

# Mandatory Coverage

## Professional Liability Insurance Policy No. 1

January 31, 2015

THE POLICY and Certificate of Insurance is the contract between the NAMED INSURED, the sole proprietor, partners and shareholders, who are members of THE ASSOCIATION, and THE INSURER, and is issued in consideration of the premium YOU have agreed to pay. This POLICY and the Certificate of Insurance are issued in reliance upon the representations which YOU have made and on the application for insurance which is now part of this contract.

**Except in PART I: DEFINITIONS, headings are inserted into the Policy for convenience of reference only and do not form part of the Policy**

## **PART I: DEFINITIONS**

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Throughout this POLICY certain words have been capitalized to indicate that they have a specific meaning as shown below:

### **YOU, YOUR**

The NAMED INSURED shown on the Certificate of Insurance issued under this POLICY and all other persons defined as 'INSUREDS' below.

### **THE INSURER**

Pro-Demnity Insurance Company.

### **THE ASSOCIATION**

The Ontario Association of Architects.

### **NAMED INSURED**

The person(s) specifically designated on the Certificate of Insurance.

### **INSUREDS**

1. The NAMED INSURED;
2. Any present or former partner, officer, director, shareholder or employee of the NAMED INSURED while acting within the scope of his/her duties for the NAMED INSURED;
3. The heirs, executors, administrators and legal representatives of each INSURED as defined in 1 and 2 above, in the event of death or, if adjudged bankrupt, insolvent or incompetent, but only with respect to errors, omissions or negligent acts committed prior to the INSURED's death, bankruptcy, insolvency or incompetency;
4. Any individual or personal corporation retained by the NAMED INSURED under personal services contracts or personal services agreements (other than contracts or agreements for consulting services) or employee on loan from others, but only while acting within the scope of his/her duties for the NAMED INSURED;
5. Any former holder of a certificate of practice under the *Architects Act* or a memorandum of practice under the *Architects Act*, R.S.O. 1980, Chapter A.26 and the Regulations thereunder, or any predecessor thereof, for whose errors, omissions and negligent acts the NAMED INSURED is liable in law.

## PERIOD OF INSURANCE

The period of time commencing with the inception time and date shown in the Certificate of Insurance issued under this POLICY to a NAMED INSURED and continuing to the expiration time and date shown in the said Certificate of Insurance or to an earlier POLICY termination date, if any.

## CLAIM

1. A written or an oral demand for money or services; or
2. A written or an oral allegation of breach in the rendering or failure to render professional services; or
3. A written or an oral allegation of an error, omission or negligent act in the performance of professional services; or
4. A circumstance, dispute or controversy which a reasonable person might expect or should foresee could subsequently give rise to a CLAIM.

ALL CLAIMS arising from a single error, omission or negligent act shall be considered a single CLAIM regardless of the number of INSUREDS, the number of persons or organizations making a CLAIM or the number of civil suits or arbitration proceedings in which the CLAIMS are made.

All allegations of breaches in the rendering or failure to render professional services or errors, omissions or negligent acts contained in a Statement of CLAIM, Notice of Action, Counterclaim, Crossclaim, Third or Subsequent Party CLAIM, Application or submission to arbitration shall be considered a single CLAIM regardless of the number of parties to a civil or arbitration proceeding.

## THE INSURER'S RIGHT TO APPOINT COUNSEL AND CONTROL THE DEFENCE OF CLAIMS

THE INSURER shall have the right to appoint counsel to defend YOU and control the defence of any civil suit or arbitration proceedings against YOU arising out of a CLAIM for which insurance is provided by this POLICY.

## CLAIM EXPENSES

All the expenses THE INSURER incurs to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this POLICY. This includes costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers but only when expressly authorized or appointed by THE INSURER and also court and arbitration costs, including all costs assessed against YOU and costs for the attendance of witnesses other than YOU.

## DAMAGES

Compensatory DAMAGES, including pre-judgment interest, payable to claimants but does not include fees which have either not been paid to YOU or which YOU are asked to return, or punitive or exemplary DAMAGES, fines or penalties.

