

CANADA MORTGAGE AND HOUSING CORPORATION

# CMHC Master Loan Insurance Policy

© 2016 Canada Mortgage and Housing Corporation

All rights reserved. No portion of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, mechanical, electronic, photocopying, recording or otherwise without the prior written permission of CMHC. Without limiting the generality of the foregoing, no portion of this document may be translated from English into any other language without the prior written permission of CMHC.

This electronic version of the document is provided solely for general public information purposes and is provided strictly "as is". CMHC makes no representation or warranty, express or implied, in respect of the content of the document (the "Information"), as to the accuracy, adequacy, completeness or reliability of the Information. This electronic version may differ from the official version, which is made available to Approved Lenders directly and governs CMHC's relationship with Approved Lenders.

**CMHC MASTER LOAN INSURANCE POLICY  
STANDARD TERMS AND CONDITIONS**

**TABLE OF CONTENTS**

<b>PART 1</b>		5.3	Representations, Warranties and Covenants are Material .....9
<b>INTERPRETATION</b>		5.4	No Representation, Warranty or Covenant by CMHC Regarding Borrower or Property..... 10
1.1	Interpretation .....2		
1.2	Extended Meanings.....4		
1.3	Headings .....4		
1.4	Statutory Authority .....4		
1.5	Interpretation in Accordance with the Act.....4		
1.6	Application of MLIP.....4		
<b>PART 2</b>		<b>PART 6</b>	
<b>APPLICATION, ELIGIBILITY, COMMITMENT</b>		<b>MEASURES TO REDUCE CLAIMS</b>	
2.1	Insurance Application .....4	6.1	Approved Lender's Obligation to Mitigate ..... 10
2.2	Eligibility Criteria .....4	6.2	Arrangements..... 11
2.3	Commitment .....5	6.3	Payments by CMHC..... 11
2.4	Material Change Prior to Advance.....5		
<b>PART 3</b>		<b>PART 7 CLAIMS</b>	
<b>PREMIUMS AND FEES</b>		7.1	Claims ..... 11
3.1	Premiums and Fees .....5	7.2	Calculated Loss..... 11
3.2	No Entitlement to Refund .....5	7.3	Crediting Receipts ..... 13
		7.4	Accelerated Claim Payment ..... 13
<b>PART 4</b>		7.5	Payment Stream..... 14
<b>INSURANCE COVERAGE</b>		7.6	Adjudicated Claims..... 14
4.1	Agreement to Insure .....6	7.7	No Limitation of CMHC Remedies ..... 15
4.2	Insurance Coverage .....6	7.8	Alternative Claims Arrangements..... 15
4.3	Assignability of Insurance Coverage .....6		
4.4	Cessation of Insurance Coverage .....6	<b>PART 8</b>	
4.5	Voidable Events.....7	<b>GENERAL</b>	
<b>PART 5</b>		8.1	No Waiver..... 15
<b>REPRESENTATIONS, WARRANTIES AND</b>		8.2	Amendments ..... 15
<b>COVENANTS</b>		8.3	Exclusive Benefit..... 15
5.1	Representations and Warranties .....7	8.4	Lender Correspondents..... 15
5.2	Covenants .....8	8.5	Privacy and Confidentiality ..... 16
		8.6	Unenforceable Term or Condition ..... 16
		8.7	Time is of the Essence ..... 16
		8.8	Notice ..... 16
		8.9	Conflict ..... 16
		8.10	Scope ..... 17

## PART 1 INTERPRETATION

### 1.1 Interpretation

(1) In this Master Loan Insurance Policy:

**Act** means the *National Housing Act*, R.S.C. 1985, c. N-11 and the regulations thereunder, each as amended from time to time.

**Advice** means any formal written communication by CMHC which is identified as an "Advice" and which is issued to all Approved Lenders for the purpose of amending, supplementing or clarifying the CMHC Handbook.

**Applicable Law** means any law, statute, regulation, code, ordinance, decree, rule, municipal by-law, or order issued by any Governmental Authority having jurisdiction, or any other requirement having the force of law.

**Application** means the written request for insurance coverage in respect of a Housing Loan under the Policy in the form required by CMHC.

**Approved Lender** means a Person designated as an approved lender by CMHC in accordance with the Act.

**Bank of Canada Rate** means the "Prime Business Rate" published by the Bank of Canada, currently referred to as series V80691311 for weekly numbers, or any similar rate published by the Bank of Canada and designated as such by CMHC from time to time or any replacement thereof.

**Borrower** means all Persons legally obligated to repay the debt obligation created pursuant to a Housing Loan, including the borrower, any co-borrower, covenantor, co-covenantor, guarantor, mortgagor, hypothecary debtor, and registered title holder and beneficial owner of the Property in respect of the Housing Loan.

**Borrower's Charge** means a cost, expense or other amount that has been (i) incurred by the Approved Lender in accordance with reasonable, normal and prudent mortgage lending practices to safeguard the interest of such Approved Lender and CMHC, or (ii) specifically approved, required or requested, in advance, in writing, by CMHC; all subject to and as permitted by the CMHC Handbook.

**Calculated Loss** means the amount calculated in accordance with Section 7.2 of this MLIP in respect of a Claim.

**Claim** means a written request, in the form required by CMHC, made to CMHC for indemnification of an Approved Lender in accordance with the Policy with respect to a Housing Loan insured by CMHC.

**CMHC** means Canada Mortgage and Housing Corporation established by the *Canada Mortgage and Housing Corporation Act*, R.S.C. 1985, c. C-7, as amended, being the insurer under the Policy.

**CMHC Handbook** means "The Handbook for CMHC Approved Lenders" made available by CMHC to the Approved Lender, including any Advices, as amended by CMHC from time to time.

