insured**; provided always that:

- a) no indemnity will be provided hereby to any person committing or condoning such dishonest or fraudulent act(s) or omission(s);
- b) no indemnity will be provided for any alleged dishonesty or fraud committed by two or more directors or partners where such directors or partners are alleged to have conspired or colluded;

### 2.3.2 Extended reporting period – optional and supplementary

The **insurer** agrees that supplemental **extended reporting periods** are available for periods of one (1) year or three (3) years. The required additional premium for the supplemental **extended reporting period** shall not exceed:

<u>Reporting Period</u>	<u>% of Annual Premium</u>
1 Year	50%
3 Years	150%

The supplemental **extended reporting period** is available only if the **insured** remains solvent and makes no act of bankruptcy or insolvency; or

a) this **policy** is cancelled or non-renewed by the **insurer**, except for non-payment of premium; and

b) the **insurers** renew or replace this **policy** with insurance that:

- i) has a **retroactive date** later than the date shown in the **schedule** of this **policy**; or
- ii) does not apply to any negligent act, error or omission in the conduct of the **professional business** on a claims-made and reported basis.

The supplemental **extended reporting period** starts when the basic extended reporting period, set forth in clause 3.2 ends; and

The **insured** must give the **insurers** a written request and pay the additional premium for the supplemental **extended reporting period** endorsement within sixty (60) days after the end of the **policy** period. Otherwise, the supplemental **extended reporting period** will not go into effect. The entire premium for the supplemental **extended reporting period** shall be deemed fully earned and non-refundable at the commencement of the supplemental **extended reporting period**.

### 2.3.3 Libel or slander

The **insurer** will pay on behalf of the **insured** legal liability arising from any **claim** or **claims** first made against the **insured** and reported to the **insurer** during the **period of insurance** in respect of libel or slander committed by:

- a) the **insured**;
- b) any **employee**;

in the conduct of the **insured's professional business** except that the **insurer's** maximum liability for any one **claim** including **defence costs** and in the aggregate during the **period of insurance** shall not exceed the **sub-limit of indemnity** specified in the **schedule**.

### 2.3.4 Loss of or damage to documents or data

The **insurer** will pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay in respect of **defence costs** as a result of

any **claim** against the **insured** during the **period of insurance** for the replacing or restoring **documents** or **data** that have been permanently lost, damaged, distorted, erased or destroyed provided that:

- a) the **documents** or **data** are entrusted to or deposited with the **insured** by a third party in the ordinary course of the **insured's** business;
- b) an **retention** of CAD1000 shall apply to each and every **claim** under this clause 2.3.4;
- c) the **insurer's** liability to pay on behalf of the **insured** under this clause 2.3.4 shall not exceed the **sub-limit of indemnity** as stated in the **schedule** which amount is inclusive of **defence costs** and the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

#### 2.3.5 Mitigation of loss

The **insurer** agrees to pay on behalf of the **insured** subject to notification in accordance with clause 3 **defence costs** reasonably incurred with the prior written consent of the **insurer** which will not be unreasonably withheld in respect of rectifying prior to any practical completion, take-over certificate or defects period, a defect in any part of the works constructed by the **insured** to the extent that the **insured** is able to demonstrate that the need for such rectification is due to the **insured's** negligence in the conduct of the **professional business** and is necessary to mitigate a **claim** or likely **claim** that would otherwise have been insured under clause 2.1.1.

### 2.4 Errors and omission liability limitations and exclusions

This **policy** excludes and does not cover:

#### 2.4.1 Aircraft, watercraft, vehicles or buildings

any loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:

- a) the ownership, possession or use by or on behalf of the **insured** of any aircraft, watercraft or mechanically propelled vehicle;
- b) the ownership or possession by or on behalf of the **insured** of any

buildings, structures, premises, land or property (mobile or immobile) or that part of any building leased, occupied or rented by the **insured**.

#### 2.4.2 Asbestos, pollution and mould

any loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:

- a) or caused by or alleged to be caused by or contributed to in whole or in part from the existence of or exposure to asbestos and/or any asbestos containing materials or products . There shall not be any obligation to defend any **claim** or suit against the **insured** alleging liability resulting from the above and **insurer** shall have no liability for **defence costs** arising therefrom;
- b) **pollution** however caused, or arising from the effects of atmospheric conditions, temperature, smoke, dust, soot, gases, steam, odours, noise or vibrations. However, this exclusion shall not apply if the harmful effect is due to a sudden occurrence neither intended nor expected where the same results as a direct consequence of an act of negligence in the conduct or the **professional business** undertaken by the **insured**;
- c) for the costs of removing, nullifying, remediating or cleaning-up seepage, **pollution** or contaminating substances unless such **pollution** is caused by a sudden unintended and unexpected occurrence where the same results as a direct consequence of an act of negligence in the conduct or the **professional business** undertaken by the **insured**;
- d)
  - i) any **fungus(i) mould(s)** mildew or yeast; or
  - ii) any **spore(s)** or toxins created or produced by or emanating from such **fungus(i) mould(s)** mildew or yeast; or
  - iii) any substance vapour gas or other emission or organic or inorganic body substance produced by or arising

