



# INSURANCE PROGRAM

INSURER  
**LLOYD'S**

BROKER



ALTERNATIVE  
RISK SERVICES INC.

ONTARIO, CANADA



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## CONTACT INFORMATION

### INSURANCE BROKER

#### **Alternative Risk Services Inc.**

250 Yonge Street, Suite 2900  
Toronto, ON  
M5B 2L7  
Tel: 416-408-5330  
Toll free: 1-866-426-1666  
Fax: 416-408-3721  
E-mail: [info@reco-claims.ca](mailto:info@reco-claims.ca)  
Web: [www.reco-claims.ca](http://www.reco-claims.ca)

Policy Wording/Coverage Questions  
Excess Coverage  
Extended Coverage

### CLAIMS ADJUSTER

#### **McLarens Canada**

16700 Bayview Ave, Suite 211,  
Newmarket ON L3X 1W1  
Toll Free: 1-877-740-1913  
Toll Free Fax: 1-866-735-1033  
Email: [claims@reco-claims.ca](mailto:claims@reco-claims.ca)

Errors & Omissions Claims Notification  
Commission Protection Claims Notification

### RECO

#### **RECO Insurance Department**

3250 Bloor Street West  
East Tower, Suite 600  
Toronto, ON  
M8X 2X9  
Tel: 416-207-4800  
Toll free: 1-800-245-6910  
Fax: 416-207-4820  
E-mail: [insurance@reco.on.ca](mailto:insurance@reco.on.ca)

Consumer Deposit Claims Notification  
Certificates  
Insurance Renewals

***Claim reporting forms are available online at [www.reco.on.ca](http://www.reco.on.ca)***



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**PROFESSIONAL LIABILITY INSURANCE**

Effected with certain Lloyd's Underwriters (hereinafter called the "Insurer") through  
**DION, DURRELL + ASSOCIATES INC.**  
**250 YONGE STREET, SUITE 2900, TORONTO, ON M5B 2L7**  
(the "Coverholder")

**DECLARATIONS**

**THIS IS A CLAIMS-MADE INSURANCE POLICY. PLEASE READ CAREFULLY.**

**Name of Canadian Intermediary: Alternative Risk Services Inc.**

**Policy No.: RECO092010-01**  
**Replaces Policy No.: RECO092009-01**

**Endorsements Issued at Inception:** USA Jurisdiction, Terrorism Exclusion

1. **Named Insured:** Real Estate Council of Ontario
2. **Address:** 3250 Bloor Street West, East Tower, Suite 600  
Toronto, ON M8X 2X9
3. **Policy Period:** From: September 1, 2010 To: September 1, 2011  
12:01 a.m. Standard Time at the address shown in Item 2 above
4. **Limits of Liability:**

Coverage A: Errors & Omissions Insurance	Limits: \$1,000,000 each Claim/\$3,000,000 Annual Aggregate
Coverage B: Commission Protection Insurance Extension	Limits: \$100,000 each Claim/\$1,000,000 Aggregate each Occurrence
Coverage C: Consumer Deposit Insurance Extension	Limits: \$100,000 each Claim/\$1,000,000 Aggregate each Occurrence
5. **Deductibles:**

A – Coverage A: Errors & Omissions Insurance	
(a) \$2,500 for each Claim that resulted in a payment for settlement or judgment plus, if applicable:	
(b) a further \$2,500 for each additional Claim against the same Insured Member reported within the current and prior three Policy Periods, but none earlier than the Policy Period commencing on September 1, 2009, that resulted in a payment for settlement or judgment under this or a prior Policy.	
B – Coverage B: Commission Protection Insurance Extension	\$250 each Claim
C – Coverage C: Consumer Deposit Insurance Extension	\$Nil
6. **Premium:** \$292.00 per Registrant
7. **Minimum Premium:** \$292.00 per Registrant
8. **Professional Services:** Real estate sales and brokerage services as defined herein
9. **Notice of Election:** Alternative Risk Services Inc.  
250 Yonge St., Suite 2900  
Toronto, ON M5B 2L7
10. **Notice of Claim:**

Errors & Omissions and Commission Protection	Consumer Deposit
To: McLarens Canada 16700 Bayview Ave., Suite 211 Newmarket, ON L3X 1W1  Toll Free: 1-877-740-1913 Fax: 1-866-735-1033 Email: claims@reco-claims.ca	To: Insurance Administrator Real Estate Council of Ontario 3250 Bloor Street West East Tower, Suite 600 Toronto, ON M8X 2X9 Phone: (416) 207-4800 Toll Free: 1-800-245-6910 Fax: (416) 207-4820 Email: insurance@reco.on.ca

The insurance contract consists of this DECLARATIONS page as well as all coverage wordings, riders, or endorsements that are attached hereto.

**IDENTIFICATION OF INSURER/ACTION AGAINST INSURER**

This insurance has been effected in accordance with the authorization granted to the Coverholder by the Underwriting Members of the Syndicates whose definitive numbers and proportions are shown in the Table attached to Agreement No. PFD0110810 (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters, they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters whose address for such service is 1155 rue Metcalfe, Suite 1540, Montreal, Québec H3B 2V6.

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Lloyd's Underwriters' insurance business in Canada.

**NOTICE**

Any notice to the Underwriters may be validly given to Dion, Durrell + Associates Inc., 250 Yonge St., Suite 2900, Toronto, ON M5B 2L7. In witness whereof this policy has been signed, as authorized by the Underwriters, by Dion, Durrell + Associates Inc.

The Insured is requested to read this POLICY and, if incorrect, return it immediately for alteration. In the event of an Occurrence likely to result in claim under this insurance, immediate notice should be given to the Coverholder whose name and address appear above. All inquiries and disputes are also to be addressed to the Coverholder.

**THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.**

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## COVERAGE A

# ERRORS & OMISSIONS INSURANCE POLICY

### SECTION I – INSURING AGREEMENTS

In consideration of the payment of the **Premium**, and subject to the **Limits of Liability** and the terms and conditions contained herein, the **Insurer** hereby agrees:

#### 1. DAMAGES

To pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay as **Damages** arising out of any **Claim** or **Claims** first made against an **Insured** during the **Policy Period** for **Professional Services**:

- (a) by reason of any act, error or omission wherever or whenever committed or alleged to have been committed in connection with or incidental to the **Insured's** activities as a real estate salesperson or broker;
- (b) because of **Personal Injury** arising out of the **Insured's** activities as a real estate salesperson or broker.

This POLICY shall only apply to **Claims** made against the **Insured** during the **Policy Period** and where the act, error or omission:

- (i) was committed during the **Policy Period**; or
- (ii) was committed prior to the **Policy Period** but of which the **Insured** had no knowledge at inception date of this POLICY, or of which the **Insured** had knowledge but could not have reasonably foreseen as of the inception date of this POLICY that such act, error or omission would result in a **Claim** against the **Insured**, and which is not covered by any other insurance.

