

# Code of Consumer Rights and Responsibilities

Everest Insurance Company of Canada (herein after referred to as EICC) is committed to safeguarding your rights when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and EICC and the insurance laws of your province. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to your insurer. Your policy outlines other important responsibilities. EICC and our distribution networks, and governments also have important roles to play in ensuring that your rights are protected

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## *Right to Be Informed*

You can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how EICC calculates price based on relevant facts.

You have the right to ask who is providing compensation to your broker or agent for the sale of your insurance. Your broker or agent will provide information detailing for you how he or she is paid, by whom, and in what ways.

EICC will disclose its compensation arrangements with its distribution networks. Brokers and agents are committed to providing information relating to ownership, financing, and other relevant facts.

## *Responsibility to Ask Questions and Share Information*

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through brochures and websites, as well as through one-on-one meetings with your broker, agent, or company representative. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform EICC or broker or agent of any change in your circumstances.

## *Right to Complaint Resolution*

EICC, its brokers and agents are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access EICC's complaint resolution process. EICC, your agent or broker can provide you with information about how you can ensure that your complaint is heard and promptly handled. Consumers may also contact the independent General Insurance OmbudService ([www.giocanada.org](http://www.giocanada.org)).

## *Responsibility to Resolve Disputes*

You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

## *Right to Professional Service*

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

## *Right to Privacy*

Because it is important for you to disclose any and all information required by EICC to provide the insurance coverage that best suits you, you have the right to know that your information will be used for the purpose set out in the privacy statement made available to you by your broker, agent or insurance representative. This information will not be disclosed to anyone except as permitted by law. You should know that insurers are subject to Canada's privacy laws.



## PRIVACY NOTICE

### **Our Privacy Policy and Commitment to Protecting Your Privacy**

Everest Insurance Company of Canada respects your right to privacy and understands the importance of keeping the nonpublic personal information about you secure. We maintain certain policies to protect the confidentiality and security of your nonpublic personal information and have appropriate physical, electronic and procedural safeguards and security standards at our facilities to prevent access to your information by unauthorized third parties. Our privacy policy and procedures incorporate the provisions of the federal Personal Information Protection and Electronic Documents Act ('PIPEDA') for collection, use and disclosure of personal information.

### **How We Gather, Use and Disclose Your Information**

Everest, through its agents and providers, collects information about you in order to provide you with the insurance products and services requested from us. We collect information that is necessary or relevant to our business. Much of this information is obtained directly from your broker or agent. The types of personal information that may be collected by Everest include, but is not limited to, the following:

- All information required for underwriting purposes including information contained in your completed application for coverage;
- Information required for claims handling and loss review purposes including medical and financial information.
- Information that may be obtained from third parties such as other insurance companies, independent claims adjuster, governmental agencies, and courts.

We may use your personal information to:

- Communicate with you;
- Assess your application for insurance including underwriting and pricing your policies;
- Verify your personal information with appropriate persons including government agencies, brokers, agents and other insurance companies;
- Conduct appraisals, evaluate and adjust claims;
- Detect and prevent fraud;
- Analyze business results and compile statistics for the industry;
- Act as required or authorized by law.

We do not disclose your nonpublic personal information except as otherwise permitted by law. By law, we are permitted to share personal information about you without your prior permission under certain circumstances and to certain persons, companies, organization and entities such as:

- Your agent or broker.
- Parties who perform a business, professional or insurance function for our company, including affiliated companies, agents, service providers and reinsurers.
- Independent claims adjusters, appraisers, solicitors, medical practitioners, investigators, auditors, accountants and lawyers who need the information to investigate, defend or settle a claim involving your insurance.
- Businesses that help us with data processing.
- Other insurance companies or agents as reasonably necessary in connection with any application, insurance policy or claim involving you.
- Law enforcement or other governmental authorities to protect our legal interests, and to authorized persons as ordered by subpoena, warrant or other court order, or as required by law.
- Insurance regulatory agencies in connection with regulation of our business.

## **Your Consent**

We assume your consent for our company to use and disclose your nonpublic personal information, including such information in our possession prior to your application and prior to the January 01, 2004 effective date of 'PIPEDA', in an appropriate manner. You provide your consent in various ways, orally or in writing, directly or through intermediaries, including but not limited to, an agent or broker through the application process, through an adjuster or other representative. You may withdraw your implied consent at any time (subject to legal or contractual obligation and on providing us reasonable notice) by contacting our Privacy Officer. Please be aware that withdrawing your consent may prevent us from providing you with the requested product or service.

## **Retention**

All personal information will be retained for as long as it is relevant or necessary and in accordance with our Records Retention policy or as required by the applicable laws. We will safeguard your nonpublic personal information with appropriate security measures against unauthorized access, loss, theft, modification, or improper use.

## **What We Will NOT do with Your Information**

We do not sell customer information to anyone. We do not share customer information with organizations outside of our associated companies other than the aforementioned entities.

## **We Strive to Protect Your Personal Information**

All employees, agents, independent brokers and suppliers who are granted access to customer records understand the need to keep this information protected and confidential. They know they are to use the information only for the purposes intended. This expectation is clearly communicated and reinforced.

We have also established physical and systems safeguards, along with the proper processes, to protect customer information from unauthorized access or use.

Everest will inform an individual of the existence, use and disclosure of his or her nonpublic personal information upon request and give the individual access to that information as required under the Personal Information Protection and Electronic Documents Act ("PIPEDA"). You may be able to challenge the accuracy and completeness of your information and have it amended as appropriate by confirming your identity and sending a written signed request to the address shown below.