<p>out of any <b>fungus(i) mould(s)</b> mildew or yeast; or</p> <p>iv) any material product building component building structure or any concentration of moisture water or other liquid within such material product building component building or structure that contains harbours nurtures or acts as a medium for any <b>fungus(i) mould(s)</b> mildew yeast or <b>spore(s)</b> or toxins emanating therefrom;</p>	
<p>regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that <b>claim</b>, loss, suit, injury, damage, <b>defence expenses</b>.</p>	<p>2.4.5 <b>Business or borrower debts</b></p> <p>any <b>claim</b>, or <b>defence costs</b> in respect of such a <b>claim</b>, arising from, or alleged to arise from, trading debt incurred by the <b>insured</b> or any guarantee given by the <b>insured</b> for debt.</p>
<p>2.4.3 <b>Associated company</b></p> <p>any <b>claim</b>, loss, liability, expenses, costs or <b>defence costs</b> brought or maintained by or on behalf of:</p> <p>a) any <b>insured</b> or any <b>parent</b> of the <b>insured</b> or any <b>subsidiary</b>; or</p> <p>b) any firm, partnership or entity in which the <b>insured</b> or any director or partner of the <b>insured</b> has a financial or executive interest exceeding ten (10%) per cent or a majority control;</p> <p>provided that this exclusion shall not apply to such loss, liability, expenses, costs or <b>defence costs</b> originating from a <b>claim</b> by an independent third party.</p>	<p>2.4.6 <b>China dry wall</b></p> <p>any <b>claim</b>, or <b>defence costs</b> in respect of such a <b>claim</b> concerning the use or failure of Gypsum Board, drywall or wallboard products or any other similar product manufactured in the People's Republic of China that do not match the quality and composition of those manufactured in <b>Canada</b> or the <b>United States of America</b>.</p>
<p>2.4.4 <b>Bodily injury and property damage</b></p> <p>a) for <b>bodily injury</b> sustained by any person; and/or</p> <p>b) for loss of or damage to property other than that property on which <b>professional activities and duties</b> have been or are being performed undertaken or provided by or on behalf of the <b>insured</b>.</p> <p>Provided however that where the <b>insured</b> is only undertaking <b>work for a fee</b> in respect of the performance of their <b>professional activities and duties</b> then this Exclusion shall be deemed to be deleted and of no effect and the following Exclusion 2.4.4a) will apply in its place:</p>	<p>2.4.7 <b>Consortium or joint venture</b></p> <p>any <b>claim</b>, loss, liability, expenses, costs or <b>defence costs</b> arising directly or indirectly out of, or in any way involving the <b>professional business</b> carried out by the <b>insured</b> in the name of any consortium or joint venture of which the <b>insured</b> forms part unless otherwise agreed by the <b>insurer</b> and specifically endorsed hereon.</p>
<p>2.4.4a) <b>Bodily injury to employees</b> for <b>bodily injury</b> sustained by any person arising out of and in the course of:</p>	<p>2.4.8 <b>Contractual liability</b></p> <p>directly or indirectly arising out of contractual liability in respect of any:</p> <p>a) fitness for purpose warranty;</p> <p>b) indemnity, performance warranty or guarantee;</p> <p>c) penalty clause or liquidated damages clause;</p> <p>but only to the extent that such contractual liability is greater than the liability which would otherwise have arisen in the absence of the relevant contractual provision referred to at 2.4.6 (a), (b) or (c) above;</p> <p>2.4.9 <b>Directors' and officers' liability</b></p> <p>any loss, liability, expenses, costs or <b>defence costs</b> against any <b>insured</b> in</p>

	their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.		any <b>claim</b> , or <b>defence costs</b> in respect of such <b>claim</b> , arising out of the <b>insured's</b> breach of any taxation, competition, monopolies, combines, restraint of trade or anti-trust legislation or regulation.
2.4.10	<b>Economic return</b>	2.4.16	<b>Limit of indemnity</b>
	any loss, liability, expenses, costs or <b>defence costs</b> arising from any estimates of profit, return on capital, economic return, or other estimates giving rise to forecasts of economic return.		liability in excess of the <b>limit of indemnity</b> stated in the <b>schedule</b> .
2.4.11	<b>Existing claims</b>	2.4.17	<b>Other insurance</b>
	a) any <b>claim</b> , or <b>defence costs</b> in respect of such <b>claim</b> made, threatened or intimated against the <b>insured</b> prior to the <b>period of insurance</b> ;		the <b>insured</b> or any other party entitled to coverage under this <b>policy</b> where it is or they are entitled to indemnity under any other policy, except in respect of any excess policy written specifically in excess of this <b>policy</b> .
	b) directly or indirectly arising out of, or in any way involving any fact or <b>circumstance</b> :	2.4.18	<b>Products liability</b>
	i) of which written notice has been given, or ought reasonably to have been given, under any previous policy (whether insured by the <b>insurer</b> or not); or		loss, liability, expenses, costs or <b>defence costs</b> directly or indirectly arising out of, or in any way involving goods or products sold, supplied, recalled, repaired, altered, manufactured, installed or maintained by the <b>insured</b> or by any consultant, sub-contractor or agent of the <b>insured</b> .
	ii) of which the <b>insured</b> first became aware prior to the <b>period of insurance</b> and which the <b>insured</b> knew or in the reasonable opinion of the <b>insurer</b> ought to have known had the potential to give rise to a <b>claim</b> or loss;	2.4.19	<b>Retention</b>
2.4.12	<b>Fines, penalties, liquidated damages, punitive, multiple or exemplary damages</b>		the amount of the <b>retention</b> stated in the <b>schedule</b> .
	any fines, penalties, liquidated damages, multiple, punitive or exemplary damages.	2.4.20	<b>Retroactive date</b>
2.4.13	<b>Insolvency of the insured</b>		any <b>claim</b> , or <b>defence costs</b> in respect of such <b>claim</b> , arising from any act committed, or alleged to have been committed, prior to the <b>retroactive date</b> .
	any <b>claim</b> , or <b>defence costs</b> in respect of such <b>claim</b> , arising out of or relating directly or indirectly to the insolvency or bankruptcy of the <b>insured</b> or any joint venture partners.	2.4.21	<b>Specifications and estimates</b>
2.4.14	<b>Insurance/financing</b>		directly or indirectly arising out of, or in any way involving any:
	directly or indirectly arising out of, or in any way involving the effecting or maintenance of insurance and/or the provision of finance or advice on financial matters;		a) incorrect or inadequate specification of materials or performance; or
2.4.15	<b>Legislation and regulation</b>		b) incorrect or inadequate estimate of construction costs or cost advice; or
			c) incorrect or inadequate programming or estimate of the period of construction;
			unless in any such case arising out of an unintentional negligent act error or omission in the conduct of the <b>professional business</b> ;