Notwithstanding the foregoing, if, during the **Policy Period** or EXTENDED REPORTING PERIOD (if the right is exercised in accordance with Condition 9 or 10), the **Insured** shall first become aware of any acts or circumstances which may subsequently give rise to a **Claim** against him/her which is insured hereunder and shall, during the **Policy Period** or EXTENDED REPORTING PERIOD (if applicable), give written notice to the **Insurer** of such acts or circumstances, then any **Claim** which is subsequently made against the **Insured** arising out of such acts or circumstances shall, for the purposes of this POLICY, be deemed to have been made against the **Insured** during the **Policy Period**.

#### 2. DEFENCE AND PAYMENT OF COSTS

This insurance applies to **Claims** anywhere in the world provided that the suit is brought within Canada or the United States. In respect of the insurance coverage under this POLICY, the **Insurer** will:

- (a) defend in the name and on behalf of the **Insured** any action which may be brought against the **Insured**, even if such action is groundless, false or fraudulent, arising out of any **Claim** coming under the terms of this POLICY. The **Insurer** shall have the right to make such investigation and negotiation of any **Claim** or suit as may be deemed expedient by the **Insurer** but it is agreed that the **Insurer** shall not compromise any **Claim** or settle any suit against the **Insured** without the consent of the **Insured**. If more than one **Insured** is involved in a **Claim** and a consensus on the issue of consent cannot be reached, then the **Insurer** shall have the right to act in its absolute discretion without such consent;

- (b) pay all costs of any appeal only as so directed by the **Insurer**, attachment or similar bonds required to be furnished in connection with the contest of any **Claims** covered hereunder, but without any obligation to apply for or furnish such bonds;
- (c) pay all costs assessed against the **Insured** in any action defended by the **Insurer** and any interest accruing after the date of action upon the part of the judgment which is within the limits of the **Insurer's** liability;
- (d) reimburse the **Insured** for all reasonable expenses, including legal costs other than loss of earnings, incurred at the **Insurer's** request;
- (e) notwithstanding the foregoing sub-paragraphs (a), (b), (c) and (d), retain the right to indemnity by the **Insured Member** for **Damages** paid by the **Insurer** but only up to the applicable **Deductible**.

### 3. **COVERAGE LIMITS AND DEDUCTIBLE**

- (a) The **Limit of Liability** – each **Claim** stated in the DECLARATIONS and the **Deductible** stated in the DECLARATIONS shall apply to each **Claim**. Where more than one **Claim** arises out of substantially the same cause, then both the **Limit of Liability** – each **Claim** and the **Deductible** stated in the DECLARATIONS shall apply as an aggregate over all such **Claims**.
- (b) The **Limit of Liability** – annual aggregate stated in the DECLARATIONS shall be the maximum liability of the **Insurer** for each **Insured Member**, as respects all **Claims** during any annual period beginning with the inception date of the **Certificate of Insurance** issued to the **Insured Member** by the **Named Insured** and ending with the expiry date of the **Policy**.
- (c) The **Insurer** shall only be liable for **Damages** that are in excess of the **Deductible** and, moreover, all **Defence Costs** shall be paid by the **Insurer** in addition to the **Limit of Liability** and the **Deductible** shall not apply to **Defence Costs**.
- (d) If **Damages** are payable for settlement or judgment pursuant to this POLICY, the **Insured Member** (never the **Named Insured**) shall pay the **Deductible** stated in Item 5.A of the DECLARATIONS. For greater certainty, each **Claim** that resulted in a payment for settlement or judgment requires the payment of a \$2,500 **Deductible** under Item 5.A (a) of the DECLARATIONS, which amount shall be increased under Item 5.A (b) of the DECLARATIONS, by a further \$2,500 for each additional **Claim** against the same **Insured Member** reported within the current and prior three **Policy Periods**, but none earlier than the **Policy Period** commencing on September 1, 2009, that resulted in a payment for settlement or judgment under this or a prior Policy.
- (e) When one or more **Claims** arising out of an act, error or omission giving rise to coverage under this POLICY are made jointly or severally against two or more **Insured Firms** or **Insured Members** at separate **Insured Firms**, the **Deductible** shall apply separately to each **Insured Member**.
- (f) If requested by the **Insurer**, the **Insured Member** shall make direct payments for **Claims** within the **Deductible** to the **Insurer** or to other parties.
- (g) All the terms and conditions of this POLICY apply notwithstanding that the amount of the **Claim** may be less than the **Deductible** stated in Item 5 of the DECLARATIONS.

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## SECTION II — DEFINITIONS

“**Anniversary**” means twelve (12) months after the inception date of this POLICY and every twelve (12) months thereafter.

“**Brokerage**” is a corporation, partnership, sole proprietor, association or other organization or entity registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Certificate of Insurance**” means the certificate issued or to be issued to an **Insured Member** or an **Insured Firm** by the **Named Insured** pursuant to Section IV 2 of this POLICY.

“**Claim**” means an oral or written demand or the filing of a suit or the initiation of an arbitration proceeding seeking **Damages** for an alleged error, omission, negligent act, or **Personal Injury** arising out of **Professional Services**; or a circumstance of which the **Insured** has knowledge that may result in a demand seeking **Damages** arising out of **Professional Services**.

“**Damages**” means compensatory damages and includes:

- (a) repair costs;
- (b) pre-judgment interest; and
- (c) costs of a claimant that are assessed or fixed by a court;  
but does not include:
  - (i) fines or penalties;
  - (ii) punitive or exemplary damages.

“**Deductible**” is that indicated in the DECLARATIONS and Clause 3 of Section I of this POLICY.

“**Defence Costs**” means costs incurred by the **Insurer** or the **Named Insured** in defending or settling a **Claim**, including legal fees and disbursements of counsel appointed by the **Insurer**; the fees and disbursements of experts, appraisers and witnesses; costs of alternative dispute resolution; and adjuster’s fees incurred on the instructions of counsel in defending or settling a **Claim**.

“**Insured**” means:

- (a) the **Named Insured**;
- (b) any **Insured Member**;
- (c) any **Insured Firm** but only with respect to the rendering of **Professional Services** directly or indirectly by a **Registrant**;
- (d) any past, present or future officer, director, employee or independent contractor of the **Named Insured**, **Insured Firm** or **Insured Member** but only with respect to the rendering of **Professional Services** directly or indirectly by a **Registrant**;
- (e) the heirs, executors, administrators, assigns and legal representatives of each **Insured** in the event of death, incapacity or bankruptcy.

“**Insured Firm**” means any **Brokerage**, real estate broker, partnership or company, and any franchisor with which the broker is associated, as well as their respective subsidiaries or parent companies, if any, whether created or acquired during the **Policy Period** with which the **Registrant**, whose actions or omissions are alleged to have given rise to a **Claim**, is or may have been associated.

“**Insured Member**” means a **Registrant** for whom the **Named Insured** has issued a valid and current **Certificate of Insurance** under the terms of this POLICY or a Brokerage.

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“**Insurer**” is that indicated in the DECLARATIONS.

“**Limits of Liability**” is that indicated in the DECLARATIONS.

“**Named Insured**” is that indicated in the DECLARATIONS.