## DEDUCTIBLE

YOUR DEDUCTIBLE will be shown on the Certificate of Insurance or Endorsement thereto and is the first portion of the DAMAGES payable by YOU for each CLAIM.

YOUR DEDUCTIBLE will be calculated in accordance with the following formula:

$$\frac{\text{DAMAGES} \times \text{DEDUCTIBLE}^*}{\text{CLAIM LIMIT}} = \text{Amount Payable}$$

\*as shown on Certificate of Insurance or Endorsement

In no event, however, shall the DEDUCTIBLE YOU pay exceed the amount shown on the Certificate of Insurance or Endorsement thereto.

Where the portion of the DEDUCTIBLE payable by YOU falls below two hundred dollars (\$200.00), THE INSURER agrees to waive payment.

## PAYMENT OF DEDUCTIBLE

### PRESENT HOLDERS OF CERTIFICATES OF PRACTICE:

The NAMED INSURED who is a holder of a certificate of practice and every present or former sole proprietor, partner or shareholder of such a NAMED INSURED who is or was a member of THE ASSOCIATION must personally pay the DEDUCTIBLE in accordance with and in the manner provided by the By-laws of THE ASSOCIATION.

### FORMER HOLDERS OF CERTIFICATES OF PRACTICE:

Every present or former sole proprietor, partner or shareholder of a former holder of a certificate of practice who is a NAMED INSURED and is or was a member of THE ASSOCIATION must personally pay the DEDUCTIBLE in accordance with and in the manner provided by the By-laws of THE ASSOCIATION.

#### 1. Sole Proprietorship

The present or former sole proprietor must pay the full amount of the DEDUCTIBLE.

#### 2. Partnerships

Every present or former partner of the NAMED INSURED must pay an amount that is equivalent to the proportion of his or her or the corporate partners' interest in the partnership.

#### 3. Corporations

Every present or former shareholder of the NAMED INSURED must pay the proportion of the DEDUCTIBLE represented by the ratio between his or her share ownership and the total number of shares of the corporation owned by members of THE ASSOCIATION.

## PART II: YOUR INSURANCE

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### 1. THE INSURER'S OBLIGATIONS

THE INSURER is formally undertaking to fulfill three (3) obligations for YOUR benefit. YOUR DEDUCTIBLE applies to the first obligation only. The second and third obligations are covered with no DEDUCTIBLE.

#### a. **DAMAGES**

THE INSURER will pay on YOUR behalf all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM providing YOUR liability is the result of an error, omission or negligent act in the performance of professional services for others in the NAMED INSURED's capacity as a holder of a certificate of practice. THE INSURER will also pay on behalf of the NAMED INSURED if specifically provided for in the Certificate of Insurance, all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM providing YOUR liability is the result of an error, omission or negligent act in the performance of professional services for others in YOUR capacity as a holder of a certificate of practice under the *Architects Act*, or a holder of a memorandum of practice under the *Architects Act*, R.S.O. 1980, chapter 26 and the regulations thereunder or any predecessor thereof.

THE INSURER will in addition pay on YOUR behalf if specifically provided for in the Certificate of Insurance, all sums which YOU become liable to pay as DAMAGES arising out of a CLAIM if YOUR liability is the result of an error, omission or negligent act in the performance of structural, electrical or mechanical professional engineering services for others in connection with the design or general review of the construction, enlargement or alteration of a building in YOUR capacity as a holder of a certificate of authorization issued under the *Professional Engineers Act* 1984 or the *Professional Engineers Act*, R.S.O. 1980, chapter 294 or any predecessor thereof, provided that:

- i. the professional engineering services are or were provided only under the personal supervision and direction of a member of the Association of Professional Engineers of Ontario, and

- ii. the error, omission or negligent act occurred or is alleged to have occurred after the date the NAMED INSURED became a holder of a certificate of practice under the *Architects Act* or a holder of a memorandum of practice under the *Architects Act*, R.S.O. 1980, chapter 26 and the regulations thereunder or any predecessor thereof.

