

# Policy

## Land Surveyors Professional Liability Policy

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**Notice:** This is a Claims made and reported Policy. Subject to its provisions, this Policy applies only to Claims which are both first made against the Insured during the Policy Period and first reported in writing to the Insurer during the Policy Period unless an optional extension period applies.

**Please read the entire Policy carefully**

Various provisions in this policy restrict coverage. Please read the entire policy carefully to determine rights, duties and what is and is not covered. Defined terms, other than headings, appear in bold type. Please refer to Section 2 - Definitions.

In consideration of the payment of the premium and deductible by the **Insured** and in reliance upon the statements in the **Insured's Application**, which is incorporated by reference, the **Insurer** agrees with the **Insured**, subject to all the terms, exclusions and conditions of this policy, as follows:

## **1 Insuring Clauses**

### **1.1 Legal Liability**

1.1.1 The **Insurer** shall pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** shall become legally obligated to pay as damages arising out of the conduct of **Professional Services** because of:

- (a) a **Wrongful Act** committed by the **Insured** or by any **Employee**, or by any other person firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (b) any dishonest or fraudulent act or omission on the part of any **Employee** up to the date of discovery by the **Insured** of any reasonable suspicion of a fraudulent or dishonest act or omission by such **Employee**, alone or in collusion with others;
- (c) libel or slander committed unintentionally by the **Insured** or by any **Employee**;
- (d) any unintentional breach of confidentiality committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

This insurance applies only if:

- (a) a **Claim** is first made against the **Insured** and **Notified** during the **Policy Period** or within the **Extended Reporting Period**; and
- (b) the **Claim** arises out of the conduct of **Professional Services** subsequent to the **Retroactive Date**.

1.1.2 The cover provided by this insuring clause shall apply in respect of legal liability arising out of the conduct of the **Professional Services** while a member of a joint venture or consortium but provided always that:

- (a) the existence of any such activity and relevant fees or turnover have been declared to the **Insurer**,
- (b) the **Insured** has not, unless with the prior consent of the **Insurer**, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
- (c) the **Insurer** remains at all times entitled to exercise its rights of subrogation,
- (d) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium, unless such **Claim** emanates from a completely independent third party, and

- (e) the cover under this policy shall be limited to the liability of the **Insured** for loss or damages arising directly from any **Wrongful Act** by the **Insured**, irrespective of their liability as a member of the joint venture or consortium, but shall in any event be no greater than any contractually agreed share of liability in the joint venture or consortium agreement.

## 1.2 Loss of Documents

The **Insurer** shall pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay for:

- (a) reasonable and necessary costs, incurred with the **Insurer's** prior written consent, of repair, replacement or reconstitution of **Documents**, and
- (b) any settlement, damages, interest and claimant's costs, arising from a **Wrongful Act** involving any **Document** which has been unintentionally destroyed, damaged, lost or mislaid during the **Policy Period** (and which after diligent search cannot be found) provided the **Claim** or circumstance giving rise to the **Claim** has been **Notified** during the **Policy Period**.

This clause is subject to a Limit of Liability of \$100,000 each and every **Claim** and in the aggregate per **Policy Period** or the **Extended Reporting Period**.

## 1.3 Personal Information Protections and Electronic Document Act (S.C., 2000, C. 5)

The **Insurer** shall pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay for defence costs and expenses resulting from any prosecution first brought against the **Insured** and/or any **Employee** and **Notified** during the **Policy Period** which arises out of the conduct of **Professional Services** in respect of any offences or alleged offences under the Personal Information Protections and Electronic Document Act (S.C., 2000, C. 5).

This clause is subject to a Limit of Liability of \$100,000 each and every **Claim** and in the aggregate per **Policy Period** or the **Extended Reporting Period**.

## 1.4 Criminal Proceedings Defence Costs

The **Insurer** shall pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay in respect of any defence costs incurred during the **Policy Period** with the prior written consent of the **Insurer** in the defence of any criminal proceedings against the **Insured** or any of its **Employees** which arises from the alleged breach of any statutory regulation in any legal jurisdiction stated in part 7 of the **Declarations** where such alleged breach arises out of the conduct of **Professional Services**.