“**Personal Injury**” means:

- (a) false arrest, humiliation, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, or malicious prosecution;
- (b) libel, slander or other defamatory or disparaging material, or publication or an utterance in violation of an individual’s right of privacy.

“**Policy Period**” is that indicated in the DECLARATIONS.

“**Premium**” is that indicated in the DECLARATIONS.

“**Professional Services**” means work as a real estate salesperson or broker registered by the **Named Insured** under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended to trade in real estate in the Province of Ontario and shall be deemed to include, but not be limited to, the provision of **Real Estate Appraisal Services**, work as a real estate consultant, real estate counselor, property manager, property management consultant and rental agent but does not include any paralegal service which is regulated by the Law Society Act, R.S.O. 1990, C. L.8 or successor legislation as from time to time amended.

“**Real Estate Appraisal Services**” means the provision of a market value opinion by an **Insured** in the course of providing **Professional Services** provided that a **Registrant** is either the author of the said opinion or has reviewed and approved the opinion but does not include an opinion that is done for the purpose of financing, whether secured or unsecured, or an opinion that is done in the usual course of business by anyone with Accredited Appraiser Canadian Institute (AACI), Canadian Residential Appraiser (CRA), Professional Appraiser (P.App), Professional Valuator (P.Val) or Canadian National Association of Real Estate Appraisers (CNAREA) designations.

“**Registrant(s)**” is a person(s) currently or previously registered by the **Named Insured** under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended and can be a real estate salesperson, real estate broker or brokerage.

### **SECTION III — EXCLUSIONS**

This POLICY does not apply to any **Claim** or **Claims** for, or arising out of:

- (a) acts, errors or omissions which are fraudulent, dishonest, criminal or malicious. However, the **Insured** shall be reimbursed for all amounts which would have been collectible under this POLICY if such allegations are not subsequently proven. This exclusion does not apply to any **Insured** who is neither the author nor an accomplice of the said acts, errors or omissions;
- (b) bodily injury to, or sickness, disease, mental anguish, mental distress or death of, any person or damage to, or destruction of, or theft of, any property, including the loss of use thereof. However, this POLICY shall cover, subject to all the terms and conditions and exclusions contained herein and subject to a \$25,000 sub-limit of liability, damage to or destruction of or theft of any property in the care, custody and control of the **Insured** for purposes of selling the property. This sub-limit of liability is part of and not in addition to the **Limit of Liability** otherwise afforded by this POLICY. Any **Claim** payable under this exclusion shall be subject to a deductible of \$500;

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- (c) failure to procure or maintain adequate insurance or bonds on assets or property;
  - (d) any **Claim** in any way related to, or arising out of, disputes relating to commissions, fees, compensation, reward or any other form of remuneration;
  - (e) any act, error or omission committed prior to the beginning of the **Policy Period** if, on or before the effective date of this POLICY, the **Insured** knew or could have reasonably foreseen that such act, error or omission did or would result in a **Claim** against the **Insured**, but this exclusion does not apply to the **Named Insured** and to any **Insured** who did not know or could not have reasonably foreseen that such act, error or omission did or would result in a **Claim**;
  - (f) any **Claim**, which is insured by any other existing valid policy or policies except in respect of any excess beyond the amount or amounts of insurance provided by such other policy or policies;
  - (g) fines, penalties, taxes assessed against the **Insured** except that if a suit shall have been brought against the **Insured** on a **Claim** falling within the coverage hereof, seeking both compensatory damages and fines, penalties, taxes, then the **Insurer** shall indemnify the **Insured** for the costs incurred with the **Insurer's** consent to defend such action until judgment in the trial court, but the **Insurer** shall not have any liability for such fines, penalties and taxes. However, this exclusion does not apply to fines, penalties or taxes incurred by a third party and included in their **Claim** for **Damages** against the **Insured**;
  - (h) any **Claim** against an **Insured** where such **Insured** has provided **Professional Services** with respect to a real estate transaction in which the **Insured** has a direct or indirect interest (including as a shareholder or otherwise as a principal in the transaction) unless the **Insured** has fully complied with the notice requirements under Section 32 of the Real Estate and Business Brokers Act, 2002 and Section 18, Disclosure of Interest, of the Code of Ethics as set out in Ontario Regulation 580/05 under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended;
  - (i) any **Claim** in any way related to or arising out of disputes relating to money or other property held on deposit by an **Insured**;
  - (j) property management where greater than 35% of either the **Registrant's** gross revenue or the gross revenue of the **Insured Firm** is derived from property management;
  - (k) to any **Claim** in any way relating to, or arising out of, an **Insured** acting as a mortgage broker. This exclusion does not apply to an **Insured** who identifies a source of funding to a borrower and directs the borrower to the source of funding for a fee.

#### **SECTION IV — CONDITIONS**

##### **1. Severability of Interest**

It is a condition precedent of this POLICY that the activities of the **Insured Member** that are alleged to give rise to a **Claim** against the **Insured** were performed by the **Insured Member** while he or she was registered under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended to trade in real estate in the Province of Ontario. No **Insured** shall be entitled to the benefit of this POLICY unless this condition is fulfilled except that coverage will apply to any **Insured** who inadvertently or unknowingly employs or becomes associated with a real estate salesperson or real estate broker who is not a **Registrant** and against whom a **Claim** is made and such **Insured** is alleged or found to be vicariously liable. Notwithstanding the foregoing, it is agreed by the **Insurer** that an **Insured** shall be entitled to the benefit of this POLICY with respect to a **Claim** which arises out of

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the activities of an **Insured Member** during a period when the registration of the **Insured Member** with the **Named Insured** has lapsed or been suspended due to administrative error on the part of the **Named Insured**.

**2. Certificates of Insurance**

The **Named Insured** shall issue **Certificates of Insurance** to **Insured Members** for a maximum period of one (1) year. A **Certificate of Insurance** for any EXTENDED REPORTING PERIOD as provided for in Condition 9 or 10 of this POLICY shall be issued by the **Insurer**.

The **Named Insured** shall act on behalf of all **Insureds** with respect to giving and receiving notice of cancellation, the negotiation of, or any revision to, any terms and conditions on issuance or renewal of this POLICY, the payment of **Premiums** and the receiving of any return premiums that may become due under this POLICY, and the acceptance of any endorsement issued to form a part hereof.

Any error and/or omission of the **Named Insured** in the issuance of a **Certificate of Insurance**, including, but not limited to, the name of the **Insured Member**, description, location, address or certificate number of the **Certificate of Insurance**, or inadvertent deletion of a **Certificate of Insurance**, shall not void or in any way impair the insurance afforded to the **Insured Member**, and the **Insurer** releases the **Named Insured** from any and all liability arising out of any such error and/or omission.

**3. Notice of Claim**

The **Insured** shall, as a condition precedent to the availability of the rights provided under this POLICY, give written notice to the **Insurer** as soon as practicable of any **Claim** made against the **Insured** or any circumstance likely to give rise to a **Claim** under this POLICY. The **Insured** shall promptly forward to the **Insurer** any demand, notice or summons received by the **Insured**. Notice given by or on behalf of the **Insured** to any authorized representative of the **Insurer** with particulars sufficient to identify the **Insured** shall be deemed notice to the **Insurer**.