**Commitment** means the written notification or certificate issued by CMHC to an Approved Lender evidencing CMHC's commitment to extend insurance coverage under the Act in respect of a Housing Loan, on the basis of the Application and any conditions, terms or provisions set out in the Commitment, pursuant to and in accordance with the Policy.

**Coverage Effective Date** means the later of (i) the date set out in the Commitment, and (ii) the date of the first advance under the Housing Loan specified in the Commitment, in compliance with the Policy.

**Eligibility Criteria** means the requirements in Section 2.2 of this MLIP that must be met for a Housing Loan to be eligible to be insured by CMHC under the Policy.

**emili Agreement** means the emili Automated Approval Agreement between CMHC and the Approved Lender, as the same may be replaced, amended or supplemented from time to time.

**Force Majeure Event** means an event or effect, other than a Natural Disaster, that can be neither anticipated nor controlled by the Borrower or the Approved Lender, and occurs without the fault or negligence of the Borrower or the Approved Lender.

**Good and Marketable Title** means title to the Property which is good and marketable and free

and clear of all Prior Encumbrances or title defects, encroachments, impediments, easements, or servitudes, except as provided for in the CMHC Handbook.

**Governmental Authority** means any federal, provincial, territorial or municipal government or legislature, and any court, commission, board, tribunal or other authority exercising executive, legislative, judicial or regulatory functions.

**Housing Loan** means a loan that is eligible for insurance under the Act and the Policy.

**Lender Correspondent** means any agent designated by an Approved Lender, in accordance with and as permitted by the Policy, to act on the Approved Lender's behalf.

**Loan Agreement** means the loan agreement and other documentation, including the mortgage, evidencing the terms and conditions pursuant to which the Housing Loan is made, as the same may be amended, modified or replaced from time to time in accordance with the Policy and any conditions or requirements that may be imposed by the Policy.

**Loan File** means all information, data and materials, regardless of format, created, received, required, transmitted, stored or preserved in connection with the underwriting, advancing and administration of the Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security.

**MLIP** means this Master Loan Insurance Policy as the same may be replaced, amended, or supplemented from time to time.

**Natural Disaster** means an event caused by forces of nature, including hurricanes, tornados, storms, high water, winddriven water, tidal waves, tsunamis, floods, earthquakes, volcanic eruptions, landslides, mudslides, snowstorms or ice storms.

**Person** means any natural person, corporation, company (with or without share capital), partnership, limited partnership, limited liability partnership, limited liability company, trustee, organization, or Governmental Authority or agency thereof.

**Policy** means (i) this MLIP, together with any riders incorporated by reference into and made a part of this

MLIP, (ii) the emili Agreement, (iii) the CMHC Handbook, and (iv) with respect to each Housing Loan insured by CMHC, the Commitment and any Special Conditions related thereto.

**Premium** means any amount required to be paid by the Approved Lender to CMHC pursuant to the Commitment in consideration of CMHC providing insurance in respect of the Housing Loan in accordance with the terms of the Policy, together with any applicable federal, provincial and territorial taxes.

**Prior Encumbrance** means a lien, mortgage, hypothec, trust deed, charge, encumbrance, restrictive covenant or other claim having priority over or equal priority with the Security, or other security instrument or claim affecting, registered against, or relating to the Property having priority over or equal priority with the Security.

**Property** means (i) any building or movable structure, or any part thereof, that is intended for human habitation, or (ii) any property that is intended to be improved, converted or developed to provide housing accommodation or services in support of housing accommodation, together with any property that is associated with housing accommodation, including, without limiting the generality of the foregoing, land, buildings and movable structures, and public, recreational, commercial, institutional and parking facilities.

**Related Person** means each of (i) a "related person" for the purposes of the *Income Tax Act* (Canada), and (ii) a Borrower, in relation to an Approved Lender, if the Borrower (a) owns shares in excess of 10 per cent of the issued shares of any class of the capital stock of the Approved Lender or otherwise has a financial interest other than a nominal interest therein, (b) is, or any officer, director or shareholder of such Borrower is, associated with the Approved Lender by reason of the holding of office or membership in the board of directors of the Approved Lender, (c) is participating as a principal with any shareholder of the Approved Lender where the objectives of such shareholder include lending on the security of real estate or the development of real estate, (d) is developing land in respect of which an Application is made which land was conveyed to such Borrower by a shareholder of the Approved Lender, and (e) is associated with the Approved

Lender, any shareholder thereof, or any partnership, joint venture or other arrangement established or entered into by such Approved Lender for the purpose of real estate development.

**Reports** means the reports required to be provided by the Approved Lender pursuant to the Policy, including in relation to status, records retention, insurance in force, and the underwriting, advancing and administration of Housing Loans insured by CMHC, including the collection of the repayment of such Housing Loans, and the creation, registration and protection of the Security in respect of such Housing Loans.

**Security** means the security given to the Approved Lender as security for repayment of the Housing Loan and includes a mortgage or hypothec over the Property and any guarantee or suretyship.

**Special Conditions** means the conditions, terms or provisions specific to the Housing Loan as set out in the Commitment or otherwise communicated in writing to the Approved Lender by CMHC prior to the making of such Housing Loan or by agreement in writing with the Approved Lender following the making of such Housing Loan, which must be fulfilled, satisfied, complied with or met by the Approved Lender in order for such Housing Loan to be insured or remain insured by CMHC.

**Unpaid Principal Balance** means the unpaid principal balance of the Housing Loan on the date on which the last payment under the Loan Agreement was made, including any amounts permitted to be capitalized to the Housing Loan in accordance with the CMHC Handbook, subject to the limits set forth in Section 4.2(2).

- (2) All other words used in this MLIP which are defined in the Act will have ascribed to them the meanings set out in the Act, unless the context indicates otherwise.

