

Policy

Engineers Professional Liability Insurance for Members of the Ordre des ingénieurs du Québec

Master Policy *L60300E*

Endorsed by: Ordre des ingénieurs du Québec

The Agreements Between You and the Insurer

This POLICY is the contract between YOU and the INSURER and was issued in consideration of the premium YOU have agreed to pay. This POLICY was issued in reliance upon the representations which YOU have made and upon the insurance application which forms part of this contract.

Part I – Definitions

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

1. Claim

- (a) A written or an oral demand for money or services; or
- (b) a written or an oral allegation of breach in the rendering or failure to render professional services;

received by YOU and resulting from a single error, omission or negligent act.

All CLAIMS, or circumstances of an error, omission or negligent act which might give rise to a CLAIM, which arise from a single error, omission or negligent act shall be considered a single CLAIM regardless of the number of INSURED(S) or the number of persons or organizations making a CLAIM.

2. Claim Expense(s)

All expenses the INSURER incurs to investigate, defend, settle, mediate, 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, and also court and arbitration costs and costs for the attendance of witnesses other than YOU.

CLAIM EXPENSE(S) shall also include certain costs as reimbursement for time and reasonable expenses incurred by YOU for YOUR attendance at discoveries, mediation and trial, in the defence of a CLAIM reported under YOUR POLICY.

Such costs as reimbursement for time shall be for actual hours in YOUR attendance at discovery, mediation and trial and shall be limited to fifty per cent (50%) of YOUR customary billing rate per hour or \$100 per hour, whichever is less.

Such costs as reimbursement for expenses shall be limited to those amounts reasonably incurred by YOU for YOUR travel, accommodation and meals in YOUR attendance at discovery, mediation and trial.

Under no circumstances, however, shall the total amount available as reimbursement for time and expenses incurred by YOU exceed \$25,000 for all CLAIMS reported per POLICY PERIOD.

3. Damages

Compensatory damages payable to claimants, but does not include interest, fines, penalties (whether contractual or other), punitive or exemplary damages, or fees which have either not been paid to YOU or which YOU are asked to return.

4. Deductible

The first portion of the payment under Part II for DAMAGES, payable by YOU for each CLAIM and which amount YOU have agreed to pay in consideration for a reduced premium for this POLICY. It is agreed that the INSURER and YOU shall contribute equally towards DAMAGES until YOU have paid the amount indicated in Item 5 of the Declarations.

In the event of a CLAIM, the applicable DEDUCTIBLE shall be that in effect at the time the CLAIM is made against YOU.

The INSURER agrees that YOU shall not be required to pay more than twice the amount indicated as the

DEDUCTIBLE in the Declarations of this POLICY for CLAIMS concerning which the INSURER has paid DAMAGES under this POLICY.

5. Insurance Manager

The INSURANCE MANAGER under this policy, who is duly authorized to issue this policy as well as to issue and receive notices under this policy for and on behalf of the INSURER, and whose name and address appears in the Declarations. The INSURANCE MANAGER is not a party to this contract of insurance.

6. Insured(s)

- (a) The NAMED INSURED; and
- (b) any present or former partner, officer, director, shareholder or employee of the NAMED INSURED while acting within the scope of his duties for the NAMED INSURED; and
- (c) while acting within the scope of their duties for the NAMED INSURED:
 - (i) any individuals or personal corporations retained by the NAMED INSURED under personal services contracts or personal services agreements;
 - (ii) employees of others on loan to and while working for and under the guidance of the NAMED INSURED;
 - (iii) any employees, volunteers or trainees who are not paid by the NAMED INSURED; and
- (d) the heirs, legal representatives or right-holders of an INSURED, but only while acting as such and in relation to acts that the INSURED allegedly committed in the rendering of professional services.

7. Insurer

YOUR insurance companies as subscribed and as indicated in the Declarations.

8. Named Insured

The person(s) or organization(s) specifically designated in the Declarations of the insurance certificate issued to the NAMED INSURED.

9. Policy

The POLICY shall be comprised of the insurance certificate issued to the NAMED INSURED, the application(s) leading to the issuance of that certificate, this POLICY wording, the Declarations issued to the NAMED INSURED and any endorsements issued to the NAMED INSURED by the INSURER.

10. Policy Period

The period from the inception date of the POLICY to the expiration date, both as indicated in the

Declarations, or such lesser period as a result of the cancellation of the POLICY.

11. You, Your

The NAMED INSURED indicated in the Declarations of this POLICY and all other persons or organizations defined as "INSURED" above.

Part II – Your Insurance Coverage

1. The Insurer's Obligations

The INSURER is formally undertaking to fulfill the following obligations for YOUR benefit. YOUR DEDUCTIBLE shall apply to each of the INSURER'S following obligations. However, the DEDUCTIBLE shall not apply to the INSURER'S obligations listed under Items (b) and (c) below.