## **If You Need More Information**

For more information about our privacy policies and procedures, please contact our Privacy Officer, Lynn Der at:

Everest Insurance Company of Canada  
130 Bloor Street West, Suite 602  
Toronto, Ontario  
M5S 1N5

Telephone: 416.487.3900

Fax: 416.487.0311

[E-mail: lynn.der@everestcanada.com](mailto:lynn.der@everestcanada.com)



## EVEREST COMPLAINT HANDLING PROTOCOL

Everest Insurance Company of Canada is committed to providing all of our customers with excellent customer service. On occasion a customer may feel they have not been treated fairly, or there may simply be a misunderstanding that needs to be resolved. Everest Insurance Company of Canada has implemented this Complaint Handling Protocol to ensure that customer complaints are dealt with in a fair and timely manner.

The first step is to discuss your complaint directly with the broker who arranged your policy. Explain your situation, outlining the concerns you may have and how you would like the matter resolved. Be as detailed as possible by providing information pertinent to the issue, including your policy or claim number.

If you are still dissatisfied with the response after speaking with your broker, you may submit your complaint to the Complaints Liaison Officer (“CLO”) for Everest Insurance Company of Canada in writing:

Complaints Liaison Officer  
Everest Insurance Company of Canada  
130 Bloor Street West, Suite 602  
Toronto, Ontario, M5S 1N5

Or, via electronic mail to [consumercomplaints@everestcanada.com](mailto:consumercomplaints@everestcanada.com)

Or, by phone at 416-487-3900

The CLO will review your concerns to ensure they have a full and proper understanding of your position. They will then investigate the situation, keeping you informed along the way and respond within 30 days from receipt of the written complaint. Once the investigation is complete, the CLO will notify you promptly of the proposed resolution.

If you feel we have not resolved your complaint satisfactorily you may contact the General Insurance OmbudService (“GIO”), which assists in the resolution of conflicts between insurance customers and their insurance companies. The contact information for the GIO is:

General Insurance OmbudService  
10 Milner Business Court Suite 701  
Toronto, Ontario  
M1B 3C6  
1-877-225-0446

For further information about the GIO, please visit their web site at <http://www.giocanada.org>

In Québec you may also utilize the services of Autorité des marchés financiers (“AMF”). If you feel Everest Insurance Company of Canada has not resolved your complaint satisfactorily, you may request to have a copy of the file sent to the AMF. The AMF will study your file and may recommend mediation, if appropriate and agreed to by both parties. The AMF can be reached at the following numbers:

Autorité des marchés financiers (AMF)  
Montréal 514 395-0337  
Québec City 418 525-0337  
Toll-free 1 877 525-0337  
FAX: 1 877 285-4378 (Toll Free)  
<http://www.lautorite.qc.ca/en/index.html>



**EVEREST**

EVEREST INSURANCE COMPANY OF CANADA  
PREMIERE INSURANCE UNDERWRITING SERVICES

## **CLAIMS NOTIFICATION**

In the event of a claim, or as soon as any circumstances become known to the Named Insured which could give rise to a claim under this insurance, you should immediately report this to the Appointed Claims Representative named below. Subsequently you must confirm this in writing. Please refer to **Section 4. GENERAL CONDITIONS** which outlines more fully your duties in the event of a claim.

### **Appointed Claims Representative**

**Crawford Canada**

200-123 Front Street West

Toronto, Ontario

M5J 2M2

Tel: 416-867-1188

After Hours Tel: 1-800-522-1380

E-Mail: [horace.Brown@everestcanada.com](mailto:horace.Brown@everestcanada.com)

## GENERAL PROVISIONS

### 1. ASSIGNMENT

Assignment of this Policy shall not be valid except with the written consent of the Insurer.

### 2. PREMIUM

The provisional premium stated on the Declaration Page is an estimated premium only. Upon termination of this Policy the earned premium shall be computed in accordance with the Insurer's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the premium paid, the Insured named on the Declaration Page shall pay the excess to the Insurer; if less, the Insurer shall return to the Insured named on the Declaration Page the unearned portion paid by the Insured.

### 3. INSPECTION AND AUDIT

The Insurer or its duly appointed representative shall be permitted but not obligated to inspect the property and operations of the Insured named on the Declaration Page at any time. Neither the Insurer's rights to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Insured named on the Declaration Page or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation. The Insurer may examine and audit the books and records of the Insured named on the Declaration Page at any time during the Policy period and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of this Policy.

### 4. WAIVER OF TERM OR CONDITION

No term or condition of this Policy shall be deemed to be waived by this Insurer in whole or in part unless the waiver is clearly expressed in writing signed by a person authorized for that purpose by the Insurer. Neither the Insurer nor the Insured shall be deemed to have waived any term or condition of this Policy by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs, or the investigation or adjustment of any claim under this Policy.

## 5. TERMINATION OF INSURANCE

This contract may be terminated in accordance with Statutory Condition 5 or, if applicable, General Condition 1. (2) of the Civil Code of the Province of Quebec, Title Fifth of Insurance (replaced 1974, Bill 7, s.2) subject to the following modifications:

- a. The Insurer agrees that where notice of termination is not personally delivered and termination is for any reason other than non-payment of premium, the Insurer will not terminate this contract without first giving to the Insured thirty days written notice of termination. The Insurer further agrees that, except in the Province of Quebec, such written notice of termination will be by registered mail addressed to the Insured at the latest post office address as notified to the Insurer.
- b. Except in the Province of Quebec, the thirty days mentioned in subcondition a. of this provision commences to run on the day following receipt of the registered letter at the post office to which it is addressed.
- c. In the Province of Quebec, the thirty days mentioned in subcondition a. of this provision commences to run from the date of receipt of the notice of termination at the Insureds latest known address.

## 6. NOTICE

Any written notice to the Insurer may be delivered at or sent by registered mail to the agent through whom this Policy was issued or to any branch of the Insurer in Canada. Written notice may be given to the Insured named on the Declaration Page by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the Insurer; or, except in Quebec, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received. In this condition, the expression "Registered" shall mean registered in or outside Canada. Notice to the first Insured named on the Declaration page shall constitute notice to all Insureds.

