

PRO-DEMUNITY INSURANCE COMPANY

IMPORTANT: This Fund has a MAXIMUM AMOUNT PAYABLE. Supplementary payment and damages are paid as incurred until the Fund is exhausted. No further payments will be made on exhaustion of the Fund.

M O L D F U N D

TERMS AND CONDITIONS

PART I DEFINITIONS

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

YOU, YOUR

A member or former member of THE ASSOCIATION or holder of a Certificate of Practice issued in accordance with the *Architects Act* as defined under "ELIGIBLE PERSONS" below.

THE INSURER

Pro-Demnity Insurance Company

THE ASSOCIATION

The Ontario Association of Architects

FUND

The Mold Fund

ELIGIBLE PERSON(S)

1. A holder of a Certificate of Practice that participated in the Indemnity Plan or purchases professional liability insurance from Pro-Demnity Insurance Company as required by the *Architects Act* and its regulations.
2. Any present or former partner, officer, director, shareholder or employee of the holder of a Certificate of Practice that participated in the Indemnity Plan or purchases professional liability insurance from Pro-Demnity Insurance Company as required by the *Architects Act* and its regulations while acting within the scope of his/her duties for the holder.

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

FUND PERIOD

The FUND shall commence January 15, 2003 for one calendar year expiring 12:01 a.m. on December 31, 2003. Thereafter a new FUND PERIOD shall commence but only if and when approved by THE INSURER.

The FUND PERIOD may be terminated as provided by PART V (General Conditions) "Termination of the FUND".

PART II THE PURPOSE

The purpose of this FUND is to pay on behalf of any ELIGIBLE PERSON damages and supplementary payments that would have been payable in the absence of Exclusion 1q) of Policies Nos. 1, 2 and 3, and Exclusion 1p) of Policy 4.

PART III APPLICATION OF THE FUND

The FUND applies to claims made against YOU for the first time during the FUND PERIOD no matter when the actual or alleged error, omission or negligent act took place. There are two conditions which must be met for such a claim to be covered by the FUND.

First, the FUND will apply only in circumstances where Policy No. 1, 2, 3, or 4 would have application, but for Exclusion 1q) or 1p), respectively, if the claim had been made thereunder and YOU are not otherwise insured under a liability insurance policy issued by any other insurer as defined by the *Insurance Act* or similar legislation prescribed by another jurisdiction or country, no matter what the limits of liability, DEDUCTIBLES, terms or conditions of the insurance policy are.

Second, payment of such claim is subject to the condition that the FUND LIMIT exceeds the ELIGIBLE PERSON(S) LIMITS of YOUR claim at the time of payment of supplementary payments and damages.

The terms, conditions and exclusions set out in Parts I, II and III of Policy No. 1, 2, 3, or 4 apply, with the exception of the definition of INSUREDS, PERIOD OF INSURANCE, and Exclusion 1q) and 1p) respectively of Policies Nos. 1, 2, 3, and 4, with the necessary modifications, to a claim that is covered under the FUND.

PART IV MAXIMUM AMOUNTS PAYABLE

The maximum amount the FUND will pay is:

FUND LIMIT: \$2,500,000 or such lesser amount that remains in the FUND.

ELIGIBLE PERSON(S) LIMITS: \$250,000 CLAIM LIMIT
\$500,000 AGGREGATE LIMIT

SUPPLEMENTARY PAYMENTS: Payable in accordance with the provisions of Policy No. 1, 2, 3, or 4 as applicable.

Subject to YOUR payment of the DEDUCTIBLE, the amount THE INSURER will pay as damages for each claim during the FUND PERIOD is the CLAIM LIMIT, provided the FUND LIMIT exceeds the CLAIM LIMIT. The amount THE INSURER will pay for all claims during the FUND PERIOD for an ELIGIBLE PERSON is the AGGREGATE LIMIT, subject always to the CLAIM LIMIT and provided the FUND LIMIT exceeds the AGGREGATE LIMIT. The FUND LIMIT is the MAXIMUM AMOUNT PAYABLE by the FUND both for supplementary payments and damages.

Where a claim is made under Policy No. 1, 2, or 3, and under the FUND with respect to one project, the MAXIMUM AMOUNT PAYABLE for both claims shall not exceed \$250,000.