It is agreed, however, that failure to give notice of any **Claim** or circumstance as outlined above, which, at the time of its happening, did not appear to involve this POLICY but which, at a later date, would appear to give rise to **Claim** hereunder, shall not prejudice such **Claim**.

Failure to give the above notices will not affect the right of any **Insured** who did not have knowledge of the act, the circumstance or the **Claim** made by a third party on condition that the failure to give any such notices be corrected during the **Policy Period**, or any renewal thereof.

Furthermore, the failure to give the above notices in said time will not affect the right of the **Insured**, if such failure has not caused prejudice to the **Insurer** and on condition that the failure to give any such notice be corrected during the **Policy Period**, or any renewal thereof.

Except for **Claims** against the **Named Insured**, notice to the **Named Insured** shall be deemed to be notice to the **Insurer**.

**4. Cooperation**

The **Insured** shall cooperate with the **Insurer** and, upon the **Insurer's** request, assist in making settlements and in the conduct of suits or proceedings. The **Insured** shall attend hearings, mediations, arbitrations, trials and examinations and shall assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not voluntarily make any payment, assume any obligation, make any admission to any claimant or incur any expense without the consent of the **Insurer**.

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**5. Consent**

The **Insurer** shall not settle any **Claim** without the consent of the **Insured**. If, however, the **Insured** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, plus **Defence Costs** incurred up to the time of such refusal. If more than one **Insured** is involved in a **Claim** and a consensus on the issue of consent cannot be reached, then the **Insurer** shall have the right to act in its absolute discretion without such consent.

**6. Fraud**

If the **Insured** shall make any **Claim** knowing the same to be false or fraudulent as regards the amount or otherwise, coverage for such **Insured** shall become null and void and all rights of the **Insured** herein shall be forfeited. Coverage shall continue to apply for the benefit of any other **Insured** who is not complicit in the fraud.

**7. Action Against the Insurer**

No action shall lie against the **Insurer** unless, as a condition precedent thereto, the **Insured** shall have fully complied with all terms of this POLICY, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured** and the claimant, subject to the prior written consent of the **Insurer**. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this POLICY to the extent of the insurance afforded by this POLICY. No person or organization shall have any right under this POLICY to join the **Insurer** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Insurer** be impeded by the **Insured** or his/her legal representative.

**8. Cancellation**

This POLICY may be cancelled:

1. by mutual consent of the **Named Insured** and the **Insurer**;
2. by the **Insurer** for non-payment of **Premium**. Such cancellation may be effected by written notice by registered mail stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this POLICY shall terminate at the date and hour specified in such notice;
3. by the **Named Insured** if a change in legislation, a change in the regulations, or a change in the by-laws of the **Named Insured** precludes the necessity of this insurance. Such cancellation may be effected by written notice to the **Insurer** stating when thereafter the cancellation shall be effective.

**9. EXTENDED REPORTING PERIOD – Named Insured**

If the **Insurer** or the **Named Insured** shall cancel or not renew this POLICY for any reason, the coverage granted by this POLICY may be extended at the option and sole discretion of the **Named Insured** for (a) an additional twelve (12) months upon payment of an additional premium of 50% (fifty percent) of the total annual premium or (b) an additional thirty six (36) months for an additional premium of 100% (one hundred percent) following the effective date of such cancellation or non-renewal with respect to any **Claim(s)** which may be made against any **Insured** after termination of this POLICY but only with respect to an act, error or omission committed prior to the effective date of termination of this POLICY and otherwise insured hereunder.

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The rights contained in this clause shall not arise, however, unless written notice of such election, together with the additional premium due, is received by the **Insurer** within thirty (30) days after the effective date of cancellation or non-renewal. This clause shall not apply to any cancellation resulting from non-payment of **Premium**.

A **Claim(s)** first made during the EXTENDED REPORTING PERIOD shall be deemed to have been made on the last day of the **Policy Period**.

**10. EXTENDED REPORTING PERIOD – Insured Member**

If any **Insured Member** shall either retire from the business or leave the business for any reason other than for disciplinary reasons, he/she shall be insured for a period of twenty four (24) months following the date of such retirement or leave from the business with respect to any **Claim** which may be made against such **Insured Member** during that twenty four (24) months period but only with respect to an act, error or omission committed prior to such retirement or leave from the business and otherwise insured hereunder.

If any **Insured Member** wishes to purchase an optional EXTENDED REPORTING PERIOD for an additional thirty six (36) months, the **Insured Member** must give written notice to the **Insurer** within twenty four (24) months following the date of such retirement or leave from the business and pay an additional premium of 30% of the last annual premium paid by the **Insured Member** as set out in Item 6 of the DECLARATIONS. This optional EXTENDED REPORTING PERIOD cannot be exercised or purchased by an **Insured Member** in a year in which the **Insurer** does not have a policy in force with the **Named Insured**.

**11. Arbitration**

In the event of a dispute between the **Insured** and/or the **Named Insured** and/or the **Insurer** as to the interpretation of this POLICY, or the settlement of **Claims**, or the apportionment of liability, or amount of the **Deductible**, a single arbitrator appointed pursuant to the provisions of The Arbitration Act, 1991 shall decide such dispute.

**12. Assignment**

This POLICY shall be void if assigned or transferred without the written consent of the **Insurer**. If the **Insured** shall die or be adjudged incompetent, this POLICY will protect the **Insured's** heir and legal representative as the **Insured** with respect to **Claims** reported during the **Policy Period** and arising out of any error, omission or negligent act committed prior to the date of death or adjudged incompetency, and insured under this POLICY.

**13. Insolvency**

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Insurer** of any obligation hereunder.

**14. Agent**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this POLICY or stop the **Insurer** from asserting any right under the terms of this POLICY, nor shall the terms of this POLICY be waived or changed, except by endorsement issued to form part of this POLICY and signed by an authorized representative of the **Insurer**.

**15. Language**

This POLICY shall be deemed to be the language of the **Insurer**.

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**16. Claims Summary Report**

The **Insurer** will remit claims summary reports, including claims reserve, to the **Named Insured** when necessary or upon request.

**17. Subrogation and Recovery**

In the event of any payment under this POLICY, the **Insurer** shall be subrogated to all rights of recovery against any person and the **Insured** shall execute and deliver instruments and papers and render assistance to secure such rights. The **Insured** shall do nothing after loss to prejudice such rights.

Any recoveries, whether effected by the **Insurer** or by the **Named Insured**, shall be applied net of the expense of such recovery, firstly to the **Insurer** as reimbursement of amounts paid in settlement of any **Claim** including **Defence Costs** incurred by the **Insurer**; secondly, to the **Insured** in satisfaction of any retention within the **Deductible**.

**18. Notice of Renewal Terms and Notice of Non-Renewal**

The **Insurer**, no less than one hundred and sixty-five (165) days prior to the **Anniversary**, shall offer irrevocable rates, terms and conditions to renew this POLICY for twelve (12) months. The **Named Insured** may accept or reject said offer no less than forty-five (45) days prior to the subsequent **Anniversary**.