## 7. CONFORMITY WITH STATUTE

Where the terms of this Policy and forms attached hereto are in conflict with the statutes of the Province in which the property insured is located, such terms are hereby amended to conform to such statutes.

## 8. CANADIAN CURRENCY CLAUSE

All limits of insurance, premiums and other amounts as expressed in this Policy are in Canadian currency.

**DIVISION V**

**NON-OWNED AUTOMOBILE INSURANCE**

The Insurer referred to in this form is the Company named as Insurer on the Declaration Page of the Policy of which this form forms a part.

Whereas an application has been made by the applicant (hereinafter called the Insured) to the Insurer for a contract of automobile insurance and the said application forms part of this contract of insurance and is as follows:

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Item APPLICATION

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1. Name and postal address of the applicant is as shown on the Declaration Page.

The applicant is as shown on the Schedule.

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2. Policy Period is as shown on the Declaration Page.

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3. The automobiles in respect of which insurance is to be provided are those not owned in whole or in part by, nor licensed in the name of the applicant, used in applicant's business of:

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**AS SHOWN IN THE SCHEDULE**

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4. The applicant's partners, officers, employees and agents as of the date of this application are as known to the Insurer.

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5. "HIRED AUTOMOBILES" – The automobiles hired by the applicant are as known to the Insurer.

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6. "AUTOMOBILES OPERATED UNDER CONTRACT" on behalf of the applicant are as known to the Insurer.

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7. This application is made for insurance against the perils mentioned in this item and upon the terms and conditions of the Insurer's corresponding standard policy form and for the following specified limit

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| Insuring Agreement                    | Perils  | Limit  |
|---------------------------------------|---|--|
| Section A<br>Third Party<br>Liability | Legal liability for<br>bodily injury to or<br>death of any person<br>or damage to<br>property of others not<br>in the care, custody<br>or control<br>of the applicant | \$ SEE SCHEDULE<br>OF COVERAGES<br><br>(Exclusive of interest<br>and costs) for loss or<br>damage resulting from<br>bodily injury to or the<br>death of one or more<br>persons, and for loss<br>or damage to property<br>regardless of the<br>number of claims<br>arising from any one<br>accident |

8. Has any Insurer cancelled, declined or refused to renew or issue, automobile insurance to the applicant within three years preceding this application? If so, state name of Insurer.

**AS KNOWN TO THE INSURER**

9. State particulars of all accidents or claims arising out of the use or operation in the applicant's business of non-owned automobiles by the applicant within the three years preceding this application.

| Injury to Persons | Damage to Property of Others |
|-------------------|------------------------------|
| AS KNOWN TO       | THE INSURER                  |

10. All the statements in this application are true and the applicant hereby applies for a contract of automobile insurance to be based on the truth of the said statements.
11. Where, (a) an applicant for a contract gives false particulars of the described automobile to be insured to the prejudice of the Insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; or (b) the Insured contravenes a term of the contract or commits a fraud; or (c) the Insured wilfully makes a false statement in respect of a claim under the contract, a claim by the Insured is invalid and the right of the Insured to recover indemnity is forfeited.

## INSURING AGREEMENT

In consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated.

### SECTION A - Third Party Liability

The Insurer agrees to indemnify the Insured against the liability imposed by law upon the Insured for loss or damage arising from the use or operation of any automobile not owned in whole or in part or licensed in the name of the Insured and resulting from

**BODILY INJURY TO OR THE DEATH OF ANY PERSON OR DAMAGE TO PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE INSURED:**

provided always the Insurer shall not be liable under Division V of this Policy:

1. for any liability which arises from the use or operation of any automobile while personally driven by the Insured if the Insured is an individual; or
2. for any liability imposed upon any person insured by Division V of this Policy:
  - a. by any Worker's Compensation Law; or
  - b. by any law for bodily injury to or death of the Insured or any partner, officer, or employee of the Insured while engaged in the business of the Insured; or
3. for any liability assumed by any person insured by Division V of this Policy voluntarily under any contract or agreement, but this exclusion does not apply to that part of any contract or agreement pertaining to the business of the Insured under which the Insured assumes tort liability of another to pay compensatory damages because of bodily injury or property damage to a third person or organization, if the contract or agreement is made prior to the bodily injury or property damage. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
4. for loss or damage to property carried in or upon an automobile personally driven by any person insured by Division V of this Policy or to any property owned or rented by, or in the care, custody or control of any such person; or
5. for any amount in excess of the limit stated in Item 7 of the application, and expenditures provided for in the Additional Agreements of Division V of this Policy; subject always to the provisions of the section of The Insurance Act (Automobile Insurance Division) relating to the nuclear energy hazard.

Paragraph 2. of this section is not applicable in the Province of Ontario.

#### ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by Division V of this Policy, the Insurer further agrees:

1. upon receipt of notice of loss or damage caused to persons or property to serve any person insured by Division V of this Policy by such investigation thereof, or by such negotiations with the Claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
2. to defend in the name of and on behalf of any person insured by Division V of this Policy and at the cost of the Insurer any civil action which may at any time be brought against such person on account of such loss or damage to persons or property; and
3. to pay all costs taxed against any person insured by Division V of this Policy in any civil action defended by the Insurer and any interest accruing after entry of judgement upon that part of the judgement which is within the limits of the Insurer's liability; and
4. in case the injury be to a person, reimburse any person insured by Division V of this Policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
5. be liable up to the minimum limit(s) prescribed for that Province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit stated in Section A of Item 7 of the application; and
6. not set up any defence to a claim that might not be set up if Division V of the Policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

#### AGREEMENTS OF INSURED

Where indemnity is provided by this section, every person insured by this Policy:

1. by the acceptance of Division V of this Policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in the province or territory of Canada in which action is brought against the Insured arising out of the use or operation of an automobile with respect to which insurance is provided hereunder;
2. shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of the statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under Division V of this Policy.