#### LIMITS OF LIABILITY

Subject to YOUR obligation to pay the DEDUCTIBLE shown on the Certificate of Insurance, the maximum amount THE INSURER will pay as DAMAGES for each CLAIM during the PERIOD OF INSURANCE is the amount set out in the Certificate of Insurance under CLAIM Limit of Liability; the maximum amount THE INSURER will pay as DAMAGES for all CLAIMS arising from the performance of professional services with respect to one project is the amount set out in the Certificate of Insurance under Project Limit of Liability, subject always to the CLAIM Limit of Liability for any one CLAIM; and the maximum amount THE INSURER will pay as DAMAGES for all CLAIMS during the PERIOD OF INSURANCE is the amount set out in the Certificate of Insurance under Aggregate Limit of Liability, subject always to the CLAIM Limit of Liability for any one CLAIM and the Project Limit of Liability for all CLAIMS with respect to one project. The CLAIM Limit of Liability, the Project Limit of Liability and the Aggregate Limit of Liability have application no matter how many INSUREDS are covered under one Certificate of Insurance or how many persons or organizations make a CLAIM. With respect to any INSURED or project for which insurance is provided by more than one Certificate of Insurance, the maximum amount THE INSURER will pay as DAMAGES under all Certificates of Insurance shall not exceed the Limits of Liability that apply to one Certificate of Insurance.

#### b. DEFENCE

Subject to THE INSURER's obligations under this POLICY as set out under "YOUR POLICY TERRITORY", THE INSURER will defend YOU in any civil suit or arbitration proceedings arising out of a CLAIM for which insurance is provided by this POLICY, even if the allegations against YOU are groundless, false or fraudulent.

THE INSURER's obligation to defend YOU shall not apply in the event there is an allegation against YOU arising out of a matter that falls within PART III "EXCLUSIONS" of this POLICY.

#### c. SUPPLEMENTARY PAYMENTS

i. THE INSURER will pay, for each CLAIM, the following:

1. CLAIMS EXPENSES, provided that in the event YOU become liable to pay DAMAGES arising out of a CLAIM in an amount that exceeds the amount set out in the Certificate of Insurance under CLAIM Limit of Liability, THE INSURER's obligation to pay YOUR CLAIMS EXPENSES shall be limited to an amount that is calculated by multiplying the total CLAIMS EXPENSES by the amount set out in the Certificate of Insurance under CLAIM Limit of Liability and dividing the product by the DAMAGES YOU are required to pay, ***unless YOU have specifically arranged professional liability insurance that applies as excess to the insurance provided by this POLICY. In that event, the maximum amount THE INSURER will pay as CLAIMS EXPENSES incurred by THE INSURER to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this POLICY, is \$200,000;***
2. Post-judgment interest upon that part of a judgment which falls within the remaining Limits of Liability at the time.

ii. THE INSURER will pay, for each CLAIM, in excess of its CLAIM Limit of Liability, the following:

1. all premiums on appeal bonds or bonds to release attachments. THE INSURER has no obligation to furnish such bonds but only to pay the premiums thereon;
2. YOUR expenses incurred for emergency medical and surgical relief to others and which YOU deemed necessary following an accident which YOU honestly believed might have been the result of an error, omission or negligent act on YOUR part.

## 2. YOUR POLICY TERRITORY

THE INSURER's obligations under this POLICY apply to CLAIMS arising out of actual or alleged errors, omissions or negligent acts which occur anywhere in the world provided that in the case of a building project

situate outside of Canada, CLAIMS are made and proceedings are instituted in the Province of Ontario and that in the case of a building project situate in Canada, CLAIMS are made and proceedings are instituted in Canada.

Notwithstanding the generality of the foregoing, THE INSURER shall have no obligations under this POLICY with respect to CLAIMS arising out of actual or alleged errors, omissions or negligent acts where CLAIMS are made or proceedings are instituted which seek to enforce by action, application or other proceeding, a foreign judgment obtained from a court in a jurisdiction outside of Canada.

### 3. YOUR POLICY PERIOD

YOUR POLICY PERIOD covers CLAIMS made against YOU for the first time during the PERIOD OF INSURANCE no matter when the actual or alleged error, omission or negligent act took place. There are two conditions which must be met for such a CLAIM to be covered.