Where a claim is made under Policy No. 4 and under the FUND with respect to one project, the MAXIMUM AMOUNT PAYABLE for both claims shall not exceed \$250,000 and where the amount paid under Policy No. 4 exceeds \$250,000, no amount shall be paid with respect to the claim under the FUND.

The FUND LIMIT and ELIGIBLE PERSON(S) LIMITS have application no matter how many ELIGIBLE PERSONS there are against whom a claim or claims is or have been made or how many persons or organizations make a claim or the number of civil actions in which the claims are made or the number of parties to the civil action and all allegations or breaches in the rendering or failure to render professional services or errors, omissions or negligent acts contained in a Notice of Action, Statement of Claim, Counterclaim, Crossclaim, Third or subsequent Party Claim shall be considered a single claim.

With respect to any ELIGIBLE PERSON(S) or project for which coverage is provided by more than one Certificate of Insurance issued by THE INSURER under Policies Nos. 1, 3 and 4 or where coverage is provided by Policy No. 2, the MAXIMUM AMOUNT THE INSURER will pay as damages under all Certificates of Insurance and Policy No. 2 shall not exceed the ELIGIBLE PERSON(S) LIMITS that apply to one ELIGIBLE PERSON, subject always to the FUND LIMIT.

DEDUCTIBLE

YOUR DEDUCTIBLE will be the amount shown on the Certificate of Insurance issued by THE INSURER for Policies Nos. 1, 3 and 4 and \$1,000.00 for Policy No. 2.

PART V GENERAL CONDITIONS

1. YOUR DUTIES IN THE EVENT OF A CLAIM

WHAT YOU MUST DO:

- i. **NOTICE:** As soon as YOU become aware of a claim, YOU must immediately notify THE INSURER, giving all pertinent details as to the circumstances surrounding the claim. As events unfold which may have an effect on the claim, YOU must continue to keep THE INSURER informed.

- ii. **COOPERATION:** YOU must cooperate with THE INSURER, and, upon request provide written statements, submit to examinations and questioning, assist in effecting settlement, secure and give evidence and assist in any reasonable way THE INSURER deems necessary. YOU must give this cooperation at YOUR own cost.
- iii. **DEDUCTIBLE:** YOU must pay YOUR DEDUCTIBLE promptly upon request.

WHAT YOU MUST NOT DO:

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

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

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

3. YOUR CONSENT TO SETTLE

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

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

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

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

5. **ASSIGNMENT**

YOU cannot assign YOUR rights under this FUND to anyone else without THE INSURER's consent. If YOU should be adjudged bankrupt, insolvent, incompetent or die during the FUND PERIOD, this FUND 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 YOU at YOUR address of record shown in the Register of THE ASSOCIATION shall constitute notice to YOUR legal representatives.

6. **THE INSURER'S RIGHT OF AUDIT**

During the FUND 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, records, accounts, documents and files or of the former holder of the Certificate of Practice, but strictly as they relate to the FUND. THE INSURER assumes no responsibility whatsoever by exercising or declining to exercise such right.

7. **DISPUTE BETWEEN ELIGIBLE PERSONS**

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

8. **CURRENCY**

All sums mentioned in this FUND are in Canadian currency.

9. **CANCELLATION BY THE INSURER**

YOUR participation in the FUND will be automatically cancelled where YOUR INSURANCE has been cancelled under Policy No. 1, 2, 3, or 4.

10. **TERMINATION OF THE FUND**

This FUND will be terminated by THE INSURER on exhaustion of the FUND LIMIT of \$2,500,000 or at an earlier date at the discretion of THE INSURER. The effective date of termination of the FUND and the end of the FUND PERIOD will be set out in an official publication of THE ASSOCIATION.

Upon such termination, all coverage under and participation in the FUND shall terminate.

11. **NOTICE TO EACH OTHER**

All notices THE INSURER sends to YOU under this FUND will be sent to YOU at YOUR address of record shown in the Register of THE ASSOCIATION.

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

The President,
Pro-Demnity Insurance Company,
111 Moatfield Drive
Don Mills, Ontario
M3B 3L6

January 15, 2003
Revised April 1, 2006