

ENDORSEMENT NO. 1 TO POLICY NO. 3

EXTENSIONS OF COVERAGE AND MODIFICATIONS TO EXCLUSIONS

1. **BREACH OF PROFESSIONAL CONFIDENTIALITY**

THE INSURER will pay on YOUR behalf all sums which YOU become legally liable to pay as DAMAGES arising out of a CLAIM resulting from any inadvertent breach of professional confidentiality provided YOUR liability arose from YOUR performance of professional services for others in the NAMED INSURED's capacity as a holder of a Certificate of Practice and YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken to be as excess insurance to any other liability insurance policy that may be issued to YOU.

2. **DISHONESTY OF EMPLOYEES**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM resulting from financial loss to third parties caused by dishonest, fraudulent or criminal acts of YOUR present or former employees while acting within the scope of their duties for the NAMED INSURED but the amount payable shall be limited to YOUR liability less the amount recoverable from the dishonest or fraudulent person.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for:

- a. any CLAIM caused by or contributed to by any present or former partner, officer, director, or shareholder of the NAMED INSURED;
- b. any CLAIM made by any present or former officer, director, shareholder, consultant, agent, or employee of the NAMED INSURED;
- c. any CLAIM arising from the provision of services which are not performed in the NAMED INSURED's capacity as a holder of a Certificate of Practice; and
- d. any CLAIM where YOU are insured under a suretyship or bond or insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken to be as excess insurance to any insurance, suretyship or bond issued to YOU.

It is a condition precedent that on discovery of any reasonable cause for suspicion of fraud, dishonesty or criminal act on the part of a present or former employee, whether giving rise to a CLAIM under this extension of coverage or not, YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding YOUR suspicion; otherwise, THE INSURER shall not be liable for any CLAIM arising from any loss sustained resulting from an act committed on the part of the employee or employees concerned, on the date of such discovery.

3. **LIBEL AND SLANDER**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become legally liable to pay as DAMAGES arising out of a CLAIM resulting from libel and/or slander committed without animosity by reason of words written, uttered or published by YOU provided YOUR liability arose from YOUR performance of professional services to others by YOU while acting within the scope of YOUR duties for the NAMED INSURED and provided YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU.

It is a condition precedent that in the event of a CLAIM, YOU shall, upon the reasonable request of THE INSURER, issue, publish and/or broadcast, orally and/or in written form, an apology and expression of regret, the form and content of which are to be approved by THE INSURER. If on receipt of such a request from THE INSURER, YOU refuse to issue such an apology and expression of regret, THE INSURER shall not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments in respect of any DAMAGES, defence costs or supplementary payments incurred after the date of such refusal.

4. **INFRINGEMENT OF COPYRIGHT**

Notwithstanding PART III Exclusion 1.a. of this POLICY, THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM from any inadvertent infringement of copyright, patents, Registered Designs, Trademarks or Passing-off provided that YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU.

5. **LOSS OF DOCUMENTS**

THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM for the accidental destruction, irrecoverable damage, or loss, or the theft of any documents (as defined herein) which YOU, in YOUR capacity as a holder of a Certificate of Practice, accept as a custodian in the course of YOUR professional services to others.

In addition, THE INSURER will pay the costs and expenses incurred by YOU in replacing or restoring such documents. However, any CLAIM for costs and expenses shall be supported by bills or accounts which shall be subject to prior approval by THE INSURER.

The DEDUCTIBLE shall not apply to the costs and expenses incurred in replacing or restoring such documents.

THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for any CLAIM where YOU are insured under a liability or property/casualty policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The expression "Documents" shall be deemed to mean maps, plans, drawings, records, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, tickets, bank notes, currency notes, negotiable instruments). Document which are stored on magnetic or electronic media shall be deemed to be physical documents on the condition that such documents were duplicated on magnetic or electronic media with the intention that in the event of destruction or irrecoverable damage the duplicate can be used as a basis for restoring the documents to their original status. It is a condition precedent that the onus of proof that the intention to use the duplicate as a basis for restoring the documents is the responsibility of the NAMED INSURED.

6. **REIMBURSEMENT OF DEFENCE COSTS INCURRED AGAINST ALLEGATIONS OF INTENTIONAL ACTS**

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will reimburse YOU for defence costs reasonably incurred arising from YOUR performance of professional services in YOUR capacity as a holder of a Certificate of Practice in respect of civil actions alleging Intentional Acts (as defined herein) otherwise not covered under terms of this POLICY, where YOU are found to be innocent by a court of competent jurisdiction or the action is discontinued provided that there is no payment of any monies, DAMAGES, fines or other penalties and there is no settlement or payment by YOU of any consideration in such civil actions.