**19. Canadian Currency Clause**

All **Limits of Liability**, **Premiums** and other amounts as expressed in this POLICY are in Canadian currency.

**20. Choice of Law**

The **Insurer** and all **Insureds** under this POLICY agree that it is to be governed by and interpreted according to the laws of the Province of Ontario and any applicable Federal legislation of Canada.

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**COVERAGE B**

**COMMISSION PROTECTION  
INSURANCE EXTENSION**

**SECTION I — INSURING AGREEMENTS**

In consideration of the payment of the **Premium**, and subject to the **Limits of Liability** and the terms and conditions contained herein, the **Insurer** hereby agrees:

**1. Loss of Commission**

To pay on behalf of the **Insured** the amount of any claim for **Loss** sustained by a **Claimant** in a trade in real estate in the Province of Ontario arising out of an **Occurrence** discovered during the **Policy Period**. Payment of any **Claim** shall only apply for the benefit of a **Claimant**.

Notwithstanding the foregoing, if, during the **Policy Period**, the **Insured** shall first become aware of any **Occurrence** which may subsequently give rise to a **Claim** against it/him/her which is insured hereunder and shall, during the **Policy Period**, give written notice to the **Insurer** of such acts or circumstances, then any **Claim** which is subsequently made against the **Insured** arising out of such acts or circumstances shall, for the purposes of this POLICY, be deemed to have been made against the **Insured** during the **Policy Period**.

**2. Defence and Payment of Costs**

In respect of the insurance coverage under this POLICY, the **Insurer** will:

- (a) defend any action against the **Named Insured** or an **Administrative Employee** relating to any **Claim** that may fall within the coverage provided by this POLICY;
- (b) subject to the COVERAGE LIMITS set out below, pay all **Defence Costs** incurred by the **Insurer** or the **Named Insured** in connection with the **Claim**, it being understood that the payment of **Defence Costs** by the **Insurer** or the **Named Insured** will not erode the **Limits of Liability** provided by this POLICY.

**3. Coverage Limits**

- (a) The **Limit of Liability** – each **Claim** stated in the DECLARATIONS shall be the maximum liability for **Loss** of the **Insurer** and the **Named Insured** in any **Claim**.
- (b) The **Limit of Liability** – aggregate each **Occurrence** stated in the DECLARATIONS shall be the maximum liability of the **Insurer** and the **Named Insured** for any **Occurrence**. If the total amount of all **Claims** in any **Occurrence** exceeds the aggregate **Limit of Liability**, then all valid **Claims** will be settled on a pro-rata basis in the same proportion that the aggregate **Limit of Liability** bears to the total amount of all **Claims**.
- (c) If payment is made for **Claim** under this POLICY, the **Registrant** (never the **Named Insured**) shall pay the **Deductible** stated in Item 5.B of the DECLARATIONS. The **Deductible** shall apply to each claim for **Loss** but shall not apply to **Defence Costs**.

**SECTION II — DEFINITIONS**

“**Administrative Employee**” means a present or former employee, director, officer, manager, volunteer or committee member of the **Named Insured** acting within the scope of his or her duties in that capacity.

“**Anniversary**” means twelve (12) months after the inception date of this POLICY and every twelve (12) months thereafter.

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“**Broker**” means an individual registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Brokerage**” is a corporation, partnership, sole proprietor, association or other organization or entity registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Claim**” means a demand for money arising out of an **Occurrence**.

“**Claimant**” means a **Brokerage, Broker** or **Salesperson** or their estates who has sustained a **Loss**, but shall not include any third party who may assert a **Claim** under a contract of assignment or factoring, provided such **Brokerage, Broker** or **Salesperson** was not the subject of, or responsible for, the **Occurrence**.

“**Commission**” is the remuneration owing to, to be paid to, or earned by, a **Registrant(s)** for a trade in real estate in the Province of Ontario.

“**Commission Trust**” means a constituted trust where all deposits and other monies received by or due to a **Brokerage** directed to satisfy **Commission** payable or damages or other compensation in lieu of **Commission**, plus applicable G.S.T., on any trade in real estate are received and held by the **Brokerage** in trust. Where the deposit is received by a listing **Brokerage**, the beneficiaries of the **Commission Trust** shall be the cooperating **Brokerage** and any listing **Salesperson** or listing **Broker** to the extent of any agreed **Commission** amount, and the listing **Brokerage** as to the balance after payment of such agreed **Commission**. Where the funds are received and held by the cooperating **Brokerage**, the beneficiaries of the **Commission Trust** shall be the cooperating **Salesperson** or cooperating **Broker** to the extent of any agreed **Commission** amount and the cooperating **Brokerage** as to the balance after payment of such agreed **Commission**.

In the event that the cooperating **Brokerage** receives the deposit, the beneficiaries to the **Commission Trust** shall be the listing **Brokerage** and any cooperating **Salesperson** or cooperating **Broker** to the extent of any agreed **Commission** amount and the cooperating **Brokerage** as to the balance after payment of such agreed **Commission**. Where the funds are received and held by the listing **Brokerage**, the beneficiaries of the **Commission Trust** shall be the listing **Salesperson** or listing **Broker** to the extent of any agreed **Commission** amount, and the listing **Brokerage** as to the balance after payment of such agreed **Commission**.

“**Commission Trust Account**” means a trust account maintained at a Canadian chartered bank or a trust company and designated as a “**Commission Trust Account**”. The **Commission Trust Account** shall be used only for the receipt and disbursement of **Commission Trust** funds, and kept separate and apart from the statutory trust account that a **Brokerage** is required to maintain for customer and/or client funds.

“**Deductible**” is that indicated in the DECLARATIONS.

“**Defence Costs**” means costs incurred by the **Insurer** or the **Named Insured** in defending or settling a **Claim**, including legal fees and disbursements of counsel appointed by the **Insurer**; the fees and disbursements of experts, appraisers and witnesses; costs of alternative dispute resolution; and adjuster’s fees incurred on the instructions of counsel in defending or settling a **Claim**.

“**Director**” means the Director under the Ministry of Consumer and Business Services Act or under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Insured**” means:

- (a) the **Named Insured**;
- (b) an **Administrative Employee**; or
- (c) a **Registrant**.

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“**Insurer**” is that indicated in the DECLARATIONS.

“**Limits of Liability**” is that indicated in the DECLARATIONS.

“**Loss**” means loss of **Commission** which has been entrusted to or received by one **Registrant** in its/his/her **Professional Capacity** but is owed to another **Registrant** in its/his/her **Professional Capacity**.

“**Named Insured**” is that indicated in the DECLARATIONS.

“**Occurrence**” means

- (a) insolvency of a **Registrant**; or
- (b) all acts of theft, fraud, misappropriation or wrongful conversion combined, committed directly or indirectly by a **Registrant** or present or former employee, director, officer or manager of a **Registrant** of moneys or other property entrusted to, or received by, the **Registrant** in the **Registrant’s Professional Capacity**.