Provided that:

- 1.4.1 the criminal proceedings are likely to give rise to a **Claim** against the **Insured** that would be covered under this policy;
- 1.4.2 in the reasonable belief of the **Insurer**, the defence of such criminal proceedings would assist in the defence of any **Claim** against the **Insured** that would be covered under this policy;
- 1.4.3 any subsequent or concurrent **Claim** that would be covered under this policy and that arises out of any criminal proceedings notified under this clause shall be subject to the notification obligations of condition 6.12 of this policy;
- 1.4.4 any appeal against the outcome of any initial criminal proceedings shall be deemed to be "criminal proceedings" for the purpose of this clause.

This clause is subject to a Limit of Liability of \$100,000 each and every **Claim** and in the aggregate per **Policy Period**.

#### 1.5 **Legal Representation Costs**

The **Insurer** shall pay or reimburse all legal expenses (which are not otherwise covered by this policy) for legal representation of the **Insured** at any proceedings before any court or tribunal of enquiry or similar forum having the power to compel attendances of witnesses at which the **Insured** in the opinion of the **Insurer** should be represented by reason of any conduct which is likely to give rise to or has given rise to a **Claim** covered by this policy.

Provided that:

- (a) this insuring clause shall only extend to **Claims Notified** to the **Insurer** during the **Policy Period**;
- (b) the **Insurer** shall not pay any penalty fine or costs awarded against the **Insured**;
- (c) no costs, charges or expenses of any kind other than those incurred with the written consent of the **Insurer** shall be payable;
- (d) the **Insurer** shall be entitled at its discretion to nominate a lawyer to represent the **Insured**.

This clause is subject to a Limit of Liability of \$100,000 each and every **Claim** and in the aggregate per **Policy Period**.

#### 1.6 **Peer Review Reimbursement**

Upon written request made by the **Insured** during the **Policy Period**, at its sole discretion the **Insurer** will reimburse the **Insured** for half the cost of a peer review program, subject to a maximum of \$2,500 per **policy period** for all such programs, to be conducted by a qualified national professional society such as the Canadian Council of Land Surveyors, Royal Architectural Institute of Canada or the Association of Consulting Engineers of Canada.

#### 1.7 **Disciplinary Action and Health and Safety Reimbursement**

The **Insurer** agrees to pay on behalf of the **Insured** the legal expenses incurred by the **Insured** with the **Insurer's** prior written consent in the **Insured's** defence against:

- (a) an official investigation or disciplinary proceeding first commenced and **Notified** during the **Policy Period** against the **Insured** by any professional licensing body with jurisdiction over the **Insured**;
- (b) a proceeding first commenced during the **Policy Period** under an Occupational Health and Safety Act with respect to **Professional Services** provided to others in the **Insured's** capacity as an architect, engineer or land surveyor.

The **Insurer** will not pay any legal expenses incurred by others and assessed against the **Insured** in such proceedings. The **Insurer's** liability for such legal expenses is limited to \$25,000 in the aggregate for the **Policy Period** each for (a) and (b) regardless of the number of proceedings commenced, which limit is separate from the Limit of Liability stated in the **Declarations**.

## 1.8 Duty to Defend

The **Insurer** shall have the right and duty to defend any **Claim** made against the **Insured** alleging a **Wrongful Act** even though the **Claim** is groundless, false or fraudulent and shall pay all reasonable and necessary defence costs and expenses incurred in the defence, investigation or settlement of any **Claim**. However, the **Insurer** shall have no duty to defend the **Insured** against any **Claim** seeking damages to which this policy does not apply.

If a **Claim** is made or a suit is brought elsewhere than within Canada or the United States of America, its territories or possessions, the **Insurer** shall have the right but not the duty to investigate and settle such **Claims** and defend such suits and the **Insurer** shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defence of any such **Claim** or suit. As respects **Claims** and suits which the **Insurer** elects not to investigate, settle or defend, the **Insured**, under supervision of the **Insurer**, shall make or cause to be made such investigation and defence as is reasonably necessary, and subject to prior authorization by the **Insurer**, will effect to the extent possible such settlement or settlements as the **Insurer** and the **Insured** deem prudent. The **Insurer** shall reimburse the **Insured** as soon as possible for the reasonable costs of such investigation, settlement or defence.

The **Insurer's** duty to defend ceases when the **Insurer** has used up the applicable limit of liability in the payment of judgments, settlements, defence costs or expenses and supplementary payments (except for payment of interest accruing after entry of judgment as set out in 1.9(g), which shall be paid in addition to the limit of liability).