The amount payable will be the defence costs paid by YOU reduced by the amount of costs awarded to YOU by a court of competent jurisdiction.

THE INSURER will not reimburse YOU for defence costs where:

- a. YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU;
- b. the defence costs arise from a complaint or disciplinary hearing under the *Architects Act*, *Professional Engineers Act* and the regulations thereof.

The expression "Intentional Acts" shall be deemed to mean fraud, conspiracy to injure, malicious acts or omissions, inducing breach of contract, and interference with economic relations.

A CLAIM for the purpose of this extension of coverage means a notice of action, statement of claim, counterclaim, third or subsequent party claim, containing allegations of Intentional Acts.

The maximum amount of defence costs reimbursable to YOU shall not exceed \$100,000 each CLAIM and \$200,000 for all CLAIMS reported during the PERIOD OF INSURANCE.

7. REIMBURSEMENT OF DEFENCE COSTS INCURRED IN PROSECUTIONS FOR CRIMINAL NEGLIGENCE CAUSING BODILY HARM OR DEATH IN CONTRAVENTION OF SECTIONS 220 OR 221 OF THE CRIMINAL CODE

Notwithstanding PART III Exclusion 1.i. of this POLICY, THE INSURER will reimburse YOU for defence costs reasonably incurred arising from YOUR performance of professional services in YOUR capacity as a holder of a Certificate of Practice in respect of a prosecution alleging a contravention of Sections 220 or 221 of the Criminal Code (criminal negligence causing death or bodily harm) otherwise not covered under terms of this POLICY, where YOU are found to be innocent by a court of competent jurisdiction or the prosecution is discontinued provided that there is no payment of any monies, DAMAGES, fines or other penalties and there is no settlement or payment by YOU of any consideration in such prosecution.

The amount payable will be the defence costs paid by YOU reduced by the amount of costs awarded to YOU by a court of competent jurisdiction.

THE INSURER will not reimburse YOU for defence costs where:

- a. YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other liability insurance issued to YOU;
- b. the defence costs arise from a complaint or disciplinary hearing under the *Architects Act*, *Professional Engineers Act* and the regulations thereof.

The expression "criminal negligence" shall be deemed to mean the doing of anything, or the omitting to do anything that it is the duty of the person to do, that shows wanton or reckless disregard for the lives or safety of other persons.

A CLAIM for the purpose of this extension of coverage means an information, indictment, summons or warrant under the Criminal Code.

The maximum amount of defence costs reimbursable to YOU shall not exceed \$100,000 each CLAIM and \$200,000 for all CLAIMS reported during the PERIOD OF INSURANCE.

8. DEFENCE COSTS COVERAGE AGAINST CONTRAVENTION OF STATUTES

THE INSURER will pay on YOUR behalf defence costs arising in respect of prosecutions alleging a contravention of statutes, regulations and by-laws listed below:

- *Occupational Health and Safety Act*
- *Planning Act*
- *Building Code Act*
- *Environmental Protections Act*
- *Environmental Bills of Rights*
- *Ontario New Home Warranties Plan Act*
- *Ontario Heritage Act*

- *Health Protection and Promotion Act*
- *Condominium Act*
- *Fire Marshals Act*
- *Gasoline Handling Act*
- *Workers Compensation Act*

and any other statute or regulation of a province or territory of Canada or Government of Canada other than the Criminal Code, or by-law of a municipality in a province or territory of Canada other than the *Architects Act* and *Professional Engineers Act* which may reasonably apply to actions arising from the performance of architectural services by a holder of a Certificate of Practice when acting in his/her capacity as a holder of a Certificate of Practice.

A prosecution for the purpose of this extension means a certificate of offence, summons, information or any other document that initiates the prosecution alleging contravention of the above statutes, regulations or by-laws.

THE INSURER will not pay on YOUR behalf defence costs under this extension of coverage where YOU are insured under a liability policy issued under the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The maximum amount of the defence costs payable on YOUR behalf shall not exceed \$100,000 for each prosecution no matter how many counts or charges may be contained in the certificate of offence, summons, information or any other document that initiates the prosecution and \$200,000 for all prosecutions reported during the PERIOD OF INSURANCE. Defence costs will be paid only to lawyers appointed or expressly approved by THE INSURER.

