

Pembroke

SYNDICATE 4000

Professional Liability

Canadian Miscellaneous Errors & Omissions

Policy Wording

In consideration of the payment of the premium shown in the Schedule, and in reliance upon the statements made in the **Proposal Information** which is hereby agreed to be the basis of this **Policy**, and which is incorporated into this **Policy** and forms a part hereof, the **Insurer** agrees, subject to the terms of this **Policy**, as follows:

1. **INSURING CLAUSE**

The **Insurer** shall indemnify the **Insured** for **Loss** and **Defence Costs** resulting from any **Claim** first made against the **Insured** by a **Third Party** during the **Policy Period** arising from a negligent act, negligent error or negligent omission committed solely in the provision of **Professional Services**.

2. **DEFINITIONS**

For the purposes of this **Policy**, the terms in bold type shall have the meanings designated below.

- A. **Bodily Injury** means physical injury, sickness or disease sustained by a person, including any resulting disability, mental anguish, mental injury, shock, fright or death.
- B. **Claim** means a written demand by a claimant for, or service of civil proceedings by a claimant seeking, monetary damages.
- C. **Defence Costs** mean necessary and reasonable legal costs and expenses incurred with the **Insurer's** prior written consent in the investigation, defence or negotiation of the settlement of any **Claim** covered under this **Policy**. **Defence Costs** do not, however, include remuneration of any kind due to (or internal costs incurred by) the **Insured**.
- D. **Director** means any person who was, now is or shall become:
1. a director within a company; or
 2. an officer within a company,
- including the equivalent position in any other jurisdiction.
- E. **Employee** means any person, other than a **Director**, **Partner** or **Member** of the **Named Insured** or any **Subsidiary**, who is under a contract of service or apprenticeship with the **Named Insured** or any **Subsidiary**.
- F. **Insured** means any of:
1. the **Named Insured**;
 2. any **Subsidiary**;
 3. any **Insured Person**; or
 4. any heir, executor or administrator of any **Insured Person** who suffers death or incapacity, but only to the extent that indemnity was available to such **Insured Person** under this **Policy**.

- G. **Insured Person** means a person who was or now is a **Director, Employee, Member, or Partner** of the **Named Insured** or any **Subsidiary**, but only to the extent that such **Insured Person** is engaged in providing **Professional Services**. **Insured Person** does not include agents, consultants, sub-contractors or independent professional advisors.
- H. **Insurer** means the Lloyd's Syndicate or Syndicates and the Insurance Company or Companies as set out in the Table of Insurers.
- I. **Loss** means the legal liability of the **Insured** to pay monetary damages, claimant's costs and/or any settlement amount agreed to by the **Insurer**. **Loss** does not, however, include any liability for:
1. fines, penalties, taxes, punitive, exemplary, restitutionary or non-compensatory damages;
 2. liquidated damages;
 3. the multiplied portion of a multiplied damage award;
 4. the return, restitution, reduction, compromise, disgorgement or refund of commissions, fees, charges or other remuneration;
 5. costs incurred as a result of non-monetary orientated proceedings, declaratory or injunctive relief;
 6. any matters or amounts that are deemed uninsurable under law;
 7. any costs and expenses incurred in the investigation, defence or negotiation of any of the heads of liability listed at sub-paragraphs I1 to I6 above.
- J. **Member** means any person holding the position of member within a limited liability partnership.
- K. **Named Insured** means the person, company or business entity stated in item 2 of the Schedule.
- L. **Partner** means any person holding the position of partner within a partnership.
- M. **Policy** means this Miscellaneous Professional Indemnity Insurance Policy, together with the attached Schedule, including all amendments and endorsements, and the **Proposal Information**.
- N. **Policy Period** means the period of time stated in item 6 of the Schedule.
- O. **Professional Services** means those services provided by the **Insured** stated in writing in the **Proposal Information**.
- P. **Property Damage** means physical injury to tangible property (including all resulting loss of use of that property) or loss of use of tangible property that is not physically injured.