## 1.9 Supplementary Payments

Subject to the limits of liability, the **Insurer** shall pay or reimburse, with respect to any **Claim** it investigates, settles or defends:

- (a) all expenses the **Insurer** incurs;
- (b) all premiums on bonds to release attachments, all premiums on appeal bonds required in any such defended **Claim**, but without any obligation to apply for or furnish such bonds;
- (c) all reasonable expenses incurred by the **Insured** at the **Insurer's** request to assist it in the investigation or defence of a **Claim**;
- (d) if the **Insured**, an **Employee** or another person are required by the **Insurer** to attend court as a witness of fact in connection with a **Claim** for which coverage is afforded by this policy, compensation shall be provided at the following rates for each day or part of a day on which attendance is required:
  - (i) Any principal, partner, director or member of the **Insured**: \$200
  - (ii) Any **Employee**: \$100
  - (iii) Any other relevant party: \$100
- (e) Payment of reasonable expenses and compensation for attendance is subject to a limit of liability of \$10,000 each and every **Claim** and in the aggregate per Policy Period;
- (f) all costs taxed against the **Insured** in any **Claim**;
- (g) all interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of liability and before the **Insurer** has paid, offered to pay, or deposited into court the part of the judgment that is within the applicable limit of liability.

## 2 Definitions

- 2.1 "**Application**" means the written information bearing the date stated in part 9 of the **Declarations** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**. This does not include any information contained within or linked to the **Insured's** website unless such information is specifically supplied to the **Insurer** by or on behalf of the **Insured** in written form.
- 2.2 "**Claim**" means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing or any demand by the **Insured** for payment of any reasonable and necessary costs under insuring clauses 1.2(a), 1.3, 1.4, 1.5 and 1.7 arising from **Professional Services**.
- 2.3 "**Computer System**" means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications systems, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers) firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communication system, world-wide web site, **Internet** site, **Intranet** site, **Extranet** site, or web address(es).
- 2.4 "**Declarations**" means the document entitled "**Declarations**" that relates to and forms part of this policy.
- 2.5 "**Document**" means all and any records arising from the **Professional Services**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the **Insured** is legally responsible, while in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Professional Services**.
- 2.6 "**Employee**" means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under an employment contract or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar program, while employed or engaged by and under the control of the **Insured** in connection with the **Professional Services**.
- 2.7 "**Extended Reporting Period**" means sixty (60) days after the effective date of cancellation or, in the event of non-renewal, after the date upon which the **Policy Period** expires. The **Extended Reporting Period** shall terminate in the event that this insurance is replaced with the same or similar insurance issued by **Insurers** or any other professional liability insurer, whether or not the terms, limits or deductibles are identical to those provided under this policy. The **Extended Reporting Period** shall not be available if the policy is cancelled effective as of the policy inception for non-payment of premium.
- 2.8 "**Extranet**" means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 2.9 "**Insured**" means any individual, firm, company or limited liability partnership named in part 1 of the **Declarations**, including any of their predecessors in business; its principals, partners, directors, members or employees (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 2.10 "**Insurer**" means Lloyds Syndicate 2003 per Catlin Canada Inc.

- 2.11 "**Internet**" means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 2.12 "**Intranet**" means one or more inter-connected networks with restricted access to the **Insured** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 2.13 "**Notified**" means that notice is sent in writing by the **Insured** (or the **Insured's** insurance broker) to, and received by, the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance broker).
- 2.14 "**Policy Period**" means the period stated in part 3 of the **Declarations**.
- 2.15 "**Premium**" means the amount stated in part 6 of the **Declarations**.
- 2.16 "**Professional Services**" means only those services provided by the **Insured** acting in the capacity of an architect, engineer, construction manager, project manager, landscape architect, land surveyor, planner or as specifically endorsed hereon.
- 2.17 "**Retroactive Date**" means the date stated in part 8 of the **Declarations**.
- 2.18 "**Terrorist Action**" means an act, including but not limited to the use of force or violence and /or the threat thereof of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes, including the intention to influence any government and /or to put the public or any section of the public in fear.
- 2.19 "**Wrongful Act**" means any negligent act, negligent error, negligent omission or negligent breach of duty.