## 1.2 Extended Meanings

Any reference in this MLIP to gender will include all genders and words importing the singular number only will include the plural and vice versa. The words "including" and "includes" mean "including (or includes) without limitation", and the words "written" or "in writing" include electronic forms of communication in accordance with the Policy.

## 1.3 Headings

All headings in this MLIP are for convenience of reference only and will not affect or be utilized in the interpretation of this MLIP.

## 1.4 Statutory Authority

The terms and conditions set forth in this MLIP are issued pursuant to the Act, including Section 19 of the Act. All Housing Loans insured by CMHC are deemed to be made, and insured, pursuant to the Act.

## 1.5 Interpretation in Accordance with the Act

The Policy is subject to, and shall be interpreted in accordance with, the Act.

## 1.6 Application of MLIP

The terms and conditions set forth in this MLIP apply to all Housing Loans insured by CMHC, and effective as of September 1, 2016, supersede and replace the Master Loan Insurance Policy form CMHC 2891, as the same was amended from time to time.

## PART 2 APPLICATION, ELIGIBILITY, COMMITMENT

### 2.1 Insurance Application

To request a Commitment, an Application must be submitted by or on behalf of the Approved Lender, in accordance with the Policy and the Act. Following receipt of an Application, CMHC may request such additional information as it considers necessary in its discretion to evaluate such Application.

### 2.2 Eligibility Criteria

A Housing Loan is not eligible for insurance coverage under the Policy unless:

- (1) the Housing Loan is underwritten and administered by an Approved Lender;
- (2) at the time the Application is submitted:

- (a) the Housing Loan complies with all applicable eligibility criteria contained in the CMHC Handbook and in regulations in effect under the Act; and
- (b) the Approved Lender is satisfied, as a result of an analysis conducted in accordance with reasonable care and normal and prudent mortgage lending practices, that:
  - (i) the Borrower has the equity, income and credit worthiness to fulfill its obligations under the Housing Loan;
  - (ii) where the Property is not homeowner occupied, the Borrower has the financial capacity, knowledge and experience to market and manage the Property; and
  - (iii) if applicable, the Borrower has the experience to construct, improve, repair, rehabilitate, convert or alter, as the case may be, the Property; and

- (3) the Housing Loan complies with the Commitment.

### **2.3 Commitment**

CMHC will communicate its acceptance of an Application in respect of a Housing Loan in the form of a Commitment.

### **2.4 Material Change Prior to Advance**

- (1) Where a Commitment has been issued, the Approved Lender will promptly give notice to CMHC of:
  - (a) any material change to any information submitted in connection with the Application; and
  - (b) any other relevant and material information which is not included in the Application,

in each case, regarding the Borrower, the Housing Loan, the Property or the Security related to such

Application, of which it becomes aware at any time prior to each and any advance being made under such Housing Loan.

- (2) CMHC reserves the right to modify or terminate the Commitment in the event that:
  - (a) there has been a material change to any information submitted or required to be submitted in connection with the Application; or
  - (b) other relevant and material information not included in the Application comes to the attention of the Approved Lender or CMHC.
- (3) Notwithstanding Section 2.4(2), and provided the Approved Lender has complied with the Policy, where the Approved Lender becomes aware of information requiring notification under Section 2.4(1) after having made one or more advances under the Housing Loan, the insurance coverage in respect of any such prior advances will be maintained.

## **PART 3 PREMIUMS AND FEES**

### **3.1 Premiums and Fees**

The Approved Lender shall pay Premiums and fees plus applicable taxes to CMHC in accordance with and as specified in the CMHC Handbook.

### **3.2 No Entitlement to Refund**

Except as specifically provided for in the CMHC Handbook, there will be no entitlement to a refund of all or any part of:

- (1) the Premium plus applicable taxes, including, for greater certainty, whether or not the Claim is adjusted or denied; or
- (2) any fees, plus applicable taxes, payable to CMHC pursuant to the Policy, including, for greater certainty, whether or not a Commitment is issued, whether or not the Housing Loan is withdrawn or never

advanced, and whether or not the Claim is adjusted or denied.

#### **PART 4 INSURANCE COVERAGE**

##### **4.1 Agreement to Insure**

Subject to the Policy, in consideration of the payment of the Premium, CMHC agrees to insure the Approved Lender against losses resulting from Borrower default, in the amount of the Calculated Loss, in respect of the Housing Loan specified in the Commitment.

##### **4.2 Insurance Coverage**

- (1) Subject to the Policy, the insurance coverage in respect of a Housing Loan will be effective on the Coverage Effective Date and, unless the Commitment specifies otherwise and subject to Section 4.4, will remain in force for the full amortization period specified in the Commitment, as may be extended in accordance with the Policy.
- (2) Subject to the Policy, the insurance coverage in respect of the principal amount of a Housing Loan will apply, if the Housing Loan is advanced:
  - (a) in a single instalment, to the amount advanced, up to and not exceeding the amount of principal specified in the Commitment; and
  - (b) by way of multiple instalments, to the aggregate amount of principal of such Housing Loan advanced, provided all such amounts have been authorized in accordance with the Policy, up to and not exceeding the amount of principal specified in the Commitment.

##### **4.3 Assignability of Insurance Coverage**

- (1) Subject to Sections 8.3(2) and 8.3(3), the insurance coverage in respect of a Housing Loan does not cease by reason only of the sale, transfer or assignment of such Housing Loan to a Person other than an Approved Lender, provided an Approved Lender or CMHC continues at all times to be responsible for the underwriting and administration of such Housing Loan, in which case the Approved

Lender will be entitled to make a Claim and receive payments under such insurance in accordance with the Policy.