## GENERAL PROVISIONS AND DEFINITIONS

### 1. Additional Insureds

The Insurer agrees to indemnify in the same manner and to the same extent as if named herein as the Insured, every partner, officer or employee of the Insured who, with the consent of the owner thereof, personally drives (a) in the business of the Insured stated in Item 3 of the application, any automobile not owned in whole or in part by or licensed in the name of (i) the Insured, or (ii) such additional Insured Person, or (iii) any person or persons residing in the same dwelling premises as the Insured or such additional Insured Person, or (b) any automobile hired or leased in the name of the Insured except any automobile owned in whole or in part or licensed in the name of such additional Insured person.

### 2. Territory

Division V of this Policy applies only to the use of or operation of automobiles within Canada or the United States of America or upon a vessel plying between ports of these countries.

### 3. Hired Automobiles Defined

The term "Hired Automobiles" as used in Division V of this Policy means automobiles hired or leased from others with or without drivers, for periods not exceeding 30 days, used under the control of the Insured in the business stated in Item 3 of the application but shall not include any automobile owned in whole or in part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

### 4. Automobiles Operated under Contract Defined

The term "automobiles operated under contract" as used in Division V of this Policy shall mean automobiles operated in the business of the Insured stated in Item 3 of the application where the complete supervision, direction and control of such automobiles remain with the owner thereof, but shall not include any automobile owned in whole or part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

### 5. Two or more Automobiles

When two or more automobiles are insured hereunder the terms of Division V of this Policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under Section A.

### 6. Premium Adjustment

An estimated premium for this form has been used as a factor in the computation of the provisional premium for this Policy. The actual premium for the insurance afforded by this

form determined in accordance with the company's rules, rates, rating plans, premium and minimum premiums applicable to this insurance, shall be included as a factor in the computation of this earned premium for this Policy.

## STATUTORY CONDITIONS

(YUKON TERRITORY, NORTHWEST TERRITORIES, ALBERTA, ONTARIO, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND)

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

NOTE: All of the statutory conditions contain the above wording. However,

- in all of the provinces and territories using this standard, approved form, only Statutory Conditions 1, 8 and 9 are made applicable to accident benefits insurance and uninsured motorist insurance where it is provided by contract.
- in the Northwest Territories the definition of "Insured Person" must be read as containing the addition of the words "and includes any other person to whom benefits may be payable under the accident benefits set out in the Schedule of the Insurance Ordinance".

### 1. Material Change in Risk

- a. The insured named in this contract shall promptly notify the Insurer or its local agent in writing of any change in the risk material to the contract and within the Insured's knowledge.
- b. Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:
  - 1) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceeding under the Bankruptcy Act (Canada);  
  
and in respect of insurance against loss of or damage to the automobile,
  - 2) any mortgage, lien or encumbrance affecting the automobile after the application for the contract;
  - 3) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

NOTE: In Prince Edward Island Statutory Condition 1, sub-conditions 2 and 3 are identical with the above quoted Statutory Condition relating to material changes in risk.

## 2. Prohibited Use by Insured

### a. The Insured shall not drive or operate the automobile:

- 1) unless the Insured is for the time being either authorized by law or qualified to drive or operate the automobile; or
- 2) while the Insured's license to drive or operate an automobile is suspended or while the Insured's right to obtain a license is suspended or while the Insured is prohibited under order of any court from driving or operating an automobile; or
- 3) while the Insured is under the age of sixteen or under such other age as is prescribed by the law of the province in which the Insured resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to the Insured; or
- 4) for any illicit or prohibited trade or transportation; or
- 5) in any race or speed test.

### b. Prohibited Use by Others

The Insured shall not permit, suffer, allow or connive at the use of the automobile:

- 1) by any person,
  - a) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
  - b) while the person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which that person resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to that person; or
- 2) by any person who is a member of the household of the Insured while that person's license to drive or operate an automobile is suspended or while that person's right to obtain a license is suspended or while that person is prohibited under order of any court from driving or operating an automobile; or
- 3) for any illicit or prohibited trade or transportation; or
- 4) in any race or speed test.

### 3. Requirements Where Loss or Damage to Persons or Property

#### a. The Insured shall:

- 1) promptly give to the Insurer written notice, with all available particulars of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
- 2) verify by statutory declaration, if required by the Insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under a contract; and
- 3) forward immediately to the Insurer every letter, document, advice or writ received by the Insured from or on behalf of the claimant.

#### b. The Insured shall not:

- 1) voluntarily assume any liability or settle any claim except at the Insured's own cost, or
- 2) interfere in any negotiations for settlement or in any legal proceeding.

#### c. The Insured shall, whenever requested by the Insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the Insurer; except in a pecuniary way, in the defence of any action or in the prosecution of any appeal.

### 4. Requirements Where Loss or Damage to Automobile

#### a. Where loss of or damage to the automobile occurs, the Insured shall, if the loss or damage is covered by this contract:

- 1) promptly give notice thereof in writing to the Insurer with the fullest of information obtainable at the time;
- 2) at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- 3) deliver to the Insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of the Insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the Insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the Insured.