	<p>Provided always that the <b>insured</b> shall establish to the satisfaction of the <b>insurer</b> that the act error or omission was unintentionally negligent;</p>	
2.4.22	<p><b>Territorial limit</b></p> <p>any <b>claim</b>, loss, liability, expenses, costs or <b>defence costs</b> arising from or alleged to have been caused by or sustained from work in connection with contracts outside the <b>territorial limits</b>.</p>	<p>i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;</p> <p>ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.</p>
2.4.23	<p><b>Unsupervised work</b></p> <p>directly or indirectly arising out of, or in any way involving the performance of <b>professional business</b> or services not under the direction and direct control and supervision of persons who are professionally qualified to practice within the Province where they are providing services or those who themselves are under direct supervision of such profession through a recognised professional body relevant to the activity being undertaken, or persons having at least five years relevant technical experience in the conduct of the <b>professional business</b>;</p>	<p>II) for loss or damage occasioned by or through or in consequence, directly or indirectly, of any of following occurrences, namely:</p> <p>a) <b>war</b>, invasion, act of foreign enemy, hostilities, or warlike operations (whether <b>war</b> be declared or not), and/or civil <b>war</b>.</p> <p>b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.</p> <p>c) acts of <b>terrorism</b>.</p>
2.4.24	<p><b>USA jurisdiction</b></p> <p>any <b>claim</b>, in any way involving any judgement, award, payment, settlement or <b>defence costs</b> or other liability delivered, awarded, made or incurred within countries which operate under the laws of <b>United States of America</b> in respect of possessions or territories (or to any order made anywhere in the world to enforce such judgment, award, payment, <b>defence costs</b> or settlement either in whole or in part), unless otherwise stipulated in the <b>schedule</b>.</p>	<p>In any action, suit or proceeding, where the <b>insurer</b> relies upon the provisions of this exclusion to exclude loss or damage, the burden of proving that such loss or damage is covered shall rest upon the <b>insured</b>.</p>
2.4.25	<p><b>War, terrorism and nuclear</b></p> <p>any loss, liability, expenses, costs or <b>defence costs</b> arising from:</p> <p>l) a) injury, sickness, disease, death, loss, destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;</p> <p>b) any legal liability of whatsoever nature;</p> <p>c) any sum which the <b>insured</b> becomes legally liable to pay or any loss or expense;</p> <p>directly or indirectly caused by or contributed to by or arising from or, in the case of (c) above, attributable to:</p>	<p>2.4.26 <b>Water ingress (applicable to British Columbia only)</b></p> <p>any <b>claim</b>, or <b>defence costs</b> arising out of, or relating directly or indirectly to, in whole or in part, the <b>infiltration of precipitation</b> into the <b>building envelope</b> of a building located in the Province of British Columbia.</p>
	<p>2.4.27 <b>Workers compensation and employment disputes</b></p> <p>a) any obligation for which the <b>insured</b> or any carrier as the <b>insured's</b> insurer may be liable under any workers' compensation, unemployment compensation, employers liability, disability benefits law or under any similar law;</p> <p>b) actual or alleged wrongful dismissal or discrimination on any basis by the <b>insured</b> against any past or present <b>employee</b>, officer, or applicant for employment;</p>	
	<p>2.4.28 <b>Workmanship/supervision</b></p>	

arising out of defective workmanship of the **insured** or its sub-contractors or any party for whom the **insured** has responsibility or for the incorporation into works of any defective or deleterious materials or in respect of **claims** arising out of the supervision of the **insured's** own labour or that of its sub-contractors except where acting in a construction management capacity.