- (2) Where an Approved Lender makes a Housing Loan to a Borrower for the purpose of discharging the Unpaid Principal Balance of a Housing Loan that is insured by CMHC, then provided such new Housing Loan satisfies the terms and conditions of the Commitment in respect of the pre-existing insured Housing Loan, including with respect to the remaining amortization period, the insurance coverage in respect of the pre-existing Housing Loan may be transferred to such new Housing Loan in accordance with the Policy.
- (3) In accepting an assignment or agreeing to administer any Housing Loan insured by CMHC, it is the responsibility of the Approved Lender to satisfy itself with respect to the prior underwriting, advancing and administration of such Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security in respect of such Housing Loan.

##### **4.4 Cessation of Insurance Coverage**

- (1) Subject to Section 4.5, the insurance coverage in respect of a Housing Loan shall cease to be in force without notice (unless otherwise indicated) on the first of the following events:
  - (a) the term of the insurance coverage has ended in accordance with Section 4.2(1) with no default having occurred under the insured Housing Loan;
  - (b) subject to Section 4.3(2), the Unpaid Principal Balance, with interest, is repaid in full;
  - (c) CMHC has satisfied all of its obligations under the Policy;
  - (d) within thirty (30) days after notice having been delivered to the Approved Lender of non-payment of

the Premium in respect of such Housing Loan, the Premium has not then been paid in full;

- (e) no advance under such Housing Loan having taken place within 12 months of the date of the Commitment, or such earlier or later date specified in the Policy;
- (f) at any time, the Housing Loan is not administered by an Approved Lender or by CMHC; and
- (g) the occurrence of any other circumstances that require the insurance coverage to cease pursuant to the Act.

(2) Subject to Section 4.4(3), CMHC will be fully discharged and released from its obligations under the Policy in respect of a Housing Loan insured by CMHC upon the cessation of the insurance coverage in respect of such Housing Loan in accordance with Section 4.4(1).

(3) If a Claim has been submitted prior to the cessation of insurance coverage in respect of a Housing Loan in accordance with Section 4.4(1), then CMHC's obligations will be fully discharged and released upon the Claim having been finally determined in accordance with the Policy.

#### **4.5 Voidable Events**

- (1) The insurance coverage in respect of a Housing Loan may be declared void by CMHC at its option if:
  - (a) CMHC is satisfied, on reasonable grounds, that it has been obtained by fraud or fraudulent misrepresentation, or any criminal act, which has occurred with the knowledge, participation or actions of the Approved Lender or its employees, officers, directors or Lender Correspondents;
  - (b) the Approved Lender has not complied with CMHC requirements in relation to the validity and enforceability of the Security; or

(c) at any time, the Approved Lender has not complied with requirements under the Act applicable to the insurability of such Housing Loan.

- (2) The circumstances pursuant to which the insurance coverage in respect of a Housing Loan may be declared void by CMHC are limited to those set out in Section 4.5(1).
- (3) In the event insurance coverage is declared void by CMHC pursuant to this Section 4.5, the Approved Lender shall take such steps and, as applicable, make such payments, as are required pursuant to the Policy and in accordance with Section 7.6.
- (4) If insurance coverage with respect to an insured Housing Loan is not voided, nothing in this Section 4.5 shall be construed so as to limit in any way CMHC's ability to adjudicate a Claim in respect of such coverage in accordance with Part 7.

### **PART 5 REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **5.1 Representations and Warranties**

- (1) By submitting an Application or a Claim, the Approved Lender represents and warrants to CMHC that, as of the time of such submission:
  - (a) to the best of its knowledge, after diligent inquiry in accordance with reasonable care and normal and prudent mortgage lending practices, all facts, information and documentation that are material to:
    - (i) the prudent underwriting, advancing and administration of such Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security in respect of such Housing Loan;



- (ii) such Application; and
- (iii) if a Claim, such Claim,

have been provided to CMHC and are true and accurate in all material respects;

- (b) the Approved Lender has complied with all applicable requirements of the Policy in respect of such Housing Loan;
- (c) the Approved Lender is, for the purposes of the insurance provided under the Policy, fully responsible and accountable for the actions and omissions of its directors, officers, employees, Lender Correspondents and agents in respect of the Housing Loan; and
- (d) the Approved Lender has provided CMHC with notice of any legal proceeding known to it that has affected or has the potential to affect such Housing Loan, or the Borrower's, the Approved Lender's or CMHC's rights or obligations under such Housing Loan.

(2) The Approved Lender represents and warrants to CMHC that, at the time any advance was made under any Housing Loan insured by CMHC:

- (a) such Housing Loan complied with the Commitment and all Eligibility Criteria; and
- (b) the Approved Lender was in compliance with its obligations under Section 2.4 in respect of material information and changes.

**5.2 Covenants**

- (1) The Approved Lender shall in respect of each Housing Loan specified in a Commitment:
  - (a) ensure that reasonable care and normal and prudent mortgage lending practices are exercised in the underwriting, advancing and administration of such Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security;

- (b) comply at all times in all respects with the Policy and with Applicable Law in respect of such Housing Loan;
- (c) ensure that such Housing Loan and the Security are valid and enforceable;
- (d) ensure that Good and Marketable Title to the Property has been obtained by the Borrower and upon the exercise of the Security can be conveyed to CMHC or to a bona fide purchaser at arm's length for value;
- (e) ensure that such Housing Loan is underwritten and administered:
  - (i) by an Approved Lender; and
  - (ii) at arm's length; provided that under this Section 5.2(1)(e), the Approved Lender and the Borrower shall be deemed to be not at arm's length if the Approved Lender and the Borrower are Related Persons;
- (f) except where prohibited by Applicable Law, offer a Borrower in good standing under the Housing Loan and the Security at the end of the term of such Housing Loan a renewal or extension of the Housing Loan at current market rates for insured Housing Loans and on substantially similar terms in an amount not less than the Unpaid Principal Balance, in accordance with the Policy;
- (g) provide such Reports to CMHC as are required under the Policy;
- (h) for the purpose of avoiding or curing a default or breach of any term or condition of the Housing Loan, the Loan Agreement or the Security, avoiding or minimizing a Claim, or otherwise mitigating any loss to the Approved Lender or CMHC, upon CMHC's request, transfer to CMHC any or all of the Housing Loan, the