- b. Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under Sub-condition a. of this condition is not recoverable under this contract.
- c. No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss of damage shall be removed
  - 1) without the written consent of the Insurer; or
  - 2) until the Insurer has had a reasonable time to make the examination for which provision is made in Statutory Condition 5.

d. Examination of Insured

The Insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative, all documents in the Insured's possession or control that relate to the matters in question and the Insured shall permit extracts and copies thereof to be made.

e. Insurer Liable for Cash Value of Automobile

The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

f. Repair or Replacement

Except where an appraisal has been made, the Insurer, instead of making payment, may, within a reasonable time, repair, rebuild, or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

g. No Abandonment; Salvage

There shall be no abandonment of the automobile to the Insurer without the Insurer's consent. If the Insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the Insurer.

h. In Case of Disagreement

In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by the appraisal as provided under The Insurance Act (in Newfoundland, The Insurance Contracts Act) before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after a proof of loss has been delivered.

5. Inspection of Automobile

The Insured shall permit the Insurer at all reasonable times to inspect the automobile and its equipment.

6. Time and Manner of Payment of Insurance Money

a. The Insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it, or where an appraisal is made under sub-condition h. of Statutory Condition 4, within fifteen days after the award is rendered by the appraisers.

b. When Action May be Brought

The Insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgement against the Insured after trial of the issue or by agreement between the parties with the written consent of the Insurer.

c. Limitation of Actions

Every action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

NOTE: In Yukon Territory, Northwest Territories and New Brunswick, the one year limitation period in sub-condition c. should read "2 years". In the case of Nova Scotia and Newfoundland, sub-condition c. should read as follows: "c. Every action or proceeding under this contract against the Insurer in respect of a claim for indemnification for liability of the Insured for loss or damage to property of another person or for personal injury to or death of another person shall be commenced within

two years after the liability of the Insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile shall be commenced within two years from the time the loss was sustained and not afterwards.”

#### 7. Who May Give Notice and Proofs of Claim

Notice of claim may be given and proofs of claim may be made by the agent of the Insured named in this contract in case of absence or inability of the Insured to give notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the Insured refuses to do so, by a person to whom any part of the insurance money is payable.

#### 8. Termination

This policy may be cancelled by the Insured named on the Declaration Page or the Insurer in accordance with the provisions of the Termination of Insurance Clause set out in the General Provisions of this policy.

#### 9. NOTICE

Any written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agency, or head office of the Insurer in the Province. Written notice may be given to the Insured named in this contract by letter personally delivered to the Insured or by registered mail addressed to the Insured at the Insured’s latest post office address as notified to the Insurer. In this condition, the expression “Registered” means registered in or outside Canada.

NOTE: In the Northwest Territories, the reference is to Territories and in the Yukon Territory the reference is to Territory rather than Province.

## COMMERCIAL GENERAL LIABILITY POLICY

**Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.**

The word “Insured” means any person or organization qualifying as such under Part II – WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning and are defined in Part V - Definitions.

In return for the payment of the premium, and subject to all the terms of this policy, the Insurer agrees with the Named Insured to provide insurance as stated in this policy.

### **Part I – COVERAGES**

#### **COVERAGE A. BODILY INJURY and PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

- a. The Insurer will pay those sums that the Insured becomes legally obligated to pay as “compensatory damages” because of “bodily injury” or “property damage” to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B and D. This insurance applies only to “bodily injury” and “property damage” which occurs during the policy period. The “bodily injury” or “property damage” must be caused by an “occurrence”. The “occurrence” must take place in the “coverage territory”. The Insurer will have the right and duty to defend an “action” seeking those damages. But:
  - 1) The amount the Insurer will pay for “compensatory damages” is limited as described in Part III – LIMITS OF INSURANCE;
  - 2) The Insurer may investigate and settle any claim or “action” at the Insurer’s discretion; and
  - 3) The Insurer’s right and duty to defend ends when the Insurer has used up the applicable limit of insurance in the payment of judgements or settlements under Coverages A, B or D or medical expenses under Coverage C.

- b. "Compensatory damages" because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- c. "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of SECTION II – WHO IS AN INSURED or any "employee" authorized by the Named Insured to give or receive notice of an "occurrence" or claim:
  - 1) Reports all, or any part, of the "bodily injury" or "property damage" to the Insurer or any other insurer;
  - 2) Receives a written or verbal demand or claim for "compensatory damages" because of the "bodily injury" or "property damage"; or
  - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. "Compensatory damages" because of "bodily injury" include "compensatory damages" claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the Insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the Insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "compensatory damages":
  - 1) That the Insured would have in the absence of the contract or agreement; or
  - 2) Assumed in a contract or agreement that is an "insured contract", provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable legal fees and necessary litigation expenses incurred by or for a party other than an Insured are deemed to be "compensatory damages" because of "bodily injury" or "property damage", provided:

- a) Liability to such party for, or at the cost of, that party's defence has also been assumed in the same "insured contract"; and
  - b) Such legal fees and litigation expenses are for defence of that party against a civil or alternative dispute resolution proceeding in which "compensatory damages" to which this insurance applies are alleged.
- c. Any obligation of the Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- d. "Bodily injury" to
- 1) An "employee" of the Insured arising out of and in the course of:
    - a) Employment by the Insured; or
    - b) Performing duties related to the conduct of the Insured's business; or
  - 2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph 2.d.1) above.

This exclusion applies:

- i) Whether the Insured may be liable as an employer or in any other capacity; and
- ii) To any obligation to share "compensatory damages" with or repay someone else who must pay damages because of the injury.

This exclusion does not apply:

- a) To liability assumed by the Insured under an "Insured contract"; or
  - b) To employees on whose behalf contributions are made by or required to be made by the Insured under the provisions of any workers' compensation law.
- e. "Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the ownership, maintenance, use or entrustment to others of any "automobile" owned or operated by or on behalf of or rented or loaned to any insured. Use includes operation and "loading or unloading". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage".