### 3 Duties in event of a claim or potential claim

Each of the following Clauses 3.1 – 3.8 are conditions precedent to the **insurer's** liability for any **claim** under this **policy**. Clause 4.12 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 3.

#### 3.1 Adjudication notice

The **insured** shall give the **insurer** written notice of intention to adjudicate served on or by the **insured** within forty-eight (48) hours of the date of such service.

#### 3.2 When to notify

3.2.1 Save as provided in clause 3.1 the **insured** shall give the **insurer** written notice as soon as practical of:

- a) any **claim** made against any **insured** or any loss during the **period of insurance**;
- b) any **circumstances** occurring during the **period of insurance** which might reasonably be expected to give rise to a **claim**;
- c) any potential loss or **circumstances** thought likely to result in loss, costs or expenses being incurred in mitigation of a **claim** or likely **claim** under this **policy**.

provided always that such written notice is given to the **insurer** during the same **period of insurance** or (if the **insured** does not renew this insurance with the **insurer**) within sixty (60) days after its expiry.

3.2.2 Any such **claim** or loss which is notified under 3.2.1 above and any subsequent **claim** arising out of **circumstances** notified under 3.2.1 above shall in each case be deemed to have been made during the **period of insurance** which expired immediately prior to the

commencement of the sixty (60) day period referred to in 3.2.1 above.

3.2.3 Neither this basic sixty (60) day **extended reporting period** nor the supplemental **extended reporting period** as set out in clause 2.3.1 extends the **policy** period or changes the scope of coverage provided or reinstates or increases the **limit of liability** stated as such in the **schedule**.

#### 3.3 Who to notify

Any notice under clause 3.1 or 3.2 shall be given in writing to the **insurer**, and delivered to the address specified in the **schedule** for this purpose.

#### 3.4 What to notify

The **insured** shall give the **insurer** specific written notice of the **claim** or loss and, in the case of notified **circumstances**, the reasons for the anticipation of the same, in each case with full particulars including the **circumstances**, dates and persons involved.

#### 3.5 Defence and settlement

3.5.1 The **insured** agrees not to incur any **defence costs**, admit liability for or attempt to settle, make any admission, offer any payment or otherwise assume any contractual obligation with respect to any **claim** or loss without the **insurer's** written consent, such consent not to be unreasonably withheld. The **insurer** shall not be liable for any **defence costs**, settlement, admission, offer, payment, or assumed obligation to which it has not consented. In any event no action shall be taken which might prejudice the **insurer**.

3.5.2 The **insurer** shall be entitled at any time to conduct, in the name of the **insured**, the defence or settlement of any **claim** or loss and to represent the **insured** in respect of that **claim** or loss. Any amount incurred by the **insurer** on behalf of the **insured** shall be part of the **defence costs**.

#### 3.6 Claims mitigation and compensation

3.6.1 The **insured** shall use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **claim** or loss.

3.6.2 The **insured** agrees not to incur such **defence costs** as referred to within clause 2.2.6 without the **insurer's** written consent, such consent not to be unreasonably withheld. The **insurer** shall not be liable for any such **defence costs**, settlement, offer, admission, payment or assumed obligation to which it has not consented. In any event, no action shall be taken which might prejudice the **insurer**. The only exception to this is the cost of emergency medical or surgical relief to others the **insured** has incurred in good faith.

3.6.3 The **insured** shall disclose to the **insurer** all relevant information and, in addition, shall provide assistance to the **insurer** within the timescale the **insurer** may reasonably require to enable the **insurer** or its agents to investigate and/or to defend any **claim** under this **policy** (including without limitation by way of compliance with any protocol or other procedural requirements which may be relevant to the jurisdiction in which the **claim** is brought) and/or to enable the **insurer** to determine its liability under this **Policy**.

### 3.7 Consent to settle

3.7.1 The **insurer** will not settle any claims without the consent of the first named **insured** stated in the **schedule**.

3.7.2 If the **insured** refuses to consent to the settlement of a **claim** as recommended by the **insurer**, then all the **insurer's** obligations with respect to that **claim** shall cease. If later the **insured** settles the **claim**, or if the matter is resolved through arbitration or litigation, then the **insurer's** liability for that **claim** shall not exceed the amount for which the **claim** could have been settled including supplementary payments incurred up to the date of refusal of consent.

### 3.8 Full and final settlement

In respect of any **claim** or loss, the **insurer** may in its reasonable opinion decide to make a payment to the **insured** (inclusive of **defence costs**) of the amount available under the **limit of indemnity** or of an amount for which the **claim** or loss may be settled (whichever is the lesser) in full and final settlement of all liability of the **insurer** to the **insured** under this **policy** in respect of that **claim** or loss.

## 3.9 Subrogation

3.9.1 In the event of any payment under this **policy**, the **insurer** shall be subrogated to the extent of such payment to all the **insured's** rights of recovery, and the **insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable the **insurer** effectively to bring proceedings in the name of the **Insured**.

3.9.2 If any payment is made under this **policy** and the **insurer** has rights of recovery in relation to such payment, the **insurer** agrees not to exercise such rights against any director or **employee** of the **insured** unless the **claim** or loss is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that director of **employee**.