Loan Agreement and the Security, which transfer will not prejudice the rights of the Approved Lender to make a Claim;

- (i) notify CMHC promptly should it become aware that false or misleading information has been provided in relation to an Application, a Report or a Claim in respect of such Housing Loan;
- (j) use such forms of documents in respect of the Application, such Housing Loan, or a Claim in respect of such Housing Loan, as may be required by CMHC; and
- (k) maintain and preserve in accordance with the CMHC Handbook a Loan File which includes all facts, information and documentation material to the prudent underwriting, advancing and administration of such Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security for the periods set out in the CMHC Handbook, and ensure that it and its Lender Correspondents:
  - (i) cooperate with CMHC and provide CMHC with all reasonable aid, evidence and information that CMHC requests from time to time regarding any such Housing Loan, regardless of status, including access to an accurate copy of the Loan File and such other records, information or documents as are related to or connected with such Housing Loan, with such aid, evidence and information to be provided on a timely basis, upon CMHC's request for such information; and
  - (ii) cooperate with CMHC and provide CMHC and its representatives on reasonable notice, at any time and from time to time, access during normal business hours to the premises of the Approved Lender or any other Person or place where Loan Files are located and access to the information

prepared or maintained by, or in the possession or under the control of the Approved Lender and its Lender Correspondents or other agents for purposes of conducting audits, complying with CMHC's legal and regulatory obligations, and ensuring compliance with the terms and conditions of the Policy.

- (2) The Approved Lender shall not, either before or after a Claim is paid, except as otherwise permitted by CMHC in writing or as permitted by the Policy, take any action or omit to take any action that would be reasonably expected to impair any right of CMHC to recover against the Borrower under the Loan Agreement or the Security. Without limiting the foregoing, and except as otherwise permitted by CMHC in writing, the Approved Lender shall not release any Security or personal covenant taken as further security to a Housing Loan insured by CMHC.

### **5.3 Representations, Warranties and Covenants are Material**

- (1) All of the representations, warranties and covenants set out in the Policy are material to CMHC's decision to insure the Housing Loan specified in the Commitment and to pay a Claim, and CMHC has relied upon these representations, warranties and covenants in agreeing to insure such Housing Loan or pay a Claim, as the case may be.
- (2) If the Approved Lender is aware at the time it would otherwise make a Claim that in respect of such Housing Loan, the Approved Lender is not in a position to satisfy all requirements under Sections 5.1 and 5.2, then the Approved Lender will inform CMHC of the particulars of such non-compliance at the time it files such Claim, and CMHC may in its discretion:

- (a) in the case of a voidable event under Section 4.5, declare the insurance coverage in respect of such Housing Loan to be void;
- (b) in the case of an inability to convey Good and Marketable Title to the Property, require that such non-compliance be addressed to CMHC's satisfaction prior to the filing of the Claim; and
- (c) in the case of any other non-compliance with the Policy in respect of such Housing Loan, consider the Claim without prejudice to CMHC's rights under the Policy, including under Section 7.6(1) of this MLIP.

#### **5.4 No Representation, Warranty or Covenant by CMHC Regarding Borrower or Property**

The issuance of a Commitment by CMHC to the Approved Lender is not to be construed or relied on by the Approved Lender, the Borrower or any other Person as representing a valuation or assessment of the condition of the Property, whether or not appraisals or inspections are carried out by or for CMHC, nor is it to be construed or relied on by the Approved Lender or the Borrower as representing a confirmation of the Borrower's ability to pay the Housing Loan.

### **PART 6 MEASURES TO REDUCE CLAIMS**

#### **6.1 Approved Lender's Obligation to Mitigate**

- (1) The Approved Lender will exercise reasonable care and normal and prudent mortgage lending practices in the underwriting, advancing and administration of the Housing Loan insured by CMHC, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security. Without limiting the generality of the foregoing, and except as otherwise required by CMHC in writing pursuant to the Policy, or as the Approved Lender and CMHC have agreed in writing otherwise, the Approved Lender will:

- (a) forthwith use its best efforts to:

- (i) cause the Borrower to avoid or cure a default or breach of any term or condition of the Housing Loan, Loan Agreement or the Security; and
  - (ii) avoid or minimize a Claim, or otherwise mitigate any loss to the Approved Lender and CMHC;
- (b) where a default under the Housing Loan cannot be avoided or cured under Section 6.1(1)(a), promptly, effectively and diligently pursue proceedings to enforce its rights and remedies with respect to such Housing Loan, the Security, and the Borrower; and

- (c) whether before or after any payment of a Claim, take all appropriate, timely and reasonable measures so as to minimize any actual or potential exposure of the Approved Lender and CMHC to any third parties in respect of such Housing Loan.
- (2) In addition to and not in derogation of the obligations of the Approved Lender under Section 6.1(1), upon CMHC's direction, where CMHC is satisfied that the Approved Lender will not be seriously prejudiced thereby, the Approved Lender will:
    - (a) enter into an arrangement with the Borrower under this Part, in accordance with the Policy or as otherwise instructed or approved by CMHC in respect of the Housing Loan insured by CMHC, or
    - (b) take such other steps as CMHC directs to avoid or cure a default or otherwise mitigate any loss to the Approved Lender or CMHC in respect of such Housing Loan.
  - (3) The Approved Lender will, unless it is unable to do so because of the stage of its realization on the Security, be prepared to accept reinstatement of a Housing Loan insured by CMHC on the curing of the

default or the making of an arrangement under this Part in respect of such Housing Loan.