This exclusion applies to any motorized snow vehicle or its trailers and any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "automobile" that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law.
  - (2) "Bodily injury" or "property damage" arising out of a defective condition in, or improper maintenance of, any "automobile" owned by the Insured while leased to others for a period of 30 days or more provided the lessee is obligated under contract to ensure that the "automobile" is insured.
  - (3) The ownership, use or operation of machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use or operation of such equipment, but this exception does not apply when such equipment is used for the purpose of "loading or unloading".
- f. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use, operation, "loading or unloading", or entrustment to others, by or on behalf of any Insured of:
- 1) Any "aircraft", air cushion vehicle or watercraft owned or operated by or rented or loaned to any Insured; or
  - 2) Any premises for the purpose of an airport or "aircraft" landing area and all operations necessary or incidental thereto.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "aircraft" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- 1) A watercraft while ashore on premises the Named Insured owns or rents;
- 2) A watercraft that the Named Insured does not own that is:
  - a) Less than 8 metres long; and

- b) Not being used to carry persons or property for a charge; or
- 3) “Bodily injury” to an employee of the Insured on whose behalf contributions are made by or required to be made by the Insured under the provisions of any workers compensation law.
- g. “Property damage” to:
  - 1) Property owned or occupied by, or rented or loaned to, any Insured;
  - 2) Premises any Insured sells, gives away or abandons, if the “property damage” arises out of any part of those premises;
  - 3) Property in the care, custody or control of any Insured;
  - 4) That particular part of real property on which any Insured or any contractor or subcontractor working directly or indirectly on any Insured’s behalf is performing operations, if the “property damage” arises out of those operations; or
  - 5) That particular part of any property that must be restored, repaired or replaced because “the Named Insured’s work” was incorrectly performed on it.

Paragraph 2) of this exclusion does not apply if the premises are “the Named Insured’s work” and were never occupied, rented or held for rental by the Insured.

Paragraph 3), 4), and 5) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 5) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

- h. “Property damage” to “the Named Insured’s product” arising out of such products or any part of such products.
- i. “Property damage” to “the Named Insured’s work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on the Insured’s behalf by a subcontractor.

- j. “Property damage” to “impaired property” or property that has not been physically injured, arising out of:
  - 1) A defect, deficiency, inadequacy or dangerous condition in “the Named Insured’s product” or “the Named Insured’s work”; or

- 2) A delay or failure by any Insured or anyone acting on any Insured's behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "the Named Insured's product" or "the Named Insured's work" after it has been put to its intended use.

- k. "Compensatory damages" claimed for any loss, cost or expense incurred by any Insured or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- 1) "The Named Insured's product";
- 2) "The Named Insured's work"; or
- 3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

- l. "Property damage" arising out of:

- 1) The use of explosives for blasting, unless used in conjunction with film production; or
- 2) Vibration from pile driving or caisson work, unless used in conjunction with film production; or
- 3) The removal or weakening of support of any property, building or land whether such support be natural or otherwise, unless used in conjunction with film production.

This exclusion does not apply:

- 1) To "property damage" arising out of work performed on the Named Insured's behalf by any contractor or subcontractor; or
- 2) To "property damage" included within the "products-completed operations hazard".

- m. Liability for:

- 1) Erasure, destruction, corruption, misappropriation, misinterpretation of "data"; or
- 2) Erroneously creating, amending, entering, deleting or using "data",

and any loss of use arising therefrom.

- n. "Bodily injury" arising out of "personal and advertising injury".
- o. Asbestos – See Common Exclusions.
- p. Fungi and Fungal Derivatives – See Common Exclusions.
- q. Nuclear Liability – See Common Exclusions.
- r. Pollution – See Common Exclusions.
- s. Professional Liability – See Common Exclusions.
- t. Terrorism – See Common Exclusions.
- u. War Risks – See Common Exclusions.

## **COVERAGE B. PERSONAL and ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

- a. The Insurer will pay those sums that the Insured becomes legally obligated to pay as "compensatory damages" because of "personal and advertising injury" to which this insurance applies. The Insurer will have the right and duty to defend any "action" seeking those "compensatory damages". The Insurer will have no duty to defend any Insured against any "action" seeking "compensatory damages" for "personal and advertising injury" to which this insurance does not apply. The Insurer may, at its discretion, investigate any offense and settle any claim or "action" that may result. But:
  - 1) The amount the Insurer will pay for "compensatory damages" is limited as described in Part III - LIMITS OF INSURANCE;
  - 2) The Insurer may investigate and settle any claim or "action" at the Insurer's discretion; and
  - 3) The Insurer's right and duty to defend ends when the Insurer has used up the applicable limit of insurance in the payment of judgements or settlements under Coverages A, B or D or medical expenses under Coverage C.

No other obligation to pay sums or perform acts or service is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A, B and D.

- b. This insurance applies to "personal and advertising injury" caused by an offence arising out of the Named Insured's business but only if the offence was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

a. “Personal and advertising injury”:

- 1) Caused by or at the direction of the Insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”;
- 2) Arising out of oral or written publication of material, if done by or at the direction of the Insured with knowledge of its falsity;
- 3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- 4) Arising out of a criminal act committed by or with the consent of the Insured;
- 5) For which the Insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for “compensatory damages” that the Insured would have in the absence of the contract or agreement.
- 6) Arising out of breach of contract, except an implied contract to use another’s advertising idea in the Named Insured’s “advertisement”;
- 7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in the Named Insured’s “advertisement”;
- 8) Arising out of the wrong description of the price of goods, products or services stated in the Named Insured’s “advertisement”;
- 9) An offense committed by an Insured whose business is advertising, broadcasting, publishing or telecasting;
- 10) Arising out of an electronic chatroom or bulletin board that any Insured hosts, owns, or over which any Insured exercises control;
- 11) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in the Named Insured’s “advertisement” of copyright, trade dress or slogan; or
- 12) Arising out of the unauthorised use of another’s name or product in the Named Insured’s e-mail address, domain name or metatag, or any other similar tactics to mislead another’s potential customers.

b. Asbestos – See Common Exclusions.