### **3 Limit of Liability**

- 3.1 The limit of liability of this policy is the maximum amount the **Insurer** shall be called upon to pay under this policy regardless of the number of **Claims**, claimants, losses or number of **Insureds**. Defence costs and expenses are part of and not in addition to the limit of liability. Payment of defence costs, expenses and supplemental payments (except for payment of interest accruing after entry of judgment) reduces the limit of liability.
- 3.2 The limit of liability shall be the amount stated in part 4 of the **Declarations**. In respect of clauses 1.2(a), 1.3, 1.4, 1.5, 1.6, and 1.7 an aggregate sub-limit of liability in the amount stated in part 4 of the **Declarations** shall apply.
- 3.3 All payments made by the **Insurer** in respect of any insuring clause, or any endorsement or otherwise, shall erode the maximum amount of the limit of liability for all **Claims** as stated in part 4 of the **Declarations**.
- 3.4 All **Claims** (including costs sought under insuring clauses 1.2(a), 1.4 and 1.5) whether made against or sought by one or more **Insureds**, wholly or substantially arising from or having any connection with or relation to:
- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause; or
  - (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause; or

- (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated;

shall be deemed to be one **Claim** or single application for costs for the purposes of deciding the applicable limit of liability and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

## **4 Deductible**

- 4.1 The limit of liability applies in excess of the deductible amounts stated in part 5 of the **Declarations**.
- 4.2 The deductible amount stated in part 5 of the **Declarations** applies to each **Claim** and shall be applicable to defence costs and expenses and supplementary payments. Payment of the deductible by the **Insured** is a condition precedent to the **Insured** being covered by the **Insurer**.

## **5 Exclusions**

The **Insurer** shall not have any liability for any **Claim** under this policy or be required to pay any defence costs or expenses for, or directly or indirectly arising out of, or in any way connected with:

### **5.1 Asbestos**

any actual or alleged liability whatsoever directly or indirectly arising out of, resulting from or in consequence of, or in any way involving or connected with asbestos or any materials containing asbestos in whatever form or quantity.

### **5.2 Bankruptcy or Insolvency**

the bankruptcy or insolvency of the **Insured**, however, the bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the **Insurer** of any of its obligations under this policy.

### **5.3 Director and Officer**

any liability, loss or damage directly or indirectly arising out of, resulting from, or in consequence of the **Insured** as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee.

### **5.4 Documents**

any repair, replacement or reconstruction cost of any document directly or indirectly occasioned by any government or public or local authority action or order, or resulting from wear or tear, the action of vermin, gradual deterioration, or magnetic flux or loss of magnetism (except where caused by lightning).

### **5.5 Fines, Penalties or Punitive Damages**

any regulatory or disciplinary investigations or proceedings (apart from the cover provided under insuring clauses 1.4, 1.5 and 1.7) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages, or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages.

## 5.6 Fraud and Dishonesty

any **Claim** or circumstance which may give rise to a **Claim** arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub-contractor of the **Insured** acting alone or in collusion with others:

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission; or
- (b) for the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives; or
- (c) arising after the discovery by any **Insured** of reasonable cause for suspicion of dishonesty or fraud by the dishonest or fraudulent person or persons; or
- (d) an amount equivalent to:
  - (i) any monies owed by the **Insured** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission; and
  - (ii) any monies held by the **Insured** and belonging to such person; and
  - (iii) any monies recovered in accordance with condition 6.8 of this policy.

## 5.7 Infiltration of Precipitation

any liability, loss or damage directly or indirectly arising out of, resulting from, or in consequence of, or in any way involving or connected with the infiltration of precipitation into a building envelope or any component thereof in a building which is in whole or in part, multi-unit residential.

## 5.8 Insurance

the failure of the **Insured** to arrange and/or maintain any form of insurance, reinsurance, suretyship or bond or similar arrangement, either with respect to the **Insured** or any other party.

## 5.9 Insured vs. Insured

any **Claim** initiated by one or more **Insured** against any other **Insured**.

## 5.10 Intellectual Property

any passing-off or infringement of copyright, design right, registered design, trademark, trade name, license, patent, or any other intellectual property rights, whether registered or unregistered.

## 5.11 Jurisdiction and Territorial Limits

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in part 7 of the **Declarations** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from the **Professional Services** undertaken outside the territorial limits shown in part 7 of the **Declarations**.

**5.12 Known Claim or Circumstance**

- (a) any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to the **Insured** prior to the **Policy Period**;
- (b) any **Claim** made prior to or pending at the inception of this **Policy Period**.

**5.13 Land and Vehicles / Real Estate Financing**

- (a) the ownership, possession, rental, lease, maintenance, operation, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile) or that part of any building leased, occupied or rented by the **Insured**; or
- (b) the providing, procuring, or maintaining real estate or financing or the failure to provide, procure or maintain real estate or financing.