First, YOU must have reported the CLAIM to THE INSURER during the PERIOD OF INSURANCE.

Secondly, YOU must have had no knowledge, prior to the PERIOD OF INSURANCE, of such CLAIM or of the circumstances, or a dispute or controversy which a reasonable person might expect could subsequently give rise to such a CLAIM.

Also, for YOUR protection, if during the PERIOD OF INSURANCE YOU report to THE INSURER circumstances of an error, omission or negligent act which any reasonable person would expect to subsequently give rise to a CLAIM, then THE INSURER will consider these a CLAIM even if a formal demand is advanced against YOU only after the PERIOD OF INSURANCE.

Any such CLAIM shall be subject to the Limit of Liability and DEDUCTIBLE in effect at the time the circumstances were reported to THE INSURER.

## PART III: EXCLUSIONS

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1. THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:

Trademark, Patent, Copyright

a. the infringement of any trademark or patent or copyright;

Insolvency, Bankruptcy

b. YOUR insolvency or bankruptcy or YOUR undergoing receivership or liquidation;

Advising or Requiring Insurance, Suretyship or Bond

c. YOUR advising or requiring, or failure to advise or require, any form of insurance, suretyship or bond other than:

- i. guidance to the client or any insurance and legal advisors of the client, about insurance, suretyship, bond, or warranty program requirements to be included in the client's bid or contract documents;
- ii. receipt of and delivery to the client of any insurance, suretyship or bond required to be obtained and submitted by a contractor, construction management firm or builder in response to requirements of bid or contract documents, but not advice as to the content or wording of any form of insurance, suretyship, bond or warranty;

Drawings, Plans, Specifications, Schedules and Contractor's Submittals

d. YOUR failure to complete drawings, plans, specifications, schedules or other documents with reasonable promptness, unless such failure is the result of an error or omission in the preparation of these documents; or YOUR failure to act upon contractor's submittals including but not limited to shop drawings, product data and samples with reasonable promptness, unless such failure is the result of another error, omission or negligent act by YOU in the performance of professional services;

#### Liability Assumed Under Contract

- e. the liability of others YOU have assumed under contract or agreement except that THE INSURER will cover YOU for YOUR liability for YOUR employees, agents, servants and consultants, provided that YOUR liability would have already existed at law in the absence thereof;

#### Warranties, Guarantees, Indemnities or Penalty Clauses

- f. express warranties, guarantees, indemnities or penalty clauses YOU have given for the benefit of others unless YOUR liability would have already existed at law in the absence thereof;

#### Performance of Services Not Usual or Customary

- g. the performance of services not usual or customary for holders of certificates of practice, or members of THE ASSOCIATION or holders of certificates of authorization under the *Professional Engineers Act*;

#### Estimates of Profit, Return on Capital, Economic Return

- h. estimates of profit, return on capital, economic return or other estimates giving rise to forecasts of economic return;

#### Dishonest, Fraudulent, Criminal or Malicious Acts or Intentional Torts

- i. any dishonest, fraudulent, criminal or malicious act or omission of an INSURED or CLAIMS for libel or slander of title, deceit, malicious prosecution, assault, false arrest, fraud or conspiracy or any CLAIM for DAMAGES which were caused or contributed by or at the direction of an INSURED either intentionally or deliberately;

#### Bodily Injury, Personal Injury, Sickness, Disease or Death to Any Employee

- j. bodily injury, personal injury, sickness, disease or death to any employee of the INSURED arising out of and in the course of his or her employment by the INSURED; or any obligation for which the INSURED or any carrier as his or her insurer may be liable, under any Workers' Compensation, Unemployment Compensation, Employers Liability, Disability Benefits Law or under any similar law;

#### Product or Equipment Malfunction and Deficiency

- k. any CLAIM arising directly or indirectly out of the malfunction or any known or suspected deficiency of any product or equipment sold, manufactured, supplied or installed by the INSURED or by others authorized by the INSURED;

#### Nuclear Energy

- l. i. liability imposed or arising under the *Nuclear Liability Act*; nor
  - ii. bodily injury or property damage with respect to which an INSURED under this POLICY is also insured under a contract of nuclear energy liability insurance (whether the INSURED is unnamed in such contract and whether or not it is legally enforceable by the INSURED) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
  - iii. bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
    - 1. the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an INSURED;
    - 2. the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
    - 3. the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an INSURED.
  - iv. With respect to property, loss of use of such property shall be deemed to be damage to or destruction of property.