- c. Fungi and Fungal Derivatives – See Common Exclusions.
- d. Nuclear Liability – See Common Exclusions.
- e. Pollution – See Common Exclusions.
- f. Professional Liability – See Common Exclusions.
- g. Terrorism – See Common Exclusions.
- h. War Risks – See Common Exclusions.

## **COVERAGE C. MEDICAL PAYMENTS**

### **1. Insuring Agreement**

- a. The Insurer will pay medical expenses as described below for “bodily injury” caused by an accident:
  - 1) On premises the Named Insured owns or rents;
  - 2) On ways next to premises the Named Insured owns or rents; or
  - 3) Because of the Named Insured’s operations;provided that:
  - 1) The accident takes place in the “coverage territory” and during the policy period;
  - 2) The expenses are incurred and reported to the Insurer within one year of the date of the accident; and
  - 3) The injured person submits to examination, at the Insurer’s expense, by physicians of the Insurer’s choice as often as the Insurer reasonably requires.
- b. The Insurer will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. The Insurer will pay reasonable expenses for:
  - 1) First aid at the time of an accident;
  - 2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - 3) Necessary ambulance, hospital, professional nursing and funeral services.

## **2. Exclusions**

The Insurer will not pay expenses for “bodily injury”:

- a. To any Insured, except “volunteer workers”;
- b. To a person hired to do work for or on behalf of any Insured or a tenant of any Insured;
- c. To a person injured on that part of premises the Named Insured owns or rents that the person normally occupies;
- d. To a person, whether or not an employee of any Insured, who at the time of injury is entitled to benefits under any workers’ compensation or disability benefits law or a similar law;
- e. To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests;
- f. The payment of which is prohibited by law;
- g. Included within the “products-completed operations hazard”; or
- h. Excluded under Coverage A.

## **COVERAGE D. TENANTS' LEGAL LIABILITY**

### **1. Insuring Agreement**

The Insurer will pay those sums that the Insured becomes legally obligated to pay as “compensatory damages” because of “property damage” to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B, and D. This insurance applies only to “property damage” to premises owned or rented to the Named Insured, or occupied by the Named Insured. This insurance applies only to “property damage” which occurs during the policy period. The “property damage” must be caused by an “occurrence”. The “occurrence” must take place in the “coverage territory”. The Insurer will have the right and duty to defend any “action” seeking those “compensatory damages” but:

- a. The amount the Insurer will pay for “compensatory damages” is limited as described in Part III – LIMITS OF INSURANCE;
- b. The Insurer may investigate and settle any claim or “action” at the Insurer’s discretion; and

- c. The Insurer's right and duty to defend ends when the Insurer has used up the applicable limit of insurance in the payment of judgements or settlements under Coverages A, B or D or medical expenses under Coverage C.

## **2. Exclusions**

This insurance does not apply to:

- a. "Property damage" expected or intended from the standpoint of the Insured.
- b. "Property damage" for which the Insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement other than a lease of premises. This exclusion does not apply to liability for "compensatory damages" that the Insured would have in the absence of the contract or agreement.
- c. Asbestos – See Common Exclusions.
- d. Fungi and Fungal Derivatives – See Common Exclusions.
- e. Nuclear Liability – See Common Exclusions.
- f. Pollution – See Common Exclusions.
- g. Professional Liability – See Common Exclusions.
- h. Terrorism – See Common Exclusions.
- i. War Risks – See Common Exclusions.

### **COMMON EXCLUSIONS – COVERAGES A, B, C and D**

This insurance does not apply to:

#### **1. Asbestos**

"Bodily injury", "property damage" or "personal and advertising injury" related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

## **2. Fungi and Fungal Derivatives**

- a. "Bodily injury", "property damage", "personal and advertising injury" or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "fungi" or "spores";
- b. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with a. above; or
- c. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in a. or b. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

## **3. Nuclear Energy Liability**

- a. Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- b. "Bodily injury" or "property damage" with respect to which an Insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;
- c. "Bodily injury" or "property damage" resulting directly or indirectly from the nuclear energy hazard arising from:
  - 1) The ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
  - 2) The furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of a nuclear facility;

- 3) The possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this exclusion:

- a) The term “nuclear energy hazard” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- b) The term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- c) The term “nuclear facility” means:
  - 1) Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - 2) Any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
  - 3) Any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - 4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

- d) The term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

#### 4. Pollution

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":
  - 1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - i. "Bodily injury" if sustained within a building and caused by smoke, fumes, vapour or soot from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - ii. "Bodily injury" or "property damage" for which the Insured may be held liable, if the Insured is a contractor and the owner or lessee of such premises, site or location has been added to this policy as an additional insured with respect to the Insured's ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, rented or loaned to, any insured, other than that additional insured; or
    - iii. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - 2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - 3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - i. Any insured; or
    - ii. Any person or organization for whom the Insured may be legally responsible; or
  - 4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- i. “Bodily injury” or “property damage” arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the “bodily injury” or “property damage” arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - ii. “Bodily injury” or “property damage” sustained within a building and caused by the release of gases, fumes or vapours from materials brought into that building in connection with operations being performed by the Insured or on the Insured’s behalf by a contractor or subcontractor; or
  - iii. “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.
- 5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.
- b. Any loss cost, or expense arising out of any:
- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”; or
  - 2) Claim or “action” by or on behalf of a governmental authority for “compensatory damages” because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, “pollutants”.

However, this Section b. does not apply to liability for “compensatory damages” because of “property damage” that the Insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “action” by or on behalf of a governmental authority.