## 6.2 Arrangements

- (1) Where a Housing Loan insured by CMHC is in default or CMHC is satisfied that a default will occur or is imminent, the Approved Lender may enter into an arrangement with the Borrower as set out in the CMHC Handbook or as otherwise approved by CMHC in writing providing for:
  - (a) the deferment of the payment of amounts payable or to become payable under the Loan Agreement;
  - (b) the deferment of the performance of other obligations of the Borrower under the Loan Agreement; or
  - (c) the variation of the terms of the Loan Agreement.
- (2) Arrangements made pursuant to Section 6.1(2) and 6.2(1) will be deemed to be acceptable to CMHC for purposes of insurance coverage in respect of such Housing Loan.

## 6.3 Payments by CMHC

- (1) Where a Housing Loan insured by CMHC is in default or CMHC is satisfied that a default will occur or is imminent, CMHC will have the right, on written notice by CMHC to the Approved Lender, to make payments or advances to the Approved Lender, the Borrower, or any other Person in respect of such Housing Loan:
  - (a) for the purpose of avoiding or curing the default, in whole or in part;
  - (b) for the purpose of facilitating the variation of the terms of payment under the Loan Agreement; or
  - (c) for any other purpose that CMHC considers appropriate in respect of such Housing Loan.
- (2) Upon CMHC making any payment or advance or assuming liability to make any payment or advance to the Approved Lender, the Borrower or any other Person pursuant to subsection (1) in respect of a Housing Loan insured by CMHC:

- (a) any such amounts, together with applicable interest and charges, shall, to the extent permitted under Applicable Law, be added to the Unpaid Principal Balance for such Housing Loan for the purpose of securing repayment as set out in the Policy or as otherwise directed by CMHC; and
- (b) CMHC will be subrogated, to the extent of the amount of the payment, to all rights of recovery and remedies of the Approved Lender, and any moneys recovered by the Approved Lender from the Borrower shall be applied firstly against moneys owing to the Approved Lender on account of such Housing Loan.

## PART 7 CLAIMS

### 7.1 Claims

- (1) A Claim must be made on a timely basis in accordance with the timeframes set out in the Policy, and must comply with all requirements of the Policy.
- (2) In the event of circumstances that could give rise to a Claim, the Approved Lender will seek first indemnification under any applicable policy of insurance in relation to the Housing Loan, the Security or the Property, other than the Policy, or under any applicable assurance or government compensation fund under which the Approved Lender or the Borrower may be eligible to make a claim.

### 7.2 Calculated Loss

Subject to the Policy, the amount payable in respect of a Claim will be calculated as:

$$CL = A - B - C$$

where:

- (1) "CL" is the Calculated Loss;

- (2) "A" is the aggregate of:
- (a) the Unpaid Principal Balance;
  - (b) the Borrower's Charges; and
  - (c) such amount of interest on each amount specified in sub-paragraphs (a) and (b), calculated at the interest rate in effect under the Loan Agreement immediately prior to the date of default under the Loan Agreement, accruing for a period of up to 12 months from the date on which the last payment in accordance with the Loan Agreement was made, plus interest for an additional period of up to 6 months at the percentage rate in effect under the Loan Agreement prior to the date of default less 200 basis points (provided such rate shall not be less than zero), or such other greater period of time or amount that CMHC may approve for unpaid interest accruing in the account in respect of the Housing Loan until payment of a Claim in accordance with the Policy;
- (3) "B" is the aggregate amount of the loss or damage:
- (a) resulting from the failure of the Approved Lender or its Lender Correspondent to exercise reasonable care and normal and prudent mortgage lending practices, in accordance with the Policy and Applicable Law, in relation to the underwriting, advancing and administration of the Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security;
  - (b) resulting from the making of any negligent material misrepresentation on the part of the Approved Lender or its employees, officers, directors or Lender Correspondents, or the breach of, or non-compliance by the Approved Lender or its employees, officers, directors or Lender Correspondents with, any of the representations, warranties, agreements or covenants in the Policy, including any condition on which the Housing Loan was insured;
- (c) equal to the amount of the cost to repair or replace damage to the Property resulting from a Natural Disaster or Force Majeure Event, unless the damage has been repaired or replaced prior to the Claim having been finally determined in accordance with the Policy, in which event any costs to the Approved Lender of effecting such repairs or replacements will not be deemed a Borrower's Charge;
  - (d) resulting from:
    - (i) fraud or fraudulent misrepresentation, or any criminal act, which CMHC is satisfied, on reasonable grounds, has occurred with the knowledge, participation or actions of the Approved Lender or its employees, officers, directors or Lender Correspondents, in relation to the underwriting, advancing and administration of the Housing Loan, including the collection of the repayment of such Housing Loan, and the creation, registration and protection of the Security;
    - (ii) the failure of the Approved Lender to comply with CMHC requirements in relation to the validity and enforceability of the Security; or
    - (iii) the failure of the Approved Lender to comply with requirements under the Act applicable to the insurability of such Housing Loan,to the extent that CMHC has not declared the insurance coverage in respect of such Housing Loan to be void in accordance with Section 4.5;