Regardless the number of such incidents of insolvency or the number of such acts of theft, fraud, misappropriation or wrongful conversion, they will be grouped as and amount to only one **Occurrence**, regardless the number of **Claimants** who suffer a **Loss**.

“**Policy Period**” is that indicated in the DECLARATIONS.

“**Premium**” is that indicated in the DECLARATIONS.

“**Professional Capacity**” means the capacity as a **Salesperson, Broker or Brokerage**.

“**Registrant(s)**” is a person(s) registered by the **Named Insured** and authorized to trade in real estate and can be a real estate **Salesperson, Broker or Brokerage**.

“**Salesperson**” is an individual registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

### SECTION III — EXCLUSIONS

This POLICY does not apply to any **Claim**:

1. on account of acts by any **Registrant** while acting as executor, administrator, trustee, guardian, conservator or in any fiduciary capacity other than as a **Brokerage, Salesperson or Broker** for a person other than itself/himself/herself;
2. on account of acts by any **Registrant** through whose acts **Loss** was sustained by a **Claimant** and was reported to the **Named Insured** prior to the beginning of this **Policy Period**;
3. by any **Salesperson or Broker** employed by or contracted to a **Brokerage** where the **Brokerage** fails to set up and maintain a **Commission Trust Account** unless the **Salesperson or Broker** has used his/her best efforts to determine that the **Brokerage** has set up and maintained a **Commission Trust Account**.

### SECTION IV — CONDITIONS

#### 1. Severability of Interest

It is a condition precedent of this POLICY that the activities of the **Registrant** that are alleged to give rise to a **Claim** against the **Insured** were performed by the **Registrant** while it, he or she was registered under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended to trade in real estate in the Province of Ontario. No **Insured** shall be entitled to the benefit of this POLICY unless this condition is fulfilled except that coverage will apply to any **Insured**

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who inadvertently or unknowingly employs or becomes associated with a real estate brokerage, real estate salesperson or real estate broker who is not a **Registrant** and against whom a **Claim** is made and such **Insured** is alleged or found to be vicariously liable. Notwithstanding the foregoing, it is agreed by the **Insurer** that an **Insured** shall be entitled to the benefit of this POLICY with respect to a **Claim** which arises out of the activities of a **Registrant** during a period when the registration of the **Registrant** with the **Named Insured** has lapsed or been suspended due to administrative error on the part of the **Named Insured**.

**2. Notice and Cooperation**

The **Insured** will give notice by submitting a detailed Notice of Claim in the prescribed form of an **Occurrence** that could result in a **Claim** to the **Insurer** as soon as practicable. For the purposes of this Section, the **Insurer** will also accept as notice of claim under this POLICY a Notice of Occurrence with sufficient particulars from an **Insured** where such **Occurrence** later gives rise to a **Claim** from a **Claimant**.

The **Insured** making the **Claim** and/or the **Claimant** shall cooperate with the **Insurer** and, upon the **Insurer's** request, assist in making settlements and in the conduct of suits or proceedings. The **Insured** and/or the **Claimant** shall attend hearings, mediations, arbitrations, trials and examinations and shall assist in securing and giving evidence and obtaining the attendance of witnesses.

Upon the **Insurer's** request, the **Insured** and/or the **Claimant** shall produce for the **Insurer's** examination all pertinent records in his/her/their possession, care or control at such reasonable times and places as the **Insurer** shall designate, and shall cooperate with the **Insurer** in all matters with respect thereto. Notwithstanding the foregoing, the obligation of the **Named Insured** to produce records to the **Insurer** is subject to the **Named Insured's** duties and responsibilities under legislation related to real estate or the **Named Insured** in the Province of Ontario, including the Real Estate and Business Brokers Act, 2002 and the Regulations thereunder as from time to time amended, and every statute and regulation that may be substituted therefor or any successor legislation and/or the Administrative Agreement between the **Named Insured** and the Province of Ontario and/or the by-laws of the **Named Insured** and/or any applicable privacy laws.

The **Insurer** will have a maximum period of one (1) year from the receipt of Notice of Claim in which the **Insurer** must complete, finalize and close its investigation and present its findings on any potential **Claim** to the **Insured** and/or the **Claimant**. This period is granted regardless of cancellation, termination or expiration of this POLICY.

**3. Claims Summary Reports**

The **Insurer** will remit claims summary reports to the **Named Insured** when necessary or upon request.

**4. Proof of Loss**

A detailed and signed Notice of Claim shall constitute proof of **Loss** for each **Claim** submitted to the **Insurer** by an **Insured** and/or the **Claimant** making the **Claim**. Upon completing its investigation and being satisfied that coverage exists, subject to the terms and conditions of this POLICY, the **Insurer** shall settle each **Claim** within a reasonable period of time not to exceed ninety (90) days.

**5. Other Insurance, Trust and Other Accounts**

If there is available to the **Insured** or **Registrant** making such **Claim** other insurance, indemnity, trust or other accounts that are the subject matter of a freeze order duly authorized by the **Director**, the **Insurer** shall be liable hereunder only for the part of such payments which is in excess of the amount recovered from such other insurance, indemnity, trust or other accounts.

**6. Subrogation and Recovery**

In the event of any payment under this POLICY, the **Insurer** shall be further subrogated to all rights of

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recovery of the **Insured** against any person and the **Insured** and/or the **Named Insured** shall execute and deliver instruments and papers and render assistance to the **Insurer** to secure such rights subject to the **Insured's** and/or **Named Insured's** duties and responsibilities under legislation related to real estate or the **Named Insured** in the Province of Ontario, including the Real Estate and Business Brokers Act, 2002 and the regulations thereunder as from time to time amended, and every statute and regulation that may be substituted therefor or any successor legislation and/or the Administrative Agreement between the **Named Insured** and the Province of Ontario and/or the by-laws of the **Named Insured** and/or any applicable privacy laws.

Any recoveries effected by the **Insurer** shall be applied net of the expense of such recovery, firstly to the **Insurer** as reimbursement of amounts paid in settlement of any **Claim**, and secondly to the **Insured** in satisfaction of any retention within the **Deductible**.

The **Insurer** expressly waives all rights of subrogation or recovery against any **Registrant** of a corporation or partnership who is neither an author, accomplice nor acting in collusion with the dishonest **Registrant** in respect of any **Occurrence** resulting in any **Claim** paid under this POLICY.

**7. Cancellation**

This POLICY may be cancelled:

- (a) by mutual consent of the **Named Insured** and the **Insurer**;
- (b) by the **Insurer** for non-payment of **Premium**. Such cancellation may be effected by written notice by registered mail stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this POLICY shall terminate at the date and hour specified in such notice;
- (c) by the **Named Insured** if a change in legislation, a change in the regulations or a change in the by-laws of the **Named Insured** precludes the necessity of this insurance. Such cancellation may be effected by written notice to the **Insurer** stating when thereafter the cancellation shall be effective.

**8. Notice of Renewal Terms and Notice of Non-Renewal**

The **Insurer**, no less than one hundred and sixty-five (165) days prior to the **Anniversary**, shall offer irrevocable rates, terms and conditions to renew this POLICY for twelve (12) months. The **Named Insured** may accept said offer forty-five (45) days prior to the subsequent **Anniversary**.