## 3.10 Allocation

3.10.1 If both liability from a **claim** or loss covered by this **policy** and liability for a **claim** or loss not covered by this **policy** arises, either because:

- a) a **claim** against any **insured** or a loss includes both covered and uncovered matters; or
- b) a **claim** against any **insured** is made and others are a party to the proceedings or demand to which the **claim** relates;

then the **insured** and the **insurer** shall use their best efforts to agree the allocation of such amount between covered loss and uncovered loss based on a fair and proper assessment of the relative legal and financial exposures.

3.10.2 Any allocation of **defence costs** on account of a **claim** which is negotiated in accordance with clause 3.11.1 above shall be applied retrospectively to all **defence costs** on account of such **claim**.

## 4 General terms and conditions

### 4.1 Applicable law

This **policy** will be governed by and interpreted in accordance with the law and jurisdiction of the province of residence of the Canadian head or principal office of the insured as

determined by the relevant Insurance Acts(s).

## 4.2 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

## 4.3 Authorisation

The **insured** named in the **schedule** shall act on behalf of all **insureds** with respect to the giving and receiving of notice under this **policy**, including the giving of notice of any **claim** or loss, the payment of premiums, the receipt and acceptance of any endorsements attaching to and forming part of this **policy**.

## 4.4 Cancellation

4.4.1 This **policy** may be cancelled at any time at the request of the **insured** and the **insurer** shall, upon surrender of the **policy**, refund the excess of paid premium above the earned premium for the period that the **insurer** is on risk with the calculation being made in accordance with the customary short rate table and procedures, but the full premium shall be payable to the **insurer** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid **claim** under this **policy**.

4.4.2 The **insurer** shall, except in the case of non-payment of premium, give the Corporate Risk Department (or its equivalent) of the **insured** thirty (30) days written registered mail notice of cancellation and, in the case of non-payment of premium, the **insurer** shall give fifteen (15) days notice of cancellation.

4.4.3 If the premium for the whole or part of this **policy** is on an estimated basis, premium adjustment may be made by the time cancellation is effected or, if not then made, shall be made as soon as practicable after cancellation becomes effective.

4.4.4 In this condition the expression "paid premium" means premium actually paid by the **insured** to the **insurer** or their authorized agent and does not include any premium or part thereof paid to the **insurer** by an agent, unless actually paid to the agent by the **insured**.

## 4.5 Document management

The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

## 4.6 Data Protection

4.6.1 The **insurer** records and holds data in accordance with strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. The **insurer** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **policy**, or otherwise as it is required or permitted by law (e.g., a subpoena, fraud investigation, regulatory reporting etc.).

4.6.2 Further, by accessing and updating various databases the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to, are available on request.

## 4.7 Dispute resolution

4.7.1 All matters in dispute between the **insured** and the **insurer** arising out of or in connection with this **policy**, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed then either party may apply to the Arbitration and Mediation Institute Foundation (AMIF) of **Canada** for the appointment of a mediator. The parties shall share equally the costs of AMIF and of the mediator and that the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

4.7.2 The parties shall continue to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

4.7.3 If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the law and jurisdiction of a Canadian province or territory as determined by the relevant Insurance Act(s).

#### 4.8 Fraud

If the **claim** is in any respect fraudulent, or if any fraudulent means or devices are used by the **insured** or anyone acting on their behalf, to obtain any benefit under this **policy**, or if any liability, loss, destruction or **damage** is occasioned by any wilful act or with the connivance of the **insured**, there will be no rights to any form of payment or indemnity under this **policy**.

Further any **claim** paid to the **insured** in respect of any fraudulent means or device must be repaid to the **insurer**.

#### 4.9 Innocent non-disclosure

In the event of a breach of the duty of disclosure, whether under clause 1.6 or otherwise, the **insurer** will not avoid the **policy** except that where the non-disclosure was reckless or fraudulent then:

- a) the **insurer** may elect to reject or reduce any **claim** causally connected to the non-disclosure; and
- b) continue with the **policy** on such terms as it may determine.

provided always that the **insured** shall establish to the satisfaction of the **insurer** that such alleged non disclosure, misrepresentation or untrue statement was free of any fraudulent intent or intent to deceive.

#### 4.10 Interrelated acts

All **claims** or **circumstances** arising directly or indirectly from:

4.10.1 one and the same act, error or omission; or

4.10.2 a series of acts, errors or omissions arising out of or attributable to the same originating cause; or

shall constitute one **claim** or **circumstances** under this **policy**, and only one **retention** shall be applicable in respect of such **claim** or **circumstances**.

#### 4.11 Material alteration

The **insured** will give to the **insurer** written notice as soon as practicable of any material alteration to the risk during the **period of insurance** including but not limited to:

4.11.1 the **insured** going into voluntary bankruptcy, receivership or liquidation or the **insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

4.11.2 any material change in the nature of the **professional business** conducted by the **insured**.

#### 4.12 Observance

4.12.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.

4.12.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach providing the **insurer** can demonstrate some prejudice.

4.12.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such **claim** has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

#### 4.13 Representation

Any person falling within the definition of the **insured** agrees that the first named **insured** is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to the **insured**.

#### 4.14 Rights of Third Parties

This insurance does not confer or create any right enforceable (including under legislation) by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

#### 4.15 Risks in Canada

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of the Lloyds underwriters' insurance business in Canada.