- (e) resulting from the inability to convey Good and Marketable Title to the Property to CMHC or to a third party;
  - (f) resulting from the alteration, modification or amendment of the terms and conditions of the Housing Loan, the Loan Agreement or the Security in a manner contrary to the Policy;
  - (g) resulting from the Approved Lender or its Lender Correspondent having taken any action or omitted to take any action which has the effect of releasing the Borrower from its obligation to repay the Housing Loan and any guarantee or indemnity, or which otherwise precludes CMHC from exercising any of its rights in relation to such Housing Loan, including but not limited to postponing or releasing the Security other than as permitted by the Policy or CMHC;
  - (h) resulting from a contravention of or failure to take appropriate measures to reduce the amount of the Claim, or otherwise comply with a requirement of CMHC that the Approved Lender or its Lender Correspondent refrain from exercising such of the Approved Lender's remedies in the event of Borrower default as CMHC has specified;
  - (i) resulting from a failure by the Approved Lender to comply with any condition or restriction to which the Approved Lender's designation is subject; and
  - (j) resulting from a breach of the provisions of this MLIP, including with respect to the underwriting, advancing and administration of the Housing Loan at arm's length;
- (4) "C" is, to the extent not already taken into account under Section 7.2(2) and Section 7.2(3), the aggregate of:
- (a) any amount advanced by CMHC to the Approved Lender in respect of the Housing Loan after default but prior to final payment of the Claim;

- (b) any amounts received by or payable to the Approved Lender to the credit of the account of the Housing Loan, including any proceeds of disposition of the Security and the Property, any amounts in respect of rent or other income derived from the Property, any settlements in respect of the Housing Loan collected by the Approved Lender, and any amount payable under any applicable policy of insurance other than the Policy or under any assurance, indemnity or government compensation fund under which the Approved Lender or the Borrower may be eligible to make a claim; and
- (c) an amount equal to the amount by which the cost to repair or replace damage to the Property caused by fire or other standard insurable perils exceeds amounts paid under insurance policies respecting such damage or loss to the Property unless the damage or loss has been repaired or replaced prior to any Claim having been finally determined in accordance with the Policy, in which event any costs to the Approved Lender of effecting such repairs or replacements will not be deemed a Borrower's Charge.

### **7.3 Crediting Receipts**

In calculating the amount payable by CMHC under this Part in respect of a Housing Loan insured by CMHC, any amounts received for the credit of the account of such Housing Loan will be applied in accordance with the CMHC Handbook.

### **7.4 Accelerated Claim Payment**

- (1) Subject to the Policy, and prior to the determination of the Calculated Loss, CMHC will pay in respect of a Claim the Unpaid Principal Balance, and Borrower's Charges and allowable interest in accordance with the CMHC Handbook, within five (5) business days following receipt by CMHC of a Claim.

- (2) In calculating the amounts payable under Section 7.4(1), all amounts received by the Approved Lender on account of the Housing Loan shall be applied against the Housing Loan in accordance with Section 7.3.
- (3) Notwithstanding Section 7.4(1), CMHC shall have the right to suspend payment of all or part of the amount payable in respect of a Claim, for any of the following reasons:
  - (a) a complete Claim, together with all relevant supporting information and documentation, has not been received by CMHC;
  - (b) the Claim is subject to pre-payment review by CMHC in accordance with the CMHC Handbook; or
  - (c) the Approved Lender is not in good standing with respect to its status and designation as an Approved Lender.
- (4) Notwithstanding Section 7.4(1), any payment by CMHC to an Approved Lender in respect of a Claim is subject to post-payment review and verification by CMHC in accordance with the CMHC Handbook.

#### **7.5 Payment Stream**

- (1) Notwithstanding Sections 7.2 and 7.4, in lieu of paying the amount that CMHC would otherwise be required to pay in respect of a Calculated Loss, CMHC may, in its discretion, pay the following amounts to the Approved Lender at the following times:
  - (a) at the time that payment in respect of a Claim in accordance with Section 7.4(1) would otherwise be made, the amount which would have been required to bring the Housing Loan into good standing, excluding penalties, late charges or any other amount accelerated by reason of the default or other breaches; and
  - (b) thereafter, any amount due under the Loan Agreement over the remaining term of the Loan Agreement, at the time such amount is due, excluding penalties, late

charges or any other amount accelerated by reason of the default or other breach.

- (2) Where CMHC elects to make payments under this section, CMHC shall have the right to fully discharge its obligations to the Approved Lender by paying, at any time prior to the end of the term of the Loan Agreement, the remaining Unpaid Principal Balance outstanding under the Loan Agreement, including interest at the rate in effect under the Loan Agreement, but not including any prepayment charges, penalties or other amounts that the Loan Agreement requires be paid in order to pay the Unpaid Principal Balance before it is due.

#### **7.6 Adjudicated Claims**

- (1) Notwithstanding any other provision of this Agreement, where CMHC receives a Claim, CMHC may consider the Claim without foregoing any of its rights, remedies or recourse, and will have the right to do any one of the following:
  - (a) deny the Claim in accordance with the Policy;
  - (b) adjust in accordance with the Policy the amount payable by CMHC in full satisfaction of CMHC's obligations in respect of the Claim; or
  - (c) pay the Claim, subject to post-payment review and verification under Section 7.4(4), and CMHC's right to adjust or reverse the amount paid in full satisfaction of the Claim in accordance with the Policy.
- (2) If a Claim is adjusted or reversed in accordance with the Policy, the Approved Lender will:
  - (a) repay to CMHC all amounts paid to the Approved Lender under Parts 6 or 7 of this MLIP in respect of the Claim, which are no longer payable as a result of such adjustment or reversal;

- (b) repay to CMHC the reasonable costs related to the adjusted or reversed Claim incurred by CMHC after the Claim was paid;
  - (c) pay to CMHC interest on each amount specified in subparagraphs 7.6(2)(a) and (b) at the Bank of Canada Rate, compounded semi-annually and not in advance from the date such amount was paid to the date such amount is repaid in accordance with this Section 7.6(2); and
  - (d) accept from CMHC, to the extent applicable and held by CMHC:
    - (i) a transfer of title to the Property, the Security, or any proceeds of disposition of the Property; and
    - (ii) a re-assignment of the Housing Loan and any judgment in respect of such Housing Loan.
- (3) The obligations of the Approved Lender under this Section 7.6 shall apply notwithstanding cessation of insurance coverage pursuant to Section 4.4.