- Q. **Proposal Information** means the application for this **Policy**, together with any other information in whatever medium or form supplied by or on behalf of the **Insured** to the **Insurer** in connection with the underwriting of this **Policy**, save that **Proposal Information** shall not include information contained on any website unless the **Insurer** is provided with hard copy pages printed from such website by or on behalf of the **Insured**.
- R. **Retention** means the retention stated in item 5 of the Schedule.
- S. **Subsidiary** means any subsidiary company wholly owned (whether directly or via a wholly owned subsidiary) by the **Named Insured** created or acquired on or before the inception date and which has been declared to the **Insurer**.
- T. **Third Party** means an independent third party and does not include:
1. the **Insured**, irrespective of the capacity in which the **Insured** acts;
 2. any person, company, organisation or entity that in whole or in part and whether directly or indirectly, owns, operates or controls the **Insured**;
 3. any person, company, organisation or entity that has a direct or indirect financial interest in the **Insured**;
 4. any company, organisation or entity in which the **Insured** has a beneficial ownership or shareholding in excess of 10% or in which the **Insured** has a direct or indirect executive or controlling interest;
 5. any other company in common ownership with the **Insured**; or
 6. any company, organisation, or entity in which an **Insured Person** is a **Director**, **Employee**, fiduciary, **Member** or **Partner**, participant, or trustee.
- U. **USA** means the United States of America, including all and any colonies, dependencies, dominions and protectorates of the United States of America.

3. **EXCLUSIONS**

This **Policy** provides no indemnity for **Loss** or **Defence Costs** in connection with any **Claim** directly or indirectly arising out of, based upon or in consequence of, resulting from, or in any way involving:

- A. any actual or alleged liability assumed by the **Insured** under any contract, warranty (except a warranty of authority), indemnity, agreement or guarantee, unless such liability would have attached to that **Insured** notwithstanding such express contract, warranty, agreement or guarantee;
- B. any actual or alleged **Bodily Injury** or **Property Damage**. For clarification, this exclusion does not apply in respect of any **Loss** or **Defence Costs** resulting from a **Claim** arising directly from any negligent act, negligent error or negligent omission by the **Insured** solely in the provision of **Professional Services**;

- C. the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;
- D. any breach of any contract of service or of any obligation owed by, or any liability of, the **Insured** as an employer or potential employer to any **Employee, Director, Member** or **Partner** or prospective **Employee, Director, Member, or Partner**;
- E. any actual or alleged infringement of copyright, patent, registered design, trade mark or any other intellectual property rights or passing off;
- F. actual or alleged seepage, pollution or contamination of any kind (including but not limited to asbestos and mould);
- G. trading losses or liabilities or debts incurred by any business managed by or carried on by the **Insured** (in whatever capacity) or the insolvency, bankruptcy, receivership, administration or liquidation or other financial failure of the **Insured**;
- H. depreciation or loss of investments when such depreciation or loss is a result of normal or abnormal fluctuations in any financial stock or commodity or other markets which are outside the influence or control of the **Insured**;
- I. the manufacture, construction, alteration, repair, servicing, installation, maintenance or treating of any goods or products sold, supplied or distributed by the **Insured** even though these activities might be carried on by that **Insured** in conjunction with the activities declared in the **Proposal Information**;
- J. any actual or alleged:
1. gaining of any profit or advantage to which the **Insured** were not legally entitled, whether or not they retain such profit or advantage; or
 2. conversion, commingling or misuse of funds or any form of money;
 3. criminal, dishonest or fraudulent acts (however in the event that a **claim** is excluded on an account of an allegation of fraud or dishonesty and the **Insured** is formally acquitted of such acts, then **Insurers** will reimburse the **Insured** for the **Defence Costs** arising from such claim); or
 4. breaches of competition/antitrust, unfair competition or restraint of trade laws;
 5. breaches of:

(A) the restrictions under applicable securities legislation, or the rules, instruments, policies, notices and orders of applicable securities regulatory authorities or self-regulatory organizations (collectively, the "Legislation"), with respect to:

(i) fraud, market manipulation or insider trading, or

(ii) misleading statements, untrue statements, misrepresentations, selective or non-disclosure of material information or tipping of material information; or

(B) any provision, standard, guideline or duty promulgated under the Legislation in connection with the purchase or sale of securities; or

6. unfair, misleading or deceptive business practices.
 7. behaviour constituting money laundering (as defined under any statute, law, regulation, international treaty or international convention regarding the movement of illicit cash or assets representing illicit monies);
- K. any:
1. facts, circumstances or events which underlie the notification to any other insurer (prior to the inception of this **Policy**) of either any claim (of whatever kind) against the **Insured**, or any circumstances which may give rise to a claim (of whatever kind) against the **Insured**; or
 2. facts, circumstances or events which (prior to inception of this **Policy**) the **Insured** appreciated or should have appreciated may give rise to a **Claim**;
- L. the operation or existence of any joint venture or consortia in which the **Insured** have an interest, unless the **Insurer's** written agreement to the **Insured's** participation in such venture or consortia has been first obtained and an endorsement added to this **Policy**;
- M. any:
1. corruption, erasure, theft, copying, recording or alteration of any electronically held data;
 2. access or lack of access to or interference with any electronically held data;
 3. loss, distortion or erasure of computer records; or
 4. actual or alleged transmission or impact of any computer virus; and
- N. any:
1. allegations of whatever kind brought or maintained against the **Insured** in the **USA**, or determined by reference to the laws of the **USA**, or which it is alleged should be determined by reference to the laws of the **USA**;
 2. legal or regulatory proceedings in the **USA**;
 3. any enforcement of any judgment given in the **USA** in any court of law or other tribunal anywhere in the world.