**5.14 Market Fluctuation / Estimates of Profit or Return on Capital**

any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorized where such authorization is required under any statutory regulation by an appropriate statutory authority or any estimates of profit, any actual or implied valuation, return on capital, economic return, or estimates giving rise to forecasts of economic return.

**5.15 Nuclear and War**

any liability, loss or damage directly or indirectly arising out of, resulting from, or in consequence of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion), or chemical, biological, radioactive or similar agents, by any party at any time for any reason;
- (d) any ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**5.16 Other Insurance**

any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to cover under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the limit of liability as exceeds the limit of the other policy.

5.17 **Products**

any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured**. This exclusion does not apply to software that is designed or modified for a client of the **Insured** in connection with the **Insured's** provision of **Professional Services** for the client.

5.18 **Project Specific**

any **Claim** arising out of the **Professional Services** the **Insured** provides in connection with any projects for which there is other valid and collectible insurance, whether by project policy or otherwise, and whether such **Claim** is covered on a primary, contributory, excess or other basis.

However, in the event that the limits of liability of such other insurance are less than those provided by this policy, coverage will be provided for the difference in the limits of liability of the policies applicable to the **Claim**. If there is a payment made under another policy arising out of a **Wrongful Act** committed by the **Insured** the **Insurer's** limit of liability under this policy shall be reduced by the amount of such payment.

In the event that a **Claim** is not covered under the terms of any other insurance but would be covered under this policy, coverage will be extended under this policy, subject to the terms and conditions of this policy.

5.19 **Related Companies**

any circumstance concerning, or **Claim** brought by or on behalf of:

- (a) the **Insured**; or
- (b) any parent or subsidiary company of the **Insured**; or
- (c) any person having a financial, executive or controlling interest in the **Insured**, unless the financial interest is:
  - (i) less than 5%; or
  - (ii) the **Claim** made against the **Insured** for coverage or contribution is in respect of a **Claim** made by an independent third party; or
- (d) any entity controlled or managed by the **Insured** that has greater than a 5% financial interest in the **Insured** or where the **Insured** has accepted a financial interest, regardless of the amount, in any entity in exchange for fees incurred.

5.20 **Retroactive Date**

any **Wrongful Act** committed, or any loss suffered, or costs incurred, or any liability arising prior to the **Retroactive Date** specified in part 8 of the **Declarations**.

5.21 **Terrorist Action**

any **Terrorist Action** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorist Action**. If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance which may give rise to a **Claim** is not covered by this policy the burden of proving the contrary shall be upon the **Insured**.

## 5.22 Toxic Mould

any actual or alleged liability whatsoever arising directly or indirectly out of or resulting from or in consequence of or in any way involving:

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, bacteria, moulds, spores or mycotoxins of any kind; or
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, bacteria, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, bacteria, moulds, spores or mycotoxins; or
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, bacteria, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, bacteria, moulds, spores or mycotoxins.

## 5.23 Warranties and Guarantees

any:

contractual liability incurred by the **Insured** in the course of the **Professional Services** arising from:

- (a) the **Insured's** acceptance or guarantee of, in any express contractual term, or fitness for purpose; or
- (b) any express warranties, guarantees given by the **Insured** including as to the period of any project; or
- (c) any express contractual penalty made between the **Insured** and a third party; or
- (d) the **Insured's** acceptance of liability for liquidated damages

except where the liability of the **Insured** in respect of any of the above would have existed to the same extent in the absence of any such contractual term, or the **Insurer** has given its prior express approval to the contractual term out of which the liability arises.

## 5.24 Workers' Compensation/Employers Liability/ Employment Related Practices

any **Claim** based upon or arising out of bodily injury to or sickness or disease of any **Employee** of the **Insured** while engaged in the employment of the **Insured** or for any obligation for which the **Insured** may be held liable under the Workers' Compensation Act or any similar legislation anywhere in the world;

any claim based upon or arising out of injury arising out of any:

- (a) refusal to employ;
- (b) termination of employment;
- (c) coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions;
- (d) consequential bodily injury or personal injury as a result of (a) through (c) above.

This exclusion applies whether the **Insured** may be held liable as an employee or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

#### 5.25 **U.S.A. Company**

any work undertaken by any duly registered or licensed company, corporation, partnership, joint venture or firm that is owned or controlled by the **Insured** and domiciled in the United States of America, its territories or possessions.