9. TRAVEL AND ACCOMMODATION COSTS INCURRED AT REQUEST OF THE INSURER

THE INSURER will reimburse YOUR travel and accommodation costs incurred by YOU as a result of attending meetings, mediation, arbitration or court but only when expressly authorized by THE INSURER.

The allowance for travel by automobile will not exceed the rates as established from time to time by the National Joint Council of the Public Service of Canada. Other travel costs must be authorized by THE INSURER.

Accommodation will be arranged by THE INSURER.

THE INSURER will not reimburse YOU where YOU are insured under a liability policy issued under the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

The DEDUCTIBLE shall not apply to this extension.

10. PARALLEL DISCIPLINE PROCEEDING AND PROFESSIONAL LIABILITY CLAIM DEFENCE COSTS COVERAGE

THE INSURER will pay on YOUR behalf defence costs reasonably incurred arising from a complaint by a member of the public, other than a member of THE ASSOCIATION, which is referred to the Discipline Committee, provided that a CLAIM must have been made against YOU that is related to the same issue and is insured by this POLICY.

The maximum amount of defence costs payable on YOUR behalf shall not exceed \$100,000 for each COMPLAINT and \$200,000 for all COMPLAINTS reported during the PERIOD OF INSURANCE. Defence costs will be paid only to lawyers appointed or expressly approved by THE INSURER.

THE INSURER will not pay defence costs on YOUR behalf where YOU are insured under a liability policy issued by any other insurer as defined in the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, deductibles, terms and conditions of the insurance are, and in no event shall this extension of coverage be taken as excess insurance to any other insurance issued to YOU.

11. FAILURE TO REPORT CLAIM PRIOR TO EXPIRATION DATE OF INSURANCE

THE INSURER will extend the PERIOD OF INSURANCE for sixty (60) days following the Expiration Date shown on the Certificate of Insurance, if YOU report a claim, of which YOU were aware prior to the Expiration Date, within sixty (60) days of the Expiration Date. It shall be a condition precedent to such extension of coverage under this Endorsement that:

- a. YOUR failure to report the CLAIM was due to inadvertence;
- b. YOU report the claim to the INSURER within sixty (60) days following the Expiration Date shown on the Certificate of Insurance; and
- c. in the event the INSURER alleges that YOUR failure to report the CLAIM prior to the Expiration Date is not due to inadvertence, the burden of proving the contrary shall be upon YOU.

If YOU do not report the CLAIM prior to the Expiration Date shown on the Certificate of Insurance, due to YOUR inadvertence, the Limits of Liability on the Certificate of Insurance that applied prior to the Expiration Date shall continue to apply during the extended period of coverage under this Endorsement.

12. COVERAGE OMBUDSMAN CLAUSE

Should the NAMED INSURED shown on the Certificate of Insurance issued under this POLICY and all other persons defined as "INSUREDS" in this POLICY disagree with any determination made concerning coverage under this POLICY by THE INSURER or its designates, YOU shall have the right to address in writing the subject matter of any disagreement to the COVERAGE OMBUDSMAN for a without-prejudice review, who shall be empowered to carry out such investigations and make enquiries of the NAMED INSURED and all other INSUREDS and others and review the issues concerning the disagreement and make on a without-prejudice basis recommendations, if any, for resolution of the disagreement to the NAMED INSURED and all other INSUREDS and/or THE INSURER.

Neither the NAMED INSURED nor any other INSURED nor THE INSURER shall be bound by any without-prejudice recommendation made by the COVERAGE OMBUDSMAN.

Any material, information or documentation submitted by the NAMED INSURED, the INSURED and/or THE INSURER to the COVERAGE OMBUDSMAN and the COVERAGE OMBUDSMAN him/herself, any report, working papers, notes, memos or other correspondence emanating from the COVERAGE OMBUDSMAN or found in his/her files shall remain confidential and, unless ordered by a court of competent jurisdiction, shall not be compellable for purposes of testimony or production by any person in any court of law, arbitration or disciplinary proceeding, and shall not be disclosed to any third party save in the proper course of any investigation performed by the COVERAGE OMBUDSMAN.

ALL OTHER DEFINITIONS, OBLIGATIONS, PROVISOS, EXCLUSIONS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

April 1, 2012 *(as amended to October 2014)*

Endorsement No. 1 to Policy No. 3 April 1, 2012 takes effect and applies to all claims made on and after April 1, 2012.