**9. Action Against the Insurer**

No suit, action or proceeding of any kind to recover under this POLICY shall be brought after the expiration of five (5) years from the termination or cancellation of this POLICY in its entirety, provided, however, that if such limitation for bringing suit, action or proceeding is prohibited or made void by any law controlling the construction of this POLICY, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

**10. Arbitration Clause**

In the event of a dispute between the **Insured** and/or the **Named Insured** and/or the **Insurer** as to the interpretation of this POLICY, or the settlement of **Claims**, or the apportionment of liability, or amount of the **Deductible**, a single arbitrator appointed pursuant to the provisions of The Arbitration Act, 1991 shall decide such dispute.

**11. Canadian Currency Clause**

All **Limits of Liability**, **Premiums** and other amounts as expressed in this POLICY are in Canadian currency.

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COVERAGES C

# CONSUMER DEPOSIT INSURANCE EXTENSION

## SECTION I — INSURING AGREEMENTS

In consideration of the payment of the **Premium**, and subject to the **Limits of Liability** and the terms and conditions contained herein, the **Insurer** hereby agrees:

**1. Loss of Deposits**

To pay on behalf of the **Insured** the amount of any claim for **Loss** sustained by a **Claimant** in a trade in real estate in the Province of Ontario arising out of an **Occurrence** discovered during the **Policy Period**. Payment of any **Claim** shall only apply for the benefit of a **Claimant**.

Notwithstanding the foregoing, if, during the **Policy Period**, the **Insured** shall first become aware of any **Occurrence** which may subsequently give rise to a **Claim** against him/her which is insured hereunder and shall, during the **Policy Period**, give written notice to the **Insurer** of such acts or circumstances, then any **Claim** which is subsequently made against the **Insured** arising out of such acts or circumstances shall, for the purposes of this POLICY, be deemed to have been made against the **Insured** during the **Policy Period**.

**2. Defence and Payment of Costs**

In respect of the insurance coverage under this POLICY, the **Insurer** will:

- (a) defend any action against the **Named Insured** or an **Administrative Employee** relating to any **Claim** that may fall within the coverage provided by this POLICY;
- (b) subject to the COVERAGE LIMITS set out below, pay all **Defence Costs** incurred by the **Insurer** or the **Named Insured** in connection with the **Claim**, it being understood that the payment of **Defence Costs** by the **Insurer** or the **Named Insured** will not erode the **Limits of Liability** provided by this POLICY.

**3. Coverage Limits**

- (a) The **Limit of Liability** – each **Claim** stated in the DECLARATIONS shall be the maximum liability for **Loss** of the **Insurer** and the **Named Insured** in any **Claim**.
- (b) The **Limit of Liability** – aggregate each **Occurrence** stated in the DECLARATIONS shall be the maximum liability of the **Insurer** and the **Named Insured** for any **Occurrence**. If the total amount of all **Claims** in any **Occurrence** exceeds the aggregate **Limit of Liability**, then all **Claims** will be settled on a pro-rata basis in the same proportion that the aggregate **Limit of Liability** bears to the total amount of all **Claims**.
- (c) The **Deductible** stated in Item 5.C of the DECLARATIONS shall apply to each claim for **Loss** but shall not apply to **Defence Costs**.

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## SECTION II — DEFINITIONS

“**Administrative Employee**” means a present or former employee, director, officer, manager, volunteer or committee member of the **Named Insured** acting within the scope of his or her duties in that capacity.

“**Anniversary**” means twelve (12) months after the inception date of this POLICY and every twelve (12) months thereafter.

“**Broker**” means an individual registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Brokerage**” is a corporation, partnership, sole proprietor, association or other organization or entity registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Claim**” means a demand for money arising out of an **Occurrence**.

“**Claimant**” means a customer or client of a **Registrant** and includes an individual or any proprietorship, partnership, cooperative, society, business, association, joint venture, syndicate, company, corporation, firm or other legal or commercial entity.

“**Commission**” is the remuneration owing to, to be paid to, or earned by, a **Registrant(s)** for a trade in real estate in the Province of Ontario.

“**Defence Costs**” means costs incurred by the **Insurer** or the **Named Insured** in defending or settling a **Claim**, including legal fees and disbursements of counsel appointed by the **Insurer**; the fees and disbursements of experts, appraisers and witnesses; costs of alternative dispute resolution; and adjuster’s fees incurred on the instructions of counsel in defending or settling a **Claim**.

“**Director**” means the Director under the Ministry of Consumer and Business Services Act or under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

“**Insured**” means:

- (a) the **Named Insured**;
- (b) an **Administrative Employee**; or
- (c) a **Registrant**.

“**Insurer**” is that indicated in the DECLARATIONS.

“**Limits of Liability**” is that indicated in the DECLARATIONS.

“**Loss**” means loss of deposit in the form of moneys or other property which has been entrusted to or received by a **Registrant** in its/his/her **Professional Capacity** from a customer or client arising out of a trade in real estate but does not include **Commission**.

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“**Occurrence**” means

- (a) insolvency of a **Registrant**; or
- (b) all acts of theft, fraud, misappropriation or wrongful conversion combined, committed directly or indirectly by a **Registrant** or present or former employee, director, officer or manager of a **Registrant** of moneys or other property entrusted to, or received by, the **Registrant** in the **Registrant’s Professional Capacity**.

Regardless the number of such incidents of insolvency or the number of such acts of theft, fraud, misappropriation or wrongful conversion, they will be grouped as and amount to only one **Occurrence**, regardless the number of **Claimants** who suffer a **Loss**.

“**Named Insured**” is that indicated in the DECLARATIONS.

“**Policy Period**” is that indicated in the DECLARATIONS.

“**Premium**” is that indicated in the DECLARATIONS.

“**Professional Capacity**” means the capacity as a real estate **Salesperson** or **Broker** or **Brokerage**.

“**Registrant(s)**” is a person(s) registered by the **Named Insured** under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended and authorized to trade in real estate and can be a **Salesperson**, **Broker** or **Brokerage**.

“**Salesperson**” is an individual registered by the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended.

### SECTION III — EXCLUSIONS

This POLICY does not apply to any **Claim** on account of acts:

1. by any **Registrant** while acting as executor, administrator, trustee, guardian, conservator or in any fiduciary capacity other than as a real estate **Brokerage**, **Salesperson** or **Broker** for a **Claimant** other than itself/himself/herself;
2. by any **Registrant** through whose acts **Loss** was sustained by a **Claimant** and was reported to the **Named Insured** prior to the beginning of this **Policy Period**.

### SECTION IV — CONDITIONS

#### 1. **Discovery and Notice**

When the **Director** or his/her designated representative of the **Named Insured** as defined under the Real Estate and Business Brokers Act, 2002 or successor legislation as from time to time amended becomes aware of evidence of an actual or alleged **Occurrence**, the **Named Insured** will give notice to the **Insurer** as soon as practicable but within the **Policy Period**. **Claims** shall be reported to the **Named Insured** as soon as practicable but no later than thirty-six (36) months after the date of discovery of an actual or alleged **Occurrence**. The **Named Insured** will have a maximum period of five (5) years from said date of discovery in which the **Named Insured** or its designate must complete, finalize and close its investigation on any potential **Claim** and present its proof of loss on behalf of all **Claimants**. This period is granted regardless of cancellation, termination or expiration of this POLICY.