#### 4.16 Severability, construction and conformance to law

4.16.1 If any provision contained in this **policy** is, for any reason, held to be invalid, illegal, or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this **policy**.

4.16.2 If any provision contained in this **policy** is, for any reason, held to be invalid, illegal, or unenforceable, it will be construed by limiting it so as to be valid, legal, and enforceable to the extent compatible with applicable law.

4.16.3 Any provisions of this **policy** which are in conflict with the statutes or regulations of the state wherein this **policy** is issued are hereby amended to conform to such statutes or regulations.

#### 4.17 Subscribing insurer

The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reasons does not satisfy all or part of its obligations.

#### 4.18 Suspension of permit or provisional administration

In the event the **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 **insurer** within a period of not more than thirty

(30) days from such suspension or provisional administration.

#### 4.19 Take-over or merger

In the event of a **take-over or merger**, this **policy** shall apply only to any **claim** by reason of negligence committed by the **insured** prior to the date of such **takeover or merger** unless otherwise agreed by the **insurer**.

## 5 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 5.1 Application

Application means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form, application form and medical questionnaire and other relevant information that the **insurer** may require.

### 5.2 Bodily injury

Bodily injury means any one of death, disease, illness, physical and mental injury of or to an individual.

### 5.3 Building envelope

Building envelope shall mean the assemblies, components and materials of a building which are intended to separate and protect the interior space of a building from the adverse effects of exterior climactic conditions.

## 5.4 Canada

Canada means the Dominion of Canada including all its territories and provinces.

## 5.5 Circumstance(s)

Circumstance(s) means an incident, occurrence, dispute, fact, matter, act or omission that might reasonably give rise to a **claim** under this **policy**.

## 5.6 Claim

Claim means:

5.6.1 the receipt by the **insured** of any written or verbal notice of demand for compensation made by a third party against the **insured**;

5.6.2 any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;

5.6.3 any notice of intention, whether orally or in writing, to commence legal proceedings against the **insured**;

5.6.4 any one discovery of loss, destruction or damage under clause 2.3.1 and 2.3.4.

## 5.7 Defence cost(s)

Defence cost(s) means all legal defence costs including witness costs incurred with the prior written and continuing consent of the **insurer** (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or settlement of any **claim** and/or **circumstance(s)**.

## 5.8 Documents / data

Documents / data means any documents, digitised data, microcode or information stored in written, machine-readable or any other form, excluding any bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

## 5.9 Employee

Employee means any person including trainees and consultants acting under a contract of service with the **insured** in respect of the conduct of the

**professional business** by the **insured**.

## 5.10 Extended reporting period

Extended reporting period means the period as set out in the **schedule** running consecutively from the end of the **period of insurance**, which the **insured** may continue to notify a valid third party **claim** that would but for the extended reporting period have been excluded by the **insurer** as having been notified outside of the **period of insurance**. However, any negligent act, negligent error or negligent omission which was or may have been or is alleged to have been committed or omitted (as the case may be) after the **period of insurance** shall be excluded.

If no extended reporting period is stated in the **schedule** it shall be deemed to be not applicable and no additional time will be granted.

## 5.11 Fungus

Fungus(i) includes but is not limited to any plants or organisms belonging to the major group Fungi lacking chlorophyll and including moulds, rusts, mildews and mushrooms.

## 5.12 Infiltration of precipitation

Infiltration of precipitation means, but is not limited to, the actual, alleged, threatened or possible infiltration, migration, presence, accumulation, condensation or dispersal of water or moisture on, in or into the **building envelope**.

## 5.13 Insured

Insured means:

5.13.1 the company or corporation specified as the **insured** in the **schedule**, and their predecessors in **professional business**; and

5.13.2 any person who is, during the **period of insurance**, a director, officer or **employee** of any **insured**; and

5.13.3 any former directors, officers or **employees** of the **insured**; and

5.13.4 in any event of the death or incompetence or bankruptcy of any director or **employee** of the **insured**, such person's estate, heirs, legal representatives or assigns, for legal liabilities incurred due to any