(a) Damages

The INSURER will pay on YOUR behalf all sums which YOU become legally liable to pay as DAMAGES arising out of a CLAIM providing YOUR legal liability is the result of an error, omission or negligent act in the performance of professional services for others.

The maximum amount the INSURER will pay as DAMAGES for each CLAIM, no matter how many INSUREDS there are under this POLICY or how many persons or organizations make a CLAIM, and the aggregate limit of liability for all CLAIMS made against YOU during the POLICY PERIOD, are as indicated in the Declarations of this POLICY.

(b) Defence

The INSURER will defend YOU in a civil suit or arbitration proceedings against a CLAIM for which coverage is provided under this POLICY even if the allegations against YOU are groundless, false or fraudulent. The INSURER will conduct such investigation and negotiations, including mediation, as it deems expedient. The INSURER'S obligations to defend YOU cease as soon as its limits of liability have been exhausted.

In all other circumstances, the INSURER shall have no obligation to defend YOU.

(c) Supplementary Payments

Until the INSURER'S limits of liability are exhausted, the INSURER will pay, for each CLAIM, the following:

- (i) CLAIM EXPENSES;
- (ii) all premiums on appeal bonds and bonds to release attachments. The INSURER has no obligation to furnish such bonds but only to pay the premiums thereon;
- (iii) all costs taxed against YOU, all court and arbitration costs owed by YOU and all

interest upon that part of a judgment which falls within the remaining limits of liability at the time;

(iv) YOUR expenses incurred for emergency medical and surgical relief to others and which YOU deemed necessary following an accident which YOU honestly believed to have been the result of an error, omission or negligent act on YOUR part;

(v) YOUR legal expenses incurred in YOUR defence of a proceeding under an *Occupational Health and Safety Act* with respect to professional services provided to others in YOUR capacity as an engineer. The INSURER will not pay any and all legal expenses incurred by others and assessed against YOU in such a proceeding. The INSURER'S limit of liability for any such legal expenses is \$25,000 per POLICY PERIOD;

(vi) in the event that any of YOUR documents have been destroyed, damaged, lost or mislaid, all expenses incurred by YOU in replacing and/or restoring such documents. For the purposes of this coverage, the term "documents" is defined as those used in the rendering of services usual or customary for professional engineers. The INSURER'S limit of liability for such expenses is \$25,000 per POLICY PERIOD.

(d) Breach of Confidentiality

The INSURER will defend YOU, make supplementary payments with respect to and pay on YOUR behalf all sums which YOU become legally obligated to pay as DAMAGES as a result of a CLAIM made against YOU for an inadvertent breach of confidentiality by YOU provided such liability arises out of YOUR performance of professional services for others and provided further that YOU are not otherwise insured for such liability under any other professional liability or commercial general liability insurance policy. This coverage shall be subject to the lesser of the limit of liability indicated in the Declarations or \$1,000,000 per CLAIM and \$2,000,000 in the aggregate per POLICY PERIOD. This limit of liability shall not serve to increase the INSURER'S limits of liability.

(e) Libel and Slander

The INSURER will defend YOU, make supplementary payments with respect to and pay on YOUR behalf all sums which YOU become legally obligated to pay as DAMAGES as a result of a CLAIM made against YOU for an unintentional libel or slander uttered or published by YOU provided such liability arises out of YOUR performance of professional services for others and provided further that YOU are not otherwise insured for such liability under any other professional liability or commercial general liability insurance policy. It is a condition

precedent to YOUR entitlement to any or any continuing coverage under this POLICY that, in the event of a CLAIM, YOU shall, upon the reasonable request of the INSURER, issue, publish or broadcast, in a manner and at such time or times as the INSURER may determine, an apology and expression of regret in a form, approved by the INSURER. This coverage shall be subject to the lesser of the limit of liability indicated in the Declarations or \$1,000,000 per CLAIM and \$2,000,000 in the aggregate per POLICY PERIOD. This limit of liability shall not serve to increase the INSURER'S limits of liability.

2. Your Policy Territory

This POLICY applies to CLAIMS arising out of actual or alleged errors, omissions or negligent acts which occur anywhere in the world.

3. Your Policy Period

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

Firstly, YOU must have reported the CLAIM to the INSURER during the POLICY PERIOD or the Extended Reporting Period, if applicable.

Secondly, any director, officer, principal, partner or risk manager of the NAMED INSURED or any person occupying a similar position with the NAMED INSURED must have had no knowledge, prior to the POLICY PERIOD, of such CLAIM or of the circumstances, dispute or controversy out of which it arises.

Thirdly, there must not be any other valid and collectible insurance available to YOU concerning such CLAIM.