As used in this POLICY:

1. the term “nuclear energy hazards” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
2. the term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
3. the term “nuclear facility” means:
  - a. any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - b. any equipment or device designed or used for:
    - i. separating the isotopes of plutonium, thorium and uranium, or any one or more of them,
    - ii. processing or utilizing spent fuel, or
    - iii. handling, processing or packaging waste;
  - c. any equipment or device used for the processing, fabrication or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations;
4. the term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission;

#### Single Project Policy, Retirement from Practice Policy

- m. i. a building project which is the subject matter of a Single Project Policy (Policy No. 3) issued to YOU by THE INSURER; or
- ii. CLAIMS that are made against YOU on and after the date on which a Retirement From Practice Policy (Policy No. 2) has been issued to YOU by THE INSURER

no matter what the Limits of Liability, DEDUCTIBLES or terms and conditions of the Policies Nos. 2 and 3 and in no event shall this POLICY be taken to be as excess insurance of the CLAIM Limit of Liability or on exhaustion of the Aggregate Limit of Liability to Policies Nos. 2 and 3;

#### Offices Outside Province of Ontario

- n. the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, or otherwise, of structural, electrical or mechanical engineering services from an office outside the Province of Ontario maintained by YOU or in which YOU have or had a direct or indirect interest;

#### Services to Office Outside Province of Ontario

- o. the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, or otherwise, of structural, electrical or mechanical engineering services from an office in the Province of Ontario provided by YOU to an office outside the Province of Ontario maintained or used by YOU or in which YOU have or had a direct or indirect interest where the performance or non-performance of architectural and professional engineering services outside of the Province of Ontario is not insured against errors and omissions under a separate and distinct professional liability insurance policy that has a minimum Limit of Liability of \$250,000 in respect of each CLAIM;



#### Geotechnical Engineering and Surveying Services

- p. the performance of geotechnical engineering services or services that constitute the practice of cadastral and professional surveying under the *Surveyors Act*, by the NAMED INSURED;

#### War, Riots, Terrorism

- q. any CLAIM made against YOU, directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any of the following regardless of any cause or event contributing concurrently or in any sequence of the loss:
- i. 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, confiscation by order of any public authority or government de jure or de facto, martial law;
  - ii. riots, strikes or civil commotion; or
  - iii. any act of terrorism.

For the purpose of this exclusion, an act of terrorism means an activity that:

1. 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
2. appears to be intended to:
  - a. intimidate or coerce a civilian population; or
  - b. disrupt any segment of the economy of a government de jure or de facto, state, or country; or
  - c. overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
  - d. affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

This POLICY also will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS made against YOU, directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, retaliating against or responding to i., ii. or iii. above.

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

In the event any portion of this exclusion is found to be unenforceable, the remainder shall remain in full force and effect.

#### Ingress of Precipitation

- r. any CLAIM made against YOU, directly or indirectly arising out of, contributed by, caused by ingress of precipitation, resulting from, or in connection with YOUR design or selection of an exterior above-grade wall, which has no provision for drainage of precipitation that penetrates the wall system, or as otherwise provided in the Practice Bulletins issued by THE ASSOCIATION.

This exclusion shall not apply to:

- i. Solid masonry, concrete, or massive moisture tolerant systems;
- ii. Window systems, pre-engineered metal building systems, or any system specifically approved by THE INSURER and provided in the Certificate of Insurance or otherwise; and
- iii. Design commenced by YOU prior to July 1, 2002.

If THE INSURER alleges that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries and supplementary payments are not covered, the burden of proving the contrary shall be upon the NAMED INSURED.