- negligence of such deceased, incompetent or bankrupt person.
- For the avoidance of doubt “**insured**” shall not include any consultant, subcontractor or agent (not being an **employee**) of the **insured**.
- 5.14 Insured section**
- Insured section means clause 2.
- 5.15 Insurer**
- Insurer means the party(ies) specified as insurer in the **schedule** and any other subscribing insurers.
- 5.16 Limit of indemnity**
- 5.16.1 Limit of indemnity means the amount specified in the **schedule** which shall be the maximum amount payable by the **insurer** in respect of any one **claim** and in the aggregate unless otherwise specified in the **schedule**:
- a) regardless of the number of insured parties, persons or organisations bringing **claims** or **series of claims** against the **insured**;
  - b) regardless of the number of **claims** made by the **insured**.
- 5.16.2 **Defence costs** shall be payable as part of and not in addition to the limit of indemnity except in Quebec where the defence costs are in addition to the limit of indemnity unless otherwise specified in the **schedule**.
- 5.16.3 Any sub-limit of indemnity stated in the **schedule** applies as if it was the limit of indemnity for the **claims** specified in the **schedule** for that sub-limit and is deemed to be part of and not in addition to the limit of indemnity specified in the **schedule**.
- 5.17 Mould**
- Mould(s) includes but is not limited to any superficial growth produced on damp or decaying organic matter or on living organisms and Fungi that produced moulds.
- 5.18 Parent**
- Parent means a company which by itself, or in concert with other companies with the same majority ownership or control as itself:
- 5.18.1 controls the composition of the board of directors, of the **insured**; or
- 5.18.2 controls more than half the voting power of the **insured**; or
- 5.18.3 holds more than half of the issued share capital of the **insured**.
- 5.19 Period of insurance**
- Period of insurance means the period shown as such on the **schedule**, which time is taken as the time zone of the first Canadian address stated in the **schedule** unless stated otherwise.
- 5.20 Policy**
- Policy means this document, the **schedule** (including any **schedules** issued in substitution), any **application form** and any endorsements attaching to this document or the **schedule**, that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.
- 5.21 Pollution**
- Pollution means:
- 5.21.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants or contaminants into the land, air, atmosphere, soil, water or buildings at any time;
- 5.21.2 any cost, expense, **claim** or **suit** arising out of any request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants at any time that the **insured** or any other insured party test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise or in any way respond to, or assess the effects of pollutants.
- 5.22 Professional business**
- Professional business shall mean whether as part of or incidental to the **insured's** business as building or engineering contractors or business support services providers or as otherwise stated in the written **application** made to **insurers** the professional business in respect of which cover is granted under this **policy** shall be defined as those activities and duties undertaken by or under the supervision of persons or



personnel who are professionally qualified.

For the avoidance of doubt:

- i) The professional business does not include the day to day supervision of manual operatives, labour and physical construction work usually undertaken by building, engineering or business support services providers;
- ii) The professional business includes the duty to warn as to the buildability of the works arising from the professional business of others;
- iii) Professionally qualified persons or personnel shall be deemed to mean those persons or personnel who have attained an appropriate professional qualification from a recognised body related to the particular activity they are undertaking

## 5.23 Retention

The **limit of indemnity** is additional to the retention and retention means the first amount specified in the **schedule** payable by the **insured** in respect of each and every **claim, series of claims** or **circumstance** as ascertained after the application of all other terms and conditions of this insurance. The retention will be applied to **defence costs** (unless expressly provided otherwise).

## 5.24 Retroactive date

Retroactive date means the date (if any) stated in the **schedule**.

- 5.24.1 Unlimited retroactive cover – where specified in the **schedule** as ‘unlimited retroactive cover’ or ‘none’, coverage under this **policy** will be in respect of acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed or alleged to have been committed;
- 5.24.2 Limited retroactive cover – where a retroactive date is specified in the **schedule**, then coverage under this **policy** will only be in respect of acts, errors or omissions first committed or alleged to have been first committed after the retroactive date.

## 5.25 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the insured. Schedules may be re-issued from time to time where each successor overrides the earlier document.

## 5.26 Series of claims

Series of claims means a number of **claims** (whether made against or involving one or more persons or entities comprising the **insured** and whether made by the same or different claimants and whether falling under one or more insuring clauses of this **policy**) that arise directly or indirectly from the same originating cause.

## 5.27 Spores

Spore(s) means any dormant or reproductive body produced by or arising or emanating out of any Fungus(i) Mould(s) mildew plants organisms or micro organisms.

## 5.28 Subsidiary

Subsidiary means any company in respect of which the **insured** (either directly or indirectly through one or more of its subsidiary companies):-

- 5.28.1 controls the composition of the board of directors; or
- 5.28.2 controls more than half the voting power; or
- 5.28.3 holds more than half of the issued share capital.

## 5.29 Take-over or merger

Take-over or merger means any sale of the **insured** named in the **schedule** or its merger with or acquisition by another entity such that the **insured** is not the surviving entity and no longer:

- 5.29.1 controls the composition of the board of directors; or
- 5.29.2 controls more than half the voting power; or
- 5.29.3 holds more than half of the issued share capital,

and includes, in the case of an **insured** which is a partnership, a merger with another partnership or the appointment of new partners (other than from existing **employees** of the partnership **insured**) such that the number of partners in the partnership immediately after such merger or appointment(s) is more than two hundred percent (200%) of the number of partners in the partnership Insured immediately before such merger or appointment(s).

### 5.30 Territorial limit

Territorial limit means the territory specified in the **schedule**.

### 5.31 Terrorism

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to:

- 5.31.1 intimidate or coerce a civilian population, or
- 5.31.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- 5.31.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
- 5.31.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

### 5.32 United States of America

United States of America shall mean the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction; including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U. S. C. 1311), and all territories, dependencies, and possessions of the United States, including foreign trade zones, and also including the outer continental shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act.

### 5.33 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, nationalisation, requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

## 6 Complaints

### 6.1 What the insured should do?

If the **insured** has any complaint with any aspect of this **policy**:

- 6.1.1 The **insured** may contact the broker/agent who arranged the policy. Should the **insured** be dissatisfied with the outcome of the broker's resolution, please submit a written complaint to:Lloyd's Canada Inc.