The Extended Reporting Period, if applicable, shall not serve to extend the POLICY PERIOD and shall in no way increase the applicable limit of liability of YOUR POLICY.

Also, for YOUR protection, if during the POLICY PERIOD YOU report to the INSURER circumstances of an error, omission or negligent act which any reasonable person or organization 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 POLICY PERIOD.

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.

4. The Insurer's Limits of Liability

The maximum amounts the INSURER will pay as DAMAGES per CLAIM and in the aggregate for the entire POLICY PERIOD are as indicated in the Declarations of this POLICY no matter how many

INSURED'S there are under this POLICY or how many persons or organizations make a CLAIM.

The INSURER'S obligations to defend YOU and to make supplementary payments are in addition to its limits of liability stipulated in YOUR POLICY on condition that the civil suit or arbitration proceedings are first brought in Canada and that the civil suit or arbitration be subject to the laws of Canada or one of its provincial jurisdictions. In all other circumstances, the INSURER'S obligations to make supplementary payments are within the limits of liability.

In the event of a CLAIM, the applicable limit of liability shall be that in effect at the time the CLAIM is made against the INSURED.

Part III – The Exclusions to Your Insurance Coverage

1. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:
 - (a) YOUR insolvency or bankruptcy or YOUR undergoing receivership or liquidation;
 - (b) YOUR advising or requiring, or failure to advise or require, any form of insurance, suretyship or bond;
 - (c) YOUR failure to complete drawings, plans, specifications, reports or schedules on time or YOUR failure to act upon shop drawings on time, unless such failure is the result of an error or inaccuracy in the preparation of these documents;
 - (d) the liability of others YOU have assumed under contract or agreement except that the INSURER will cover YOU for YOUR legal liability and that of YOUR employees, agents, servants and subconsultants to the extent that such liability would have existed in the absence of the contract or agreement;
 - (e) express warranties, guarantees and penalty clauses YOU have given for the benefit of others unless YOUR legal liability would have already existed at law in the absence thereof;
 - (f) the performance of services not usual or customary for professional engineers;
 - (g) estimates of profit, return on capital, economic return or other estimates giving rise to forecasts of economic return;
 - (h) YOUR participation in a joint venture, partnership, association or any other entity which has not been endorsed on this POLICY as an additional NAMED INSURED unless this POLICY was specifically issued for the purpose of insuring a joint venture. This exclusion shall not apply with respect to YOUR participation in a joint venture, partnership or association established with another firm of architects, landscape architects, land surveyors, interior designers, environmental consultants or engineers for the performance of

professional services covered under the terms of this POLICY.

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:
 - (i) in which YOU either directly or indirectly have an interest; or
 - (ii) that directly or indirectly has an interest in YOU;
 - (b) by any employee, director, partner or officer of any such business enterprise.

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 twenty-five per cent (25%).

3. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:
 - (a) faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the project or the construction documents unless such CLAIM arises solely out of YOUR provision of field supervision services in YOUR capacity as an engineer;
 - (b) the design or manufacture of any goods or products sold or supplied by YOU or designed, manufactured, sold or supplied by others under licence from YOU.
4. The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:
 - (a) liability imposed by or arising under any nuclear liability act or any law governing nuclear energy, or the amendments thereof;
 - (b) 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 named or 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;
 - (c) bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
 - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an INSURED;

- (ii) 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
- (iii) 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 useable for any scientific, medical, agricultural, commercial or industrial purpose) sold, handled, used or distributed by an INSURED.

In the context of this exclusion:

- (a) The term “nuclear energy hazard” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
- (b) The term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and other compounds, radioactive isotopes of other elements and any other substances that the Canadian Nuclear Safety Commission 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.
- (c) The term “nuclear facility” means:
 - (i) 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;
 - (ii) any equipment or device designed or used for:
 - (a) separating the isotopes of plutonium, thorium and uranium, or any one or more of them;
 - (b) processing or utilizing spent fuel;
 - (c) handling, processing or packaging waste;
 - (iii) any equipment or device used for the processing, fabricating 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;
 - (iv) 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.

- (d) 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.
- (e) With respect to property, loss of use of such property shall be deemed to be property damage.

Part IV – General Conditions

1. 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 provide written notice to the INSURANCE MANAGER at the address indicated in the Declarations, 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 INSURANCE MANAGER informed.

Notwithstanding the foregoing, any late notice or absence of notice required by this condition shall result in the forfeiture of YOUR rights if the INSURER sustains injury therefrom.

(ii) Co-operation

YOU must co-operate with the INSURANCE MANAGER 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 INSURANCE MANAGER deems necessary. YOU must give this co-operation at YOUR own cost.

(iii) Deductible

YOU must pay YOUR DEDUCTIBLE immediately upon request when an indemnity is paid.

