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Policy

Land Surveyors

Professional Liability Insurance

Professional Liability Consortium

Master Policy L92000

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:

YOU, YOUR

The NAMED INSURED shown on the Declarations page of this POLICY and all other persons or organizations defined as 'INSURED' below.

THE INSURER

YOUR insurance companies as subscribed.

NAMED INSURED

The person(s) or organization(s) specifically designated on the Declarations page of this insurance certificate.

POLICY

The insurance certificate issued to the NAMED INSURED which certificate shall be considered a separate and individual POLICY incorporating the terms and conditions of the Master Policy L92000 the application for insurance, the Declarations page and any endorsement issued by THE INSURER.

INSURED(S)

1. The NAMED INSURED; and
2. any present or former partner, executive officer, director, shareholder or employee of the NAMED INSURED while acting within the scope of his or her duties for the NAMED INSURED.

POLICY PERIOD

The period from the Inception Date of this POLICY to the Expiration Date both as shown on the Declarations page or such lesser period as a result of the cancellation of this POLICY.

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;

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 INSUREDS or the number of persons or organizations making a CLAIM.

CLAIM EXPENSE(S)

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, and also court and arbitration costs and costs for the attendance of witnesses other than YOU.

Where the defence is the obligation of the INSURED, CLAIM EXPENSE(S) shall be all the expenses that the INSURED incurs that would otherwise have been incurred by THE INSURER as defined above.

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.

DEDUCTIBLE

Subject to Part II, the first portion of the payment under Part II for DAMAGES, defence or supplementary payments payable by YOU for each CLAIM and which amount YOU have agreed to pay in consideration for a reduced premium for this POLICY.

THE INSURER agrees that YOU shall not be required to pay more than twice the amount shown as the DEDUCTIBLE on the Declarations page of this POLICY for CLAIMS concerning which THE INSURER has paid DAMAGES under this POLICY.

PART II – YOUR INSURANCE COVERAGE

THE INSURER'S OBLIGATIONS

THE INSURER is formally undertaking to fulfill the following obligations for YOUR benefit. YOUR POLICY DEDUCTIBLE shall apply to each of THE INSURER'S following obligations, except where civil suit or arbitration proceedings are brought in Canada, whereupon the DEDUCTIBLE shall not apply to THE INSURER'S obligations listed under Items 2 and 3 below.

1. 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 YOUR capacity as a Land Surveyor.

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 amount of liability for all CLAIMS made against YOU during the POLICY PERIOD, are as shown on the Declarations page of this POLICY.

2. DEFENCE

On condition that civil suit or arbitration proceedings are brought in Canada, THE INSURER will defend YOU in such suit or proceedings against a CLAIM for which coverage is provided under the POLICY even if the allegations against YOU are groundless, false or fraudulent. THE INSURER will conduct such investigation and negotiations 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.

3. SUPPLEMENTARY PAYMENTS

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

- (a) CLAIM EXPENSES;
- (b) 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;
- (c) all costs taxed against YOU, all court and arbitration costs owed by YOU and all interest upon that part of a judgement which falls within the remaining limits of liability at the time;
- (d) 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.

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 provided CLAIMS are made and proceedings are instituted in Canada, or in the United States of America, its territories and possessions.

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.

Secondly, YOU 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.

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.

THE INSURER'S LIMITS OF LIABILITY

The maximum amounts THE INSURER will pay as DAMAGES per CLAIM and for the entire POLICY PERIOD are as shown on the Declarations page of this POLICY no matter how many INSUREDS there are under this POLICY or how many persons or organizations make a CLAIM.

THE INSURER'S obligations to defend and to make supplementary payments are in addition to its limits of liability as spelled out in YOUR POLICY on condition that civil suit or arbitration proceedings are 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 INSURER'S limits of liability.

PART III – THE EXCLUSIONS TO YOUR INSURANCE COVERAGE

EXCLUSIONS

1. THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of:
 - (a) the infringement of any trademark or patent or copyright;
 - (b) YOUR insolvency or bankruptcy or YOUR undergoing receivership or liquidation;
 - (c) YOUR advising or requiring, or failure to advise or require, any form of insurance, suretyship or bond;
 - (d) 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;

- (e) the liability of others YOU have assumed under contract or agreement except that THE INSURER will cover YOU for YOUR employees, agents, servants and subconsultants;
 - (f) express warranties, guarantees and penalty clauses YOU have given for the benefit of others unless YOUR liability would have already existed at law in the absence thereof;
 - (g) the performance of services not usual or customary for Land Surveyors;
 - (h) estimates of profit, return on capital, economic return or other estimates giving rise to forecasts of economic return;
 - (i) 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 this purpose;
 - (j) the nuclear energy hazards as defined in the Nuclear Energy Exclusion Endorsement forming part of this POLICY; or
 - (k) the pollution hazards as defined in the Pollution Exclusion Endorsement forming part 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.
3. THE INSURER will not cover YOU, pay DAMAGES, provide YOU with a defence or make supplementary payments for CLAIMS arising out of services YOU may provide for projects where actual construction, installation, erection, fabrication, assembly or manufacture thereof is also performed by YOU or on YOUR behalf, or by or on behalf of an associated business enterprise in which YOU either directly or indirectly have an interest, or that directly or indirectly has an interest in YOU.

PART IV – GENERAL CONDITIONS

YOUR DUTIES IN THE EVENT OF A CLAIM

WHAT YOU MUST DO

1. **NOTICE:** As soon as YOU become aware of a CLAIM, YOU must, as soon as practicable, provide written notice to ENCON Group Inc. 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 INSURER informed.
2. **CO-OPERATION:** YOU must co-operate 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 co-operation at YOUR own cost.