### **7.7 No Limitation of CMHC Remedies**

A determination by CMHC in respect of a Claim will not limit the remedies of CMHC in any future similar or dissimilar fact situation, including in respect of any adjustment that may be made by CMHC to a Claim under Section 7.6(1).

### **7.8 Alternative Claims Arrangements**

The Approved Lender and CMHC may agree in writing to vary the basis on which Claims in relation to Housing Loans are paid under this Part 7, any such arrangement to be set out in a rider to this MLIP.

## **PART 8 GENERAL**

### **8.1 No Waiver**

No term, condition or requirement of the Policy in respect of a Housing Loan insured by CMHC shall be deemed to have been waived or modified unless such

waiver or modification is in writing and duly executed on behalf of CMHC. The waiver or modification by CMHC of any term, condition or requirement of the Policy does not constitute a waiver or modification of any other term, condition or requirement of the Policy.

### **8.2 Amendments**

- (1) CMHC reserves the right to amend this MLIP from time to time with reasonable advance notice providing an effective date for any such amendment.
- (2) Notwithstanding Section 8.2(1), any amendment to this MLIP which constitutes a material change to coverage pursuant to the Policy shall apply only to Commitments issued following the effective date for such material amendment.

### **8.3 Exclusive Benefit**

- (1) The purpose of insurance coverage under the Policy, and any payment made under Part 7 of this MLIP, is to indemnify the Approved Lender against losses resulting from Borrower default, in the amount of the Calculated Loss, in respect of the Housing Loan specified in the Commitment.
- (2) No Person, other than an Approved Lender, is entitled to make, or receive payment from CMHC in respect of, a Claim for a Calculated Loss.
- (3) Where more than one Approved Lender is involved in respect of a Housing Loan insured by CMHC, a Claim in respect of such Housing Loan shall be submitted by only one of the Approved Lenders involved with such Housing Loan.
- (4) No obligations of any Persons, including the Borrower, are released or discharged, in whole or in part, by virtue of insurance coverage under the Policy or the payment by CMHC to the Approved Lender of any Claim in respect of the Policy.

### **8.4 Lender Correspondents**

An Approved Lender may engage Lender Correspondents to act on its behalf in respect of a



Housing Loan in accordance with the Policy, provided the Approved Lender is and remains at all times fully responsible and accountable for the actions and omissions of any such Lender Correspondents and agents in respect of such Housing Loan.

### 8.5 Privacy and Confidentiality

Those terms and conditions of the emili Agreement which relate to

- (1) the obligations of the Approved Lender with respect to Borrower consent to the collection and use of personal information; and
- (2) the obligations of CMHC and the Approved Lender with respect to the ownership, confidentiality and non-disclosure of confidential and proprietary information of CMHC, the Approved Lender and the Borrower,

shall extend and apply to all matters arising between the Approved Lender and CMHC in relation to the Policy, including all communications and information shared between the Approved Lender and CMHC.

### 8.6 Unenforceable Term or Condition

Any provision of this MLIP which is invalid or unenforceable shall not affect any other provision and shall be deemed to be severable, and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

### 8.7 Time is of the Essence

In all matters relating to the Policy, time will always be of the essence, and no extension of time or variation from the Policy will be deemed to operate as a waiver of this clause.

### 8.8 Notice

- (1) Any notice, direction or other communication with respect to any specific Housing Loan insured by CMHC must be given in accordance with the Policy.
- (2) Notwithstanding Section 8.8(1), any notice, direction or other communication that relates to this MLIP generally, and does not relate to a specific Housing Loan insured by CMHC, must be in writing and shall be deemed given:

- (a) in the case of a communication by the Approved Lender, if sent by registered mail or by courier to:

Senior Vice-President, Insurance  
Canada Mortgage and Housing  
Corporation  
700 Montreal Road  
Ottawa, Ontario K1A 0P7

with a copy to:

Senior Vice-President, General  
Counsel and Corporate Secretary  
Canada Mortgage and Housing  
Corporation  
700 Montreal Road  
Ottawa, Ontario K1A 0P7; and

- (b) in the case of a communication by CMHC, if sent to the last known address provided by the Approved Lender in accordance with the Policy.

- (3) Any notice, direction or other communication under Section 8.8(2) shall be deemed to be delivered and received (i) if received before 3:30 p.m. on a business day, on that business day, and (ii) otherwise on the business day next following the date of receipt. By giving to the other party at least three (3) business days notice thereof, either party may, at any time and from time to time, change its address for delivery of communications under this Section.

### 8.9 Conflict

- (1) In the event and to the extent of any conflict between two or more documents forming part of the Policy, those documents will be interpreted in the following order of priority:
  - (a) this MLIP, together with any riders incorporated by reference into and made a part of this MLIP;
  - (b) the emili Agreement, as applicable;
  - (c) the CMHC Handbook and Advices thereunder; and
  - (d) the Commitment and any Special Conditions related thereto.

- (2) Notwithstanding Section 8.9(1), and for greater certainty:
- (a) a conflict shall not be considered to exist by reason only of the fact that a document forming part of the Policy contains requirements or conditions that are in addition to requirements or conditions contained in a different document forming part of the Policy; and
  - (b) in the event of any conflict between the Act, and any document forming part of the Policy, the Act shall prevail.

#### **8.10 Scope**

Except as CMHC may expressly agree in writing, the Policy constitutes the entire set of terms and conditions with respect to all current and future Housing Loans insured by CMHC. CMHC and the Approved Lender have not relied and are not relying on any other information, discussion or understanding in relation to the subject matter of the Policy, including with respect to insurance coverage under a Housing Loan.