Claims By Business Enterprise, Charity, Club, Trust, Estate, Association or Organization Having an Interest

2. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU:

- a. by a business enterprise, charity, club, trust, estate, association or any organization
  - i. in which YOU either directly or indirectly have or at the time of the performance of the professional services had an interest; or
  - ii. that directly or indirectly has or at the time of the performance of the professional services had an interest in YOU;
- b. by any employee, director, partner, officer or shareholder, member, trustee, executor, administrator or representative of any such business enterprise, charity, club, trust, estate, association or other organization.

This exclusion shall not apply where the interest held by the business enterprise in YOU or the interest held by YOU in the business enterprise, whether held as equity, ownership or voting rights, is less than or equal to ten percent (10%).

Claims by an Employee or a Related Company

3. Notwithstanding that YOU are a holder of a certificate of practice, THE INSURER will not cover YOU, pay DAMAGES, or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where the relationship between YOU and the person or organization who makes the CLAIM is that of employee and employer and not independent contractor and principal or where the CLAIM made against YOU is by a parent company, a subsidiary or affiliated company of YOUR employer.

In determining whether or not the relationship is that of employee and employer or independent contractor and principal, regard will be had for the following:

- a. the degree of control that YOU are subject to in performing the architectural services;
- b. the opportunity YOU have to make a profit or suffer a loss in performing the architectural services;
- c. whether YOU have a firm or practice that is separate from and not integrated into the organization to whom YOU are providing architectural services.

The relationship between YOU and the organization to whom YOU are providing architectural services will be considered to be that of employee and employer where one or more of the following prevails:

- d. YOU must comply with instructions as to when, where and how the architectural services are to be performed;
- e. YOU must render the services personally and cannot engage others to perform all or part of the service without consent;
- f. the hours and days during which the architectural services are provided are set by the employer;
- g. YOU must devote either YOUR full time or substantial time to the business of the employer;
- h. YOU are paid in regular amounts at stated intervals;
- i. the employer deducts EI, CPP, insurance, income tax and other similar matters from YOUR pay;
- j. where the employer owns or controls the work site;
- k. the employer requires the submission of regular oral or written reports;
- l. where YOU usually work only for one employer.

#### Misrepresentation of Fact in Insurance Application

4. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where there is a misrepresentation of fact whether by omission or otherwise in the application for insurance or any application for renewal of insurance that has been filed by YOU or where YOU are in breach of any of the terms or conditions of the POLICY.

#### Other Insurance

5. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where YOU are insured against errors, omissions or negligent acts arising out of the performance or non-performance of architectural services or if specifically provided for in the Certificate of Insurance, in the performance of structural, electrical or mechanical engineering services, under a professional liability insurance policy issued by any other insurer as defined by the *Insurance Act*, or similar legislation prescribed by another jurisdiction or country, no matter what the Limits of Liability, DEDUCTIBLES or terms and conditions of the insurance policy are and whether or not the policy was issued for a single project or otherwise except insurance specifically arranged to apply as excess to the insurance provided by this POLICY.

In no event shall this POLICY be taken to be as excess insurance to any other professional liability insurance policy that may have been issued to YOU.

#### Punitive, Exemplary DAMAGES, Fines, Penalties

6. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU for punitive or exemplary DAMAGES, fines or penalties, except that if an action or proceeding is brought against YOU for any CLAIM falling within the insurance provided by this POLICY seeking compensatory, punitive or exemplary DAMAGES, then THE INSURER will afford a defence to such an action or proceeding in accordance with obligation 2 of this POLICY but without any liability whatsoever for such punitive or exemplary DAMAGES, fines or penalties.

#### Waiver of INSURER's Right of Recovery

7. THE INSURER will not cover YOU, pay DAMAGES or provide YOU with a defence or make supplementary payments for CLAIMS made against YOU where YOU have entered into any agreement or given a waiver or provided an undertaking not to enforce any rights, that may prohibit, restrict, postpone or imperil THE INSURER's right of recovery against any other person.