## **6 Conditions**

### 6.1 **Action Against the Insurer**

No action may be brought against the **Insurer** concerning this policy unless, as a condition precedent to such action, the **Insured** has fully complied with all the terms of this policy, and the amount of the **Insured's** obligation to pay has been decided either by final judgment against the **Insured** after actual contested trial, or by written agreement among the **Insured**, the **Insurer**, and the claimant. No person or entity has any right under this policy to include the **Insurer** in any action against the **Insured** to determine the **Insured's** liability, nor will the **Insurer** be brought into such action by any **Insured** or any **Insured's** representative.

### 6.2 **Assignment**

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

### 6.3 **Cancellation**

6.3.1 This policy may be cancelled at any time by or on behalf of the **Insurer** by giving written notice by mail to the **Insured** at the address specified in part 2 of the **Declarations**, not less than thirty (30) days before the effective date of cancellation; or not less than ten (10) days in the event of cancellation for non-payment of the **Premium**. The cancellation shall be effective and the **Premium** shall be adjusted on a pro rata basis provided no **Claim** has been made and no circumstance has been **Notified** prior to such cancellation. Otherwise the **Premium** shall not be returnable and shall be deemed fully earned at cancellation.

6.3.2 This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver, or administrator over any of the **Insured's** assets;
- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of compensation with its creditors by the **Insured**;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled or any territory within the territorial limits as stated in part 7(b) of the **Declarations**. For the purpose of this condition alone the **Insured** shall mean only the firm or company named in part 1 of the **Declarations**.

6.3.3 This policy may be cancelled at any time by the **Insured** by giving written notice to the **Insurer** indicating when cancellation shall be effective. Provided no **Claim** has been made and no circumstance has been **Notified** prior to such cancellation, the **Insurer** will retain the customary short rate proportion (unexpired portion of **Premium** less handling charges) of the **Premium**. Otherwise the **Premium** shall be deemed fully earned at cancellation.

#### 6.4 **Changes**

None of the provisions of this policy will be waived, changed, or modified except by written endorsement issued by the **Insurer** to form part of this policy. Notice to any broker of the **Insurer** or knowledge possessed by any such broker or any other person will not act as a waiver or change in any part of this policy and will not prevent the **Insurer** from asserting any rights under the provisions of this policy.

#### 6.5 **Conduct of Claim**

The **Insurer** will not settle any **Claim** without the **Insured's** written consent. If however, the **Insured** withholds consent to a settlement recommended by the **Insurer** then the **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where the **Insured** has requested to be covered under this policy. If any **Insured** withholds consent to such settlement, the **Insurer's** liability for any **Claim** shall not exceed the amount for which the **Insurer** could have settled such **Claim**, plus costs and expenses incurred at the date such settlement was proposed in writing by the **Insurer**.

#### 6.6 **Discharge of Policy Liability**

The **Insurer** may in its absolute discretion, at any time, after deduction of such sums as they may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which the **Insured** is liable in respect of any **Claim** or circumstance, tender to the **Insured**:

- (a) the remaining amount of the limit of liability available under this policy; or
- (b) such lesser amount for which the **Insurer** believes the **Claim** or circumstance can be settled (to include claimants' costs and interest);

and thereafter the **Insurer** will cease to have any further liability under this policy in respect of such **Claim** or circumstance.

#### 6.7 **Dishonest and Fraudulent Policy Claims**

If the **Insured** shall make any **Claim** or report any circumstance knowing it to be in whole or in part false or fraudulent, then the policy shall immediately become void from inception and all policy rights shall be forfeited and any payments already made under the policy shall be immediately repayable. Alternatively, and at its sole option, the **Insurer** may choose to reinstate the policy but refuse cover for the false or fraudulent **Claim** or circumstance.

#### 6.8 **Dishonest or Fraudulent Claim Recovery**

Where a **Claim** or circumstance against the **Insured** involves the dishonest or fraudulent act or omission of any **Employee** of the **Insured**:

- (a) the **Insured** shall at the request and expense of the **Insurer** take all reasonable steps to obtain reimbursement from such person;

- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall not be repaid;
- (c) nothing in this policy shall preclude the **Insurer** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (d) no payment shall be made by the **Insurer** under this policy until after the final ascertainment of the amount of any recovery from the dishonest or fraudulent person or persons or their estates or legal representatives.