- O. or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
1. ionising radiations or contamination by radioactivity from any nuclear fuel, waste or substance or the radioactive, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
 2. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, martial law;
 3. confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
 4. any act of terrorism; or
 5. any action taken in controlling, preventing, suppressing or in any way relating to 2 and / or 3 and / or 4 above.

For the purpose of this exclusion an act of terrorism means any act, including but not limited to the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes or other ends including the intention to influence any government de jure or de facto and/or to put the public, or any section of the public, in fear.

For clarification, sub-paragraphs O.2 to O.5 of this exclusion do not apply in respect of any **Loss** or **Defence Costs** resulting from a **Claim** arising directly from any negligent act, negligent error or negligent omission by the **Insured** solely in the provision of the **Professional Services**.

In any **Claim** and in any action, suit or other proceedings to enforce a **Claim** by the **Insured** under this **Policy**, the burden of proving that such **Claim** does not fall within the exclusions above shall be upon the **Insured**.

In the event any element of this exclusion is found to be invalid or unenforceable, the remainder shall continue to be in full force and effect.

4. AGGREGATE LIMIT OF INDEMNITY

The Aggregate Limit of Indemnity for all **Loss** and **Defence Costs** for all **Claims** made against all **Insureds** and reported to the **Insurer** in writing during the **Policy Period** shall not exceed the Aggregate Limit of Indemnity stated in item 4 of the Schedule. All obligations of the **Insurer** under this **Policy** shall cease after the Aggregate Limit of Indemnity has been paid by the **Insurer**.

For the avoidance of doubt, this **Policy** is a single contract of insurance and if more than one **Insured** is covered, this **Policy** shall nevertheless be and remain a single contract of insurance for the benefit of the **Insured**.

5. RETENTION

The **Insurer** shall only be liable in excess of the **Retention**, which **Retention** shall apply to each and every **Claim** and shall be inclusive of **Defence Costs**.

6. NOTICE OF CLAIM

A. The **Insured**, as a condition precedent to their right to indemnity under this **Policy**, shall give the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than the end of the **Policy Period**.

B. If during the **Policy Period**, the **Insured** become aware of a specific act, error or omission which is reasonably expected to be likely to give rise to a **Claim** and the **Insured** seek indemnity for such **Claim**, then, as a condition precedent to their right to indemnity under this **Policy**, the **Insured** must during the **Policy Period** give written notice to the **Insurer** of:

1. the specific act, error or omission of the relevant **Insured**;
2. the reasons for anticipating the likelihood of a **Claim**;
3. the identity of the potential claimant;
4. the amount of actual or potential damages; and
5. how and when the **Insured** first became aware of such specific act, error or omission.

If such details are provided in full then any **Claim** subsequently made against the **Insured** arising out of such specific act, error or omission, shall be deemed to have been made at the time such notice was received by the **Insurer**.

C. The **Insured** shall give notice under this clause to the **Insurer** (via the **Insured's** broker or other agent only) at the address specified in item 8. of the Schedule. Notice shall be deemed reported on the date and at the time of receipt by the **Insurer**.

D. The **Insured**, as a condition precedent to their right to indemnity under this **Policy**, shall, at their own cost, co-operate with the **Insurer** and provide such assistance and information as the **Insurer** may reasonably request.

E. The **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions with respect to which insurance is afforded under this **Policy**; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

7. CLAIMS HANDLING

- A. The **Insurer** shall be entitled, but not obliged, at any time to take over and conduct in the name of the **Insured** the investigation, defence or settlement of any **Claim**.
- B. The **Insured** shall not admit liability, enter into negotiations, or agree to the settlement, mediation or arbitration of any **Claim** or incur any **Defence Costs** without the prior written consent of the **Insurer**.
- C. If the **Insured** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to contest a **Claim**, then the **Insurer's** liability for **Loss** and **Defence Costs** in respect of such **Claim** shall not exceed the amount for which the **Claim** could have been settled and **Defence Costs** incurred to the date of such refusal.