Tel: 1-877-4LLOYDS

Broker Management Services

Fax: (514) 861-0470

1155 rue Metcalfe, Suite 1540

E-mail: [lineage@lloyds.ca](mailto:lineage@lloyds.ca)

Montreal, Quebec H3B 2V6

- 6.1.2 Any written complaint will be forwarded to Lloyd's Policyholder and Market

Assistance Department in London which ensures that Lloyd's Underwriters and their representatives' deal with claims and complaints in an acceptable manner. It acts as an impartial mediator. When undertaking a review this Department takes account of general legal principles, good insurance practice, and whether all events surrounding a given case have been considered fairly.

- 6.1.3 If you are dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, you may ask the General Insurance OmbudService (GIO) to arrange for mediation. Mediation is not available until Lloyd's has issued its final letter of position on your complaint.

## 6.2 About the General Insurance Ombudsman Service (GIO)

- 6.2.1 The **insured** may contact the General Insurance OmbudService (GIO) who will contact Lloyd's on your behalf. However, the **insured** must first have tried to resolve any problem with the **insurer** first.

- 6.2.2 The GIO can be reached across Canada at its national toll-free number: 1-877-225-0446

For more information or to submit the facts of any insurance-related dispute, please visit the GIO website at [www.gio-scad.org](http://www.gio-scad.org).

- 6.2.3 GIO - Alberta can be contacted where a policyholder is not satisfied with the basis on which a premium for basic coverage for a private passenger vehicle was determined, or considers that an insurer, directly or indirectly, has taken an adverse contractual action with respect to insurance for basic coverage.

- 6.2.4 In Québec, the **insured** may also avail themselves of the services of Autorité des marchés financiers (l'Autorité). Should they be dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, the **insured** may request Lloyd's Canada Inc. to send the complaint to l'Autorité who will study the file and may recommend mediation, if it deems this action appropriate and if both parties agree to it. L'Autorité can be reached at:

## Autorité des marchés financiers (l'Autorité)

Québec City (418) 525-0311

Montréal (514) 395-0311

Toll-free: 1-866-526-0311

## 6.3 Lloyd's Underwriters Code of Consumer Rights & Responsibilities

**Lloyd's Underwriters are committed to safeguarding your rights when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your underwriters and the insurance laws of your province/territory. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to the underwriters with whom insurance is being negotiated. Your policy outlines other important responsibilities. Underwriters and intermediaries acting on your behalf, and governments also have important roles to play in ensuring that your rights are protected.**

### 6.3.1 Right to Be Informed

In dealing with Lloyd's Underwriters, you will be represented by an intermediary, such as a broker acting as your agent, and they may deal with other intermediaries. From the intermediary with whom you deal, you can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how premiums are calculated based on relevant facts.

A policy issued by Lloyd's Underwriters will expire on the day specified in the policy. If you wish to renew the policy, the intermediary with whom you deal will have to approach the Underwriters participating in it, often through another intermediary. If Lloyd's Underwriters are given the information they require to determine renewal terms for the policy at least 45 days prior to its expiry, under normal circumstances, they will advise the intermediary who

approaches them of any changes to the policy terms at least 30 days prior to the expiration of the policy. Terms may subsequently change if there is a change in material facts prior to the expiration date.

Intermediaries may receive payments from Lloyd's Underwriters in a variety of ways, which may include the payment of commissions. Lloyd's strongly supports the disclosure and transparency of these commission arrangements. You have the right to ask the intermediary with whom you deal for details of how and by whom the intermediary is being paid.

Lloyd's Underwriters accept business as members of syndicates each of which is managed by a 'managing agent'. Lloyd's has risk management procedures in place in respect of the relationship between Lloyd's managing agents and any related companies that act as intermediaries. This is to ensure that the managing agent makes proper disclosures of any such arrangements. A policyholder may ask the intermediary whom he is dealing to disclose if it is a related company to a Lloyd's managing agent.

### 6.3.2 **Responsibility to Ask Questions and Share Information**

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through brochures and websites, as well as through one-on-one meetings with the intermediary with whom you deal. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your underwriters of any change in your circumstances through the intermediary with whom you deal. The Underwriters with whom renewal is being negotiated must be given information required to determine renewal terms of your policy, via the intermediary whom you are dealing with, at least 45 days prior to the expiration of the policy.

### 6.3.3 **Right to Complaint Resolution**

Lloyd's Underwriters are committed to high standards of customer service. If you have a complaint about the service

you have received, you have a right to access the Lloyd's complaint resolution process for Canada. The intermediary with whom you deal can provide you with information about how you can ensure that your complaint is heard and promptly handled. Disputes involving claims settlement matters may be handled by the independent General Insurance OmbudService [www.gio-scad.org](http://www.gio-scad.org) where your complaint may be referred to an independent mediator.

### 6.3.4 **Responsibility to Resolve Disputes**

You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

### 6.3.5 **Right to Professional Service**

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

### 6.3.6 **Right to Privacy**

Because it is important for you to disclose any and all information required by underwriters with whom insurance is being negotiated on your behalf to provide the insurance coverage that best suits you, you have the right to know from the intermediary with whom you deal the purposes for which Lloyd's Underwriters will use your personal information. This information will not be disclosed to anyone except as permitted by law. You should know that Lloyd's Underwriters are subject to Canada's privacy laws with respect to their business in Canada

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