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## 2. **Claims Summary Reports**

The **Named Insured** will remit claims summary reports to the **Insurer** when necessary or upon request. The **Insurer** may request additional details on any **Claim** and reserves the right to an independent review in the settlement of any **Claim**.

## 3. **Cooperation and Proof of Loss**

Upon the **Insurer's** request, the **Insured** shall produce for the **Insurer's** examination all pertinent records at such reasonable times and places as the **Insurer** shall designate, and shall cooperate with the **Insurer** in all matters with respect thereto. Notwithstanding the foregoing, the obligation of the **Named Insured** to produce records to the **Insurer** is subject to the **Named Insured's** duties and responsibilities under legislation related to real estate or the **Named Insured** in the Province of Ontario, including the Real Estate and Business Brokers Act, 2002 and the Regulations thereunder as from time to time amended, and every statute and regulation that may be substituted therefor or any successor legislation and/or the Administrative Agreement between the **Named Insured** and the Province of Ontario and/or the by-laws of the **Named Insured** and/or any applicable privacy laws.

A detailed and signed Notice of Claim shall constitute proof of loss for each **Claim** submitted to the **Insurer** by an **Insured** and/or the **Claimant** making the **Claim**. Upon completing its investigation and being satisfied that coverage exists, subject to the terms and conditions of this POLICY, the **Insurer** shall settle each **Claim** within a reasonable period of time not to exceed ninety (90) days.

## 4. **Other Insurance, Trust and Other Accounts**

If there is available to the **Insured** or **Registrant** making such **Claim** other insurance, indemnity, trust or other accounts that are the subject matter of a freeze order duly authorized by the **Director**, the **Insurer** shall be liable hereunder only for the part of such payments which is in excess of the amount recovered from such other insurance, indemnity, trust or other accounts.

## 5. **Subrogation and Recovery**

In the event of any payment under this POLICY, the **Insurer** shall be subrogated to all rights of recovery against any person and the **Insured** shall execute and deliver instruments and papers and render assistance to secure such rights subject to the **Named Insured's** duties and responsibilities under legislation related to real estate or the **Named Insured** in the Province of Ontario, including the Real Estate and Business Brokers Act, 2002 and the regulations thereunder as from time to time amended, and every statute and regulation that may be substituted therefor or any successor legislation and/or the Administrative Agreement between the **Named Insured** and the Province of Ontario and/or the by-laws of the **Named Insured** and/or any applicable privacy laws.

Any recoveries, whether effected by the **Insurer** or by the **Named Insured**, shall be applied net of the expense of such recovery, firstly to the **Insurer** as reimbursement of amounts paid in settlement of any **Claim** and secondly, in satisfaction of any retention within the **Deductible**.

It is expressly agreed between the **Insured** and the **Insurer** that the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery, including the value of any dishonest **Registrant's** interest in any partnership as determined by closing the said partnership's books as of the date of the discovery of the **Occurrence** by the **Named Insured**, including any amounts owing to such dishonest **Registrant** by the said partnership but in no event for more than the amount of coverage applicable to the INSURING AGREEMENTS of this POLICY. The **Insurer** expressly acknowledges that it shall waive all rights of recovery against any **Registrant** of the partnership in question who was neither an author, accomplice nor acting in collusion with the dishonest **Registrant** in respect of any **Occurrence** resulting in any **Claim** paid under this POLICY.

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**6. Cancellation**

This POLICY may be cancelled:

- (a) by mutual consent of the **Named Insured** and the **Insurer**;
- (b) by the **Insurer** for non-payment of **Premium**. Such cancellation may be effected by written notice by registered mail stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this POLICY shall terminate at the date and hour specified in such notice;
- (c) by the **Named Insured** if a change in legislation, a change in the regulations or a change in the by-laws of the **Named Insured** precludes the necessity of this insurance. Such cancellation may be effected by written notice to the **Insurer** stating when thereafter the cancellation shall be effective.

**7. Notice of Renewal Terms and Notice of Non-Renewal**

The **Insurer**, no less than one hundred and sixty-five (165) days prior to the **Anniversary**, shall offer irrevocable rates, terms and conditions to renew this POLICY for twelve (12) months. The **Named Insured** may accept said offer forty-five (45) days prior to the subsequent **Anniversary**.

**8. Action Against the Insurer**

No suit, action or proceeding of any kind to recover under this POLICY shall be brought after the expiration of five (5) years from the termination or cancellation of this POLICY in its entirety, provided, however, that if such limitation for bringing suit, action or proceeding is prohibited or made void by any law controlling the construction of this POLICY, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

**9. Arbitration Clause**

In the event of a dispute between the **Insured** and the **Insurer** as to the interpretation of this POLICY, or the settlement of **Claims**, or the apportionment of liability or amount of the **Deductible**, a single arbitrator appointed pursuant to the provisions of The Arbitration Act, 1991 shall decide such dispute.

**10. Canadian Currency Clause**

All **Limits of Liability**, **Premiums** and other amounts as expressed in this POLICY are in Canadian Currency.

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## SECTION V — ENDORSEMENTS

### USA JURISDICTION ENDORSEMENT

It is hereby understood and agreed that in respect of any action brought in a court of law or in respect of any judgment, award, payment or settlement within countries which operate under the laws of the United States of America (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part), the following conditions shall apply:

(a) **Defence Costs** incurred with the consent of the Underwriters in the defence or settlement or compromise of any such **Claim** are included within the **Limit of Liability** and the **Deductible**;

(b) (i) the **Limits of Liability** is restated as follows:

**Limits of Liability:**

Errors & Omissions Insurance	(a) Each <b>Claim</b>	\$1,000,000
	(b) Aggregate	\$1,000,000
Commission Protection Insurance Extension	(a) Each <b>Claim</b>	\$100,000
	(b) Aggregate	\$100,000
Consumer Deposit Insurance Extension	(a) Each <b>Claim</b>	\$100,000
	(b) Aggregate	\$100,000

(c) Underwriters will not be liable to indemnify the **Insured** for any **Claim**:

(i) for or arising out of or relating directly or indirectly to actual, alleged or threatened seepage, pollution or contamination of any kind; or

(ii) arising out of awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.

**ALL OTHER TERMS, CONDITIONS, LIMITATIONS AND EXCLUSIONS REMAIN UNALTERED.**

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## **TERRORISM EXCLUSION ENDORSEMENT**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes liability for loss, injury, damage, cost or expense of whatsoever nature, directly or indirectly caused by, resulting from, or in connection with, any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this Endorsement, an act of terrorism 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 organisation(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.

This Endorsement also excludes loss, injury, damage, cost or expense of whatsoever nature, directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that, by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the Assured.

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

NMA2951  
14/07/2002



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