8. GENERAL CONDITIONS

A. Premium Payment

In the absence of a specific written agreement to the contrary, this **Policy** can be voided with effect from inception by the **Insurer** in the event that the **Insurer** does not receive full payment of premium within sixty (60) days of inception.

B. Other Insurance

The insurance provided by this **Policy** shall apply only as excess over any other valid and collectible insurance or other indemnity, unless such other insurance or indemnity is written only as specific excess insurance over the Aggregate Limit of Indemnity provided by this **Policy**. Therefore, where there is other valid and collectible insurance or other indemnity, the **Insured** must first claim under that other insurance or indemnity and not under this **Policy**.

C. Subrogation

- 1. The **Insurer** shall be subrogated to all the **Insured's** rights of recovery against any person before or after any payment or indemnity under this **Policy** and the **Insured**, as a condition precedent to their right to indemnity under this **Policy**, shall at its own cost take all steps necessary to preserve the **Insurer's** rights of subrogation and shall give all such assistance in the exercise of rights of recovery as the **Insurer** may require.
- 2. Any sums recovered from any third party pursuant to sub-clause 1. shall first be paid to the **Insurer** up to the full amount of **Loss** and/or **Defence Costs** paid on behalf of the **Insured** for a **Claim**. Any sums remaining shall be paid to the **Insured**, less the costs of recovery incurred by the **Insurer**.

D. Allocation

In the event that any claim under this **Policy** gives rise to both a **Loss** and / or **Defence Costs** which are covered under this **Policy** and losses or defence

costs which are not covered under this **Policy**, the **Insurer** and the **Insured** shall use their best efforts to agree a fair and proper basis for allocation taking into consideration the relative legal exposures of the various parties. In the event that the **Insurer** and the **Insured** cannot agree on allocation they shall each select an arbitrator. If they cannot agree within thirty (30) days, either may request that selection of a third arbitrator be made by a judge of a court having jurisdiction. Each party will pay the expense it incurs and bear the expense of the third arbitrator equally. The rules for the conduct of the arbitration shall be in the discretion of the arbitrator.

E. Assignment

This **Policy** and any and all rights under it are not assignable without the written consent of the **Insurer**.

F. Cancellation

Where permitted by the applicable law, any **Insurer** may terminate their participation on this **Policy** by giving notice in writing sent by registered or certified mail to the address of the **Named Insured**, as shown in Item 3 of the Schedule stating when, not less than forty-five (45) days after the sending of such notice, the cancellation shall be effective. The sending of such notice shall be sufficient proof of notice and notice shall be deemed to have been made on the date of sending. In the event of such termination, the premium payable to that **Insurer** shall be pro rata to the time on risk. Payment or tender of unearned premium, if any, shall not be a condition precedent to the effectiveness of cancellation.

G. Entire Agreement

The terms and provisions of this **Policy** shall not be waived, changed or modified, unless by written endorsement. Notices to, by or from any agent or representative of the **Insured** or the **Insurer** shall not effect a waiver, change or modification of this **Policy** and shall not prevent the **Insurer** from asserting any rights under this **Policy**.

H. Authorisation

By acceptance of this **Policy**, each **Insured** agrees that the **Named Insured** shall act on behalf of all **Insureds** for all purposes including the negotiation of the terms of this **Policy**, payment of or return of premiums, receipt and acceptance of any endorsement issued to form a part of this **Policy** and giving and receiving notice of cancellation of this **Policy**.

I. Action against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of the **Policy**, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgement against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**.

J. Material Change

The **Insured** shall immediately notify the **Insurer** of any material change in the facts and circumstances disclosed to the **Insurer** in the **Proposal Information** which may increase the risk accepted by the **Insurer** under this **Policy**. Where the **Insurer** is given such notice and where permitted under the applicable law, the **Insurer** may elect to terminate this **Policy** or to offer the **Insured** a continuation of cover on such revised terms and conditions as the **Insurer** in its sole discretion shall specify. If the **Insured** breaches this condition by not giving the required notice, the **Insurer** may elect (in its sole discretion) to terminate this **Policy** in its entirety and in which case this **Policy** shall be of no effect whatsoever from the date of the breach.