(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. Any such admission, obligation or commitment will vitiate this POLICY as far as that particular CLAIM is concerned. The only exception to this is the cost of emergency medical or surgical relief to others YOU have incurred in good faith.

(ii) **Recoveries**

YOU must not do anything which will imperil the INSURER'S rights of recovery against any other party.

2. **The Insurance Manager's Duties in the Event of a Claim**

The INSURANCE MANAGER agrees to provide written notice to YOU and to the Secrétaire de l'Ordre des ingénieurs du Québec, if coverage is denied under the policy.

3. **Your Consent to Settle**

The INSURER will not settle any CLAIMS without the consent of the NAMED INSURED.

If the NAMED INSURED refuses to consent to the settlement of a CLAIM as recommended by the INSURER, then all the INSURER'S obligations with respect to that CLAIM shall cease. If later YOU settle the CLAIM, or if the matter is resolved through arbitration or litigation, then the INSURER'S liability for that CLAIM shall not exceed the amount for which the CLAIM could have been settled including supplementary payments incurred up to the date of refusal of consent.

4. **Other Insurance**

The INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of the professional services YOU provide in connection with 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 any other basis.

However, in the event that the limits of liability of such other insurance are less than those provided by YOUR POLICY, coverage will be provided under YOUR POLICY for the difference in the limits of liability of the policies applicable to the CLAIM. If there is a payment of DAMAGES made under another policy arising out of YOUR error, omission or negligent act, then the INSURER'S limits of liability under this POLICY shall be reduced by the amount of such payment.

Also, in the event that a CLAIM is not covered under the terms of other insurance but would be covered under YOUR POLICY, coverage will be extended under YOUR POLICY, subject to the terms and conditions of YOUR POLICY.

5. **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.

6. **Assignment of Policy**

YOU may not 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 POLICY PERIOD, 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 indicated in the Declarations shall constitute notice to YOUR legal representatives.

7. **More Than One Insured**

If there is more than one NAMED INSURED under this POLICY, then, as far as CLAIMS advanced by others are concerned, this POLICY must be read as if a separate POLICY had been issued to each. This will not, however, increase the INSURER'S limits of liability.

8. **The Insurer's Right of Audit**

During the POLICY PERIOD, during any extension thereof and for one year thereafter, the INSURER has the right to inspect YOUR premises and operations and to examine and audit YOUR books, but strictly as they relate to this insurance or to the calculation of the premium for this POLICY. The INSURER assumes no responsibility whatsoever by exercising or declining to exercise such right.

9. **Premium**

YOUR premium for this POLICY will be indicated in the Declarations as a fixed premium.

10. **Cancellation by You**

YOU may cancel this POLICY at any time by giving the INSURER notice in writing stating the date cancellation is to take effect.

11. **Cancellation and Non-renewal**

The INSURER may cancel YOUR POLICY only if YOU have not paid the entire premium. The INSURER shall then provide YOU with at least ninety (90) days written notice to this effect stating the date on which the cancellation is to take effect.

If the INSURER cancels or decides to not renew YOUR POLICY, the INSURER agrees to provide at least ninety (90) days written notice to this effect to:

Ordre des ingénieurs du Québec
Attention: Secrétaire de l'Ordre
Gare Windsor, Suite 350
1100 des Canadiens-de-Montréal Avenue
Montreal, Quebec H3B 2S2

If, following cancellation, there is a return premium payable to YOU, the INSURER'S cheque will be sent to YOU as soon as possible, but the cancellation is not contingent upon this.

12. Premium Adjustment for Cancellation

The amount of earned premium calculated upon cancellation by the INSURER shall be computed on a pro rata basis in accordance with the number of days during which the POLICY was in force.

In the event of cancellation by YOU, the amount of earned premium shall be calculated on a short rate basis in accordance with the number of days during which the POLICY was in force.

13. 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 indicated in the Declarations.

All notices YOU send to the INSURER under this POLICY must be sent to the INSURANCE MANAGER at the address indicated in the Declarations.

14. 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.

Part V – Coverage Extension Extended Reporting Period

In the event this POLICY is non-renewed or cancelled for any reason, YOU are entitled to an Extended Reporting Period of five (5) years. This extension of coverage is subject to all the terms and conditions of this POLICY and shall apply only to CLAIMS first made against the INSURED and reported, in writing, to the INSURER, during the five (5) years immediately following the date of non-renewal or cancellation of this POLICY, arising from an error, omission or negligent act committed or alleged to have been committed before this date.

The fact that the period during which CLAIMS may be made against YOU for the first time and reported to the INSURER in writing under this POLICY is extended in accordance with the Extended Reporting Period shall in no way increase the limit of liability of this POLICY in force at the time of the non-renewal or cancellation of this POLICY.