## **PART IV: GENERAL CONDITIONS**

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### **1. THE INSURER'S RIGHTS OF SURVEYS AND REVIEWS**

THE INSURER has the right to:

- a. make or authorize surveys or perform reviews of the NAMED INSURED's activities;
- b. provide to the NAMED INSURED reports or the findings of any surveys or reviews;
- c. recommend any changes to the NAMED INSURED's activities; and
- d. require that the NAMED INSURED or any partner, officer, director, shareholder or employee of the NAMED INSURED meet with THE INSURER or any of its representatives with respect to the NAMED INSURED's CLAIMS history for the purpose of reducing the exposure to CLAIMS or any other matter related to risk management, CLAIMS prevention, POLICY restrictions, DEDUCTIBLE and the calculation of premiums to be paid by the NAMED INSURED.

## 2. YOUR DUTIES IN THE EVENT OF A CLAIM

### a. WHAT YOU MUST DO:

- i. **NOTICE:** As soon as YOU become aware of a CLAIM, YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding the CLAIM. As events unfold which may have an effect on the CLAIM, YOU must continue to keep THE INSURER informed.
- ii. **COOPERATION:** YOU must cooperate with THE INSURER, and, upon request, provide written statements, submit to examinations and questioning, assist in effecting settlement, secure and give evidence and assist in any reasonable way THE INSURER deems necessary. YOU must give this cooperation at YOUR own cost. ***YOU must promptly pay all CLAIMS EXPENSES over and above the CLAIMS EXPENSES payable by THE INSURER under this POLICY.***
- iii. **DEDUCTIBLE:** YOU must pay YOUR DEDUCTIBLE promptly upon request.

### b. WHAT YOU MUST NOT DO:

- i. **ADMISSIONS:** YOU must not admit responsibility, assume any obligation or make any commitment of money or services without THE INSURER's consent, even if YOU believe there may have been an error, omission or negligent act on YOUR part.
- ii. **RECOVERIES:** YOU must not do anything which will imperil THE INSURER's rights of recovery against any other party.

## 3. YOUR CONSENT TO SETTLE

THE INSURER may settle any CLAIM without YOUR consent and if it does so YOU will nevertheless remain liable to contribute YOUR DEDUCTIBLE as provided by the terms of this POLICY.

If YOU object to the settlement of a CLAIM recommended by THE INSURER, the latter may permit YOU to contest or continue any civil suit or arbitration proceeding arising out of the CLAIM but only on the condition that the amount payable under this POLICY for such CLAIM shall not exceed the amount for which the CLAIM could have been settled inclusive of costs, CLAIMS EXPENSES and other expenses incurred up to the date of such objection, subject always to YOUR DEDUCTIBLE and the limits and limitations of this POLICY.

## 4. THE INSURER'S RIGHTS TO RECOVER FROM OTHERS

After THE INSURER has paid DAMAGES under this POLICY, YOUR rights to recover against any other party are automatically transferred to THE INSURER to the extent of the payment it made. YOU shall do everything needed to assist THE INSURER and YOU must not prejudice its rights of recovery.

## 5. ASSIGNMENT OF INSURANCE

YOU cannot assign YOUR rights under this POLICY to anyone else without THE INSURER's consent. If YOU should be adjudged bankrupt, insolvent, incompetent or die during the PERIOD OF INSURANCE, this POLICY will cover YOUR legal representatives in the same manner as it presently covers YOU.

YOU agree that any notice of any kind THE INSURER mails to the NAMED INSURED at the address shown on the Register of THE ASSOCIATION shall constitute notice to YOUR legal representatives.

## 6. THE INSURER'S RIGHT OF AUDIT

During the PERIOD OF INSURANCE, during any extension thereof or for one year thereafter, THE INSURER has the right to inspect YOUR premises and operations and to examine and audit YOUR books, records, accounts, documents and files for each architectural project, for the purposes of any inquiry or investigation related to the calculation of the premiums for YOUR insurance or with respect to any question as to the application or breach of the terms and conditions of the POLICY. THE INSURER assumes no responsibility whatsoever by exercising or declining to exercise such right.

## **7. DISPUTE BETWEEN INSUREDS**

In the event of a dispute between INSUREDS as to the apportionment of liability in any occurrence, such dispute shall be decided by an arbitrator.