#### 6.9 **Duty to Cooperate**

As a condition precedent to the right to cover under this policy and without limiting the requirements of any insuring agreement in this policy, the **Insured** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where the **Insured** has requested to be covered under this policy and provide such cooperation and assistance as the **Insurer** and its representatives, legal advisers or agents may reasonably require. It is a condition precedent to the right to be **Insured** under this policy that the **Insured** and any **Employee** (or any person, firm or company acting for or on behalf of the **Insured**) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

#### 6.10 **Examination and Audit**

If the **Insurer** requests, the **Insured** agrees to allow the **Insurer** to examine and audit the **Insured's** financial books and records. The **Insurer** may do this at any time during the **Policy Period** or up to three years after the end of the **Policy Period**.

#### 6.11 **No Admission of Liability**

As a condition precedent to the right to be covered under this policy the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the **Insurer**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where the **Insured** has requested to be covered under this policy.

#### 6.12 **Notification**

As a condition precedent to the right to cover under this policy the **Insurer** must be **Notified** in writing to the Notification Address set out below as soon as practicable during the **Policy Period**:

- (a) of any **Claim**;
- (b) regardless of any previous notice, of receipt of any **Claim** Form, Particulars of **Claim**, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) of any circumstance of which the **Insured** may or ought to become aware which may give rise to a **Claim**;
- (d) of any reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, **Employee** or consultant of the **Insured** which might give rise to a **Claim** under this policy;

- (e) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy.

In the event that the **Insurer** is **Notified** during the **Policy Period** of any circumstance which in the **Insurer's** reasonable opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so **Notified** shall be deemed to have been made during the **Policy Period**.

Notification Address: Claims Department  
Catlin Canada Inc  
36 Toronto Street, Suite 1210  
Toronto, Ontario M5C 2C5

#### 6.13 **Personal Information Protection and Electronic Document Act (S.C., 2000, C. 5)**

It is agreed by the **Insured** on behalf of itself, its partners, principals, directors, members and **Employees** that any information provided to the **Insurer** regarding the **Insured** will be processed by the **Insurer**, in compliance with the provisions of the Personal Information Protection and Electronic Document Act (S.C., 2000, C. 5) for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

#### 6.14 **Premium**

All **Premium** charges under this policy will be computed according to the rules, rates, and rating plans which apply at the Effective Date of the **Policy Period** stated in part 3 of the **Declarations**.

#### 6.15 **Premium Payment**

The **Insured** undertakes that **Premium** will be paid in full to the **Insurer** within sixty (60) days of inception of this policy (or, in respect of instalment **Premiums**, when due).

#### 6.16 **Subrogation**

Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which cover is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which the **Insurer** would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the **Insurer**, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses or deductible.

## **7 Interpretation**

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;

- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

## **8 Governing Law and Disputes**

- 8.1 This policy shall be governed by and construed in accordance with the law and jurisdiction and any applicable federal law and requisition of the Canadian province or territory of the Insured's domicile.
- 8.2 All disputes concerning the interpretation of this policy are understood and agreed by both the **Insured** and the **Insurer** to be subject to the law of the province or territory of the **Insured's** mailing address as stated in the **Declarations**. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Canada and to comply with all requirements necessary to give such court jurisdiction.
- 8.3 In any action to enforce the obligations of the **Insurer** liable hereunder they can be designated or named as "the Lloyd's General Representative in his quality as Attorney In Fact in Canada, for Lloyd's Underwriters, Members of Lloyd's, London, England" and such designation shall be binding on the **Insurer** liable hereunder as if they had each been individually named as Defendant. Service of such proceedings may validly made upon the Lloyd's General Representative at the Lloyd's office address in Canada.

## **9 Currency**

Unless otherwise endorsed hereon, all amounts referenced in this policy are in Canadian dollars.

## **10 Policyholder Complaints**

Catlin Canada Inc is dedicated to providing a high quality service and wants to ensure that it maintains this at all times. If the **Insured** feels that Catlin has not offered a first class service or if the **Insured** has any questions or concerns about the policy or the handling of a **Claim** the **Insured** should, in the first instance, contact its insurance broker through whom this insurance was placed.

If the **Insured** is unable to resolve the situation and wishes to make a complaint, the **Insured** can do so at any time by referring the matter to:

Complaints Department  
Catlin Canada Inc  
36 Toronto Street, Suite 1210  
Toronto, Ontario M5C 2C5  
Tel No: +1 416 644 3312