K. Fraudulent Claims

If the **Insured** make any claim for indemnity under this **Policy** knowing the same to be false or fraudulent, the **Insurer**, where permitted under the applicable law, may elect (in its sole discretion) to terminate this **Policy** immediately in its entirety and in which case this **Policy** shall be of no effect whatsoever and all claims for indemnity hereunder (including such false or fraudulent claim) shall be forfeited. Further, in circumstances where the **Insurer** is entitled to avoid this **Policy**, whether for fraud by the **Insured** or otherwise, the **Insurer** may instead elect (in its sole discretion) to give notice to the **Insured** that this **Policy** remains in full force and effect, but no indemnity is provided for any **Claim** based upon, directly or indirectly arising out of, or in any way involving the circumstances that entitled the **Insurer** to avoid this **Policy**.

9. LAW

The construction, interpretation and meaning of the provisions of this **Policy** and any issue concerning its formation shall be determined in accordance with Canadian law.

10. DISPUTE RESOLUTION

Any dispute arising out of or in connection with this **Policy**, including any question regarding its formation, existence, validity or termination, shall be referred to arbitration in the same manner as disputes under section 8.D. of this **Policy**.

11. HEADINGS

The descriptions in the headings and any subheading of this **Policy** (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions of this **Policy**.

NOTICE TO THE INSURED

Data Protection Act 1998

We may store your information on a computer and use it for administration, risk assessment, research and statistical purposes, marketing purposes and for crime prevention (see further details below). We will only disclose your personal details to third parties, if it is necessary for the performance of your contract with us.

In order to assess the terms of the insurance contract or administer claims that arise, we may need to collect data that the Data Protection Act defines as sensitive, such as medical history or criminal convictions. By proceeding with this contract you will signify your consent to such information being processed by us or our agents.

We will keep your information secure at all times. In certain circumstances, for example for systems administration purposes, we may have to transfer your information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with your insurance application, we will assume you are agreeable for us to transfer your information to a country outside the EEA.

Should you wish to receive a copy of the information we hold on you, please contact the Compliance Officer, Lloyd's Syndicate 4000, Box 146, Lloyd's, 1 Lime Street, London EC3M 7HA.

Complaint Procedure

The **Insurer** is committed to providing a first class service at all times.

If at any time there are questions or concerns regarding this **Policy** or the handling of a **Claim**, you should in the first instance refer to your insurance broker or intermediary, if any. If your problem cannot be resolved, any question or complaint should then be addressed to:

Director of Claims
Lloyd's Syndicate 4000
2nd Floor South,
3 Minster Court,
Mincing Lane,
London EC3R 7DD

Telephone: 020 7337 4400

If after following the above procedure your complaint has not been resolved to your satisfaction, you should write to the Chief Executive at the address above.

In the event you wish to pursue matters further, where appropriate, you can refer the matter at any time to the:

Complaints Department
Lloyd's
One Lime Street,
London EC3M 7HA
Telephone: 020 7327 5693 Fax: 020 7327 5255
E-mail: Lloyds-Regulatory-Complaints@lloyds.com

Complaints that cannot be resolved by the Complaints Department may, where appropriate, be referred to the Financial Ombudsman Service to review the case.

The address is:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Telephone: 0845 080 1800

www.financial-ombudsman.org.uk

The Financial Ombudsman's Service decision is binding upon the **Insurer** but you are free to reject it without affecting your legal rights.

Financial Services Compensation Scheme

The **Insurer** is covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if the **Insurer** cannot meet their obligations. This depends on the type of business and the circumstances of the claim. Further information about compensation scheme arrangements is available from the FSCS.

**CANADIAN MISCELLANEOUS ERRORS & OMISSIONS
INSURANCE POLICY**

SCHEDULE

1. **Policy Number:**
2. **Named Insured:**
3. **Address:**
4. **Aggregate Limit of Indemnity:** CAD in the aggregate inclusive of
Defence Costs
5. **Retention:** CAD each and every Claim
Defence Costs inclusive
6. **Policy Period:**
7. **Premium:** CAD
8. **Address for notification:
(via broker or other agent)** Lloyd's Syndicate 4000
One Lime Street
London EC3M 7HA

TABLE OF INSURERS

Where Lloyd's Syndicate 4000 has underwritten this policy with one or more other insurers (as listed in the Table of Insurers below), Lloyd's Syndicate 4000 and such other insurers bind themselves severally and not jointly, each for their own part and not for one another. Lloyd's Syndicate 4000 and each such insurer shall only be liable for their percentage of the risk shown below.

The insurers subscribing to this policy are:

- | | | |
|----|--|------|
| 1. | Lloyd's Syndicate 4000
One Lime Street
London EC3M 7HA
United Kingdom | [%] |
| 2. | [] | [%] |
| 3. | [] | [%] |

Pembroke