## **8. PREMIUM**

YOUR Premium will be shown on the Certificate of Insurance as either a Fixed Premium or a Deposit Premium adjustable upon cancellation or expiry of the PERIOD OF INSURANCE.

If YOUR Premium is a Deposit Premium which is adjustable, then upon cancellation or expiry of the PERIOD OF INSURANCE, YOU must declare to THE INSURER the amount of Gross Fees for professional services billed by YOU as shown in the annual financial statement for YOUR last fiscal year. THE INSURER will then calculate YOUR final premium by multiplying the rate per one hundred dollars (\$100.00) of fees shown on the Certificate of Insurance by the total amount of fees YOU have declared.

If this premium adjustment produces a difference between the final premium and the deposit premium of less than two hundred dollars (\$200.00), YOU and THE INSURER both agree to waive the adjustment and forgive either the additional premium payable by YOU or the return premium payable to YOU as the case may be. Any premium adjustment is subject to THE INSURER retaining at least the minimum retained premium shown on the Certificate of Insurance.

## **9. PLAN CREDIT**

The Board of Directors of THE INSURER shall, in respect of each financial year of THE INSURER, determine and credit to YOU the amount of refund of premiums to which YOU shall be entitled in respect of such financial year (the "Plan Credit"). The Plan Credit so credited to YOU in respect of such financial year shall be applied, in a manner determined by THE INSURER, in the next financial year of THE INSURER in discharge, in whole or in part, of YOUR liability to pay premiums to THE INSURER.

## **10. WAIVER OF EXCLUSIONS AND BREACH OF CONDITIONS**

Whenever insurance under any provision of this POLICY would be excluded, suspended or lost because of Exclusion 1.i. relating to any judgment or final adjudication based upon or arising out of any dishonest, fraudulent, criminal, malicious or deliberately wrongful acts, errors or omissions of any INSURED, THE INSURER agrees that such insurance as would otherwise be afforded under this POLICY shall apply with respect to each and every INSURED who did not personally commit or omit or personally participate in committing or omitting one or more of the acts, errors or omissions described in any such exclusion, provided that if the condition be one with which such INSURED can comply, after receiving knowledge thereof, the INSURED entitled to the benefit of the Waiver of Exclusions and Breach of Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other INSURED to comply therewith.

## **11. POLICY CONFORMITY WITH STATUTES**

Terms of this POLICY which are in conflict with the statutes of the Province wherein this POLICY is issued, are hereby amended to conform to such statutes.

## **12. POLICY INTERPRETATION**

The POLICY shall be interpreted in accordance with the law of Ontario and all questions arising under the POLICY including whether or not a CLAIM made against YOU is insured by the POLICY and whether THE INSURER has a duty to defend YOU in any civil suit or arbitration proceedings arising out of a CLAIM or pay on YOUR behalf any sum which YOU should become liable to pay as DAMAGES arising out of a CLAIM shall be within the exclusive jurisdiction of the Superior Court of Justice in Ontario and shall be determined by that Court.

## **13. THE INSURER'S RIGHT TO BROADEN COVERAGE**

THE INSURER shall have the right at any time during the PERIOD OF INSURANCE to amend this POLICY to broaden any coverage under this POLICY or Endorsement No. 1 to this POLICY.

#### **14. CURRENCY**

All sums mentioned in this POLICY are in Canadian currency.

#### **15. CANCELLATION BY THE INSURER**

THE INSURER may cancel YOUR insurance under this POLICY, for the non-payment of any premium, levy, DEDUCTIBLE or taxes, by giving notice of intention to cancel in the manner provided by the By-laws of THE ASSOCIATION.

The effective date of cancellation shall be the 11th day following the date on which notice of cancellation is given.

#### **16. NOTICE TO EACH OTHER**

The NAMED INSURED shall be considered the agent of all other INSUREDS under this POLICY.

All notices THE INSURER sends to YOU under this POLICY must be sent to the NAMED INSURED at the address shown on the Register of THE ASSOCIATION.

All notices YOU send to THE INSURER under this POLICY must be sent to:

**Pro-Demnity Insurance Company, 111 Moatfield Drive, Toronto, Ontario M3B 3L6**