3. **DEDUCTIBLE:** YOU must pay YOUR DEDUCTIBLE promptly upon request.
4. **DEFENCE:** Where civil suit or arbitration proceedings are brought outside Canada, YOU shall use diligence and prudence in the day-to-day handling and resolution of CLAIMS, actively defend and pursue potential settlements, settle those CLAIMS which ought reasonably to be settled, and attempt to obtain full and complete releases.

WHAT YOU MUST NOT DO

1. **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.
2. **RECOVERIES:** YOU must not do anything which will imperil THE INSURER'S rights of recovery against any other party.

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.

OTHER INSURANCE

If YOU are carrying separate single project coverage with THE INSURER, then this POLICY shall not be called upon and no coverage shall be afforded. This insurance shall be in excess of all other valid and collectible insurance available to YOU and this insurance shall not be called upon in contribution.

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.

ASSIGNMENT OF POLICY

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 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 shown on the Declarations page shall constitute notice to YOUR legal representatives.

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.

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.

PREMIUM

YOUR premium for this POLICY will be shown on the Declarations page as either a Fixed Premium or a Deposit Premium adjustable upon cancellation or expiry of this POLICY.

If YOUR POLICY Premium is an Adjustable Deposit Premium, then upon cancellation or expiry of this POLICY, YOU must declare to THE INSURER the amount of gross fees for professional services billed by YOU during the POLICY PERIOD. THE INSURER will then calculate YOUR final premium by multiplying the rate per one hundred dollars (\$100.00) of fees shown on the Declarations page 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 Declarations page.

Gross fees shall mean the gross amount billed by YOU to clients, including that portion of fees which YOU pass on to subconsultants but excluding charges for extraordinary disbursements. Gross fees shall also include the market value of non-monetary compensation received by YOU in lieu of fees for professional services rendered.

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. YOU must return the POLICY to THE INSURER if possible.

CANCELLATION BY THE INSURER

If THE INSURER decides to cancel this POLICY, it must notify the NAMED INSURED, in writing, stating the date cancellation is to take effect.

If THE INSURER cancels because YOU have not paid the entire premium, the date of cancellation shall be at least fifteen (15) days after the date on which the notice was mailed.

If THE INSURER cancels for any other reason, the date of cancellation shall be at least forty-five (45) days after the date on which the notice was mailed.

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.

PREMIUM ADJUSTMENT FOR CANCELLATION

If the premium for this POLICY is a Fixed Premium, 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.

If the premium is an Adjustable Deposit Premium, the amount of earned premium shall be calculated by multiplying the rate per one hundred dollars (\$100.00) of fees shown on the Declarations page by the amount of gross fees for professional services billed by YOU while the POLICY was in force. In no event shall the earned premium be less than seventy-five per cent (75%) of the Adjustable Deposit Premium shown on the Declarations page of YOUR POLICY.

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 Declarations page.

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

ENCON Group Inc.
500-1400 Blair Place
Ottawa, Ontario K1J 9B8

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.

**SPECIAL ENDORSEMENT
NUCLEAR ENERGY EXCLUSION
Endorsement No. 1**

YOUR POLICY does not apply:

1. to liability imposed by or arising under the Nuclear Liability Act; nor
2. to 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
3. to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
 - (a) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an INSURED;
 - (b) 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
 - (c) 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) used, distributed, handled or sold by an INSURED.

As used in this POLICY:

1. The term “nuclear energy hazard” 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 other 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, 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;

(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.
5. With respect to property, loss of use of such property shall be deemed to be property damage.

POLLUTION EXCLUSION
Endorsement No. 2

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

residential, commercial or industrial buildings, but not including industrial wastes.

1. CLAIMS, or parts thereof, directly or indirectly caused by or arising out of the presence of pollutants, or the detection (or failure thereof), evaluation, assessment or quantification of pollutants, or the removal, displacement or mixing of pollutants, or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, or physical exposure to same, however, and by whomever caused.
2. Any losses, cost or expense arising directly or indirectly out of any governmental action, direction or request or undertaking to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize pollutants.

This exclusion shall not apply:

1. To CLAIMS arising by reason of professional services performed by YOU in connection with the design and construction of potable water systems, storm water systems and domestic sewage systems; or
2. To that portion of CLAIM for DAMAGES, by reason of professional services performed by YOU, which DAMAGES have been directly occasioned by Explosion or Fire, it being agreed that the INSURER'S obligations to provide YOU with a defence or make supplementary payments shall only be in respect to CLAIMS for DAMAGES directly occasioned by Explosion or Fire and not in respect to any other liabilities, obligations, duties, costs, expenses, fines or penalties imposed on YOU by reason of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants.

For the purpose of this exclusion, the following definitions shall apply:

Pollutants:

Any solid, liquid, gaseous or thermal irritant or contaminant, either naturally occurring or otherwise, and including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste, asbestos, materials containing asbestos and ureaformaldehyde. Waste includes materials to be recycled, reconditioned or reclaimed.

Potable water System:

A system for the collection, production, treatment, storage, supply, transmission, carriage or distribution of drinking water that meets or is intended to meet applicable standards for human consumption.

Storm water System:

A system for the collection, storage, treatment, transmission, carriage or disposal of storm water caused by natural precipitation in the form of rain, hail, snow or sleet.

Sewage System:

A system for the collection, storage, treatment, transmission, carriage or disposal of sanitary sewage in the form of liquid and suspended solid wastes that normally emanate from