## **5. Professional Liability**

"Bodily injury" (other than “incidental medical malpractice injury”), "property damage" or “personal and advertising injury” due to the rendering of or failure to render by, or on behalf

of, any Insured any "professional services" for others, or any error or omission, malpractice or mistake in providing those services.

## **6. Terrorism**

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly, in whole or in part, out of "terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

## **7. War Risks**

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly, in whole or in part, out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

### **SUPPLEMENTARY PAYMENTS – COVERAGES A, B and D**

The Insurer will pay, with respect to any claim or "action" the Insurer defends:

- 1) All expenses the Insurer incurs.
- 2) The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. The Insurer does not have to furnish these bonds.
- 3) All reasonable expenses incurred by the Insured at the Insurer's request to assist the Insurer in the investigation or defence of the claim or "action", including actual loss of earnings up to \$250 a day because of time off from work.
- 4) All costs assessed or awarded against the Insured in the "action".
- 5) Prejudgement interest awarded against the Insured on that part of the judgement the Insurer pays. If the Insurer makes an offer to pay the applicable limit of insurance, the Insurer will not pay any prejudgement interest based on that period of time after the offer.
- 6) All interest on the full amount of any judgement that accrues after entry of the judgement and before the Insurer has paid, offered to pay, or deposited in court the part of the judgement that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

## Part II – WHO IS AN INSURED

1) If the Named Insured designated in the Declarations is:

- a) An individual, the Named Insured and his or her spouse are Insureds, but only with respect to the conduct of a business of which the Named Insured is the sole owner.
- b) A partnership, limited liability partnership or joint venture, the Named Insured is an Insured. The Named Insured's members, partners, and their spouses are also Insureds, but only with respect to the conduct of the Named Insured's business.
- c) A limited liability company, the Named Insured is an Insured. The Named Insured's members are also Insureds, but only with respect to the conduct of the Named Insured's business. The Named Insured's managers are also Insureds, but only with respect to their duties as the Named Insured's managers.
- d) An organization other than a partnership, limited liability partnership, joint venture or limited liability company, the Named Insured is an Insured. The Named Insured's "executive officers" and directors are Insureds, but only with respect to their duties as the Named Insured's "executive officers" or directors. The Named Insured's stockholders are also Insureds, but only with respect to their liability as stockholders of the Named Insured.
- e) A trust, the Named Insured is an Insured. The Named Insured's trustees are also Insureds, but only with respect to their duties as trustees of the Named Insured.

2) Each of the following is also an Insured:

- a) The Named Insured's "volunteer workers" only while performing duties related to the conduct of the Named Insured's business, and the Named Insured's "employees" other than either the Named Insured's "executive officers" (if the Named Insured is an organization other than a partnership, limited liability partnership, joint venture or limited liability company) or the Named Insured's managers (if the Named Insured is a limited liability company), but only for acts within the scope of their employment by the Named Insured or while performing duties related to the conduct of the Named Insured's business. However, none of these "employees" or "volunteer workers" are insureds for:
  - (1) "Bodily injury" or "personal and advertising injury":
    - (a) To the Named Insured, to the Named Insured's partners or members (if the Named Insured is a partnership, limited liability partnership or joint venture), to the Named Insured's members (if the Named Insured is a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of the Named Insured's business, or to the Named Insured's other "volunteer workers" while performing duties related to the conduct of the Named Insured's business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the injury described in Paragraphs (1)(a) or (b) above;
- (d) Arising out of his or her providing or failing to provide professional health care services; or
- (e) To any person who at the time of injury is entitled to benefits under any workers' compensation or disability benefits law or a similar law; or

(2) "Property damage" to property:

- (a) Owned, occupied or used by, or
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

the Named Insured, any of the Named Insured's "employees", "volunteer workers", any partner or member (if the Named Insured is a partnership, limited liability partnership or joint venture), or any member (if the Named Insured is a limited liability company).

- b) Any person (other than the Named Insured's employees or "volunteer workers"), or any organization while acting as the Named Insured's real estate manager.
  - c) Any person or organization having proper temporary custody of the Named Insured's property if the Named Insured dies, but only:
    - 1. With respect to liability arising out of the maintenance or use of that property; and
    - 2. Until the Named Insured's legal representative has been appointed.
  - d) The Named Insured's legal representative if the Named Insured dies, but only with respect to duties as such. That representative will have all the Named Insured's rights and duties under this Policy.
- 3) Any organization the Named Insured newly acquires or forms, other than a partnership, limited liability partnership, joint venture or limited liability company, and over which the Named Insured maintains ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after the Named Insured acquires or forms the organization or the end of the policy period, whichever is earlier;
- b. Coverages A and D do not apply to “bodily injury” or “property damage” that occurred before the Named Insured acquired or formed the organization; and
- c. Coverage B does not apply to “personal and advertising injury” arising out of an offense committed before the Named Insured acquired or formed the organization.

No person or organization is an Insured with respect to the conduct of any current or past partnership, limited liability partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations of this Policy.

### **Part III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most the Insurer will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or “actions” brought; or
  - c. Persons or organizations making claims or bringing “actions”.
2. Subject to 3. below, the Each Occurrence Limit is the most the Insurer will pay for the sum of:
  - a. “Compensatory damages” under Coverage A; and
  - b. Medical expenses under Coverage C;
 because of all “bodily injury” and “property damage” arising out of any one “occurrence”.
3. Under Coverage A, the Aggregate Limit is the most the Insurer will pay for the sum of all “compensatory damages” because of “bodily injury” and “property damage” included in the “products-completed operations hazard”.
4. The Personal and Advertising Injury Limit is the most the Insurer will pay under Coverage B for the sum of all “compensatory damages” because of all Personal and Advertising Injury sustained by any person or organization and in the aggregate during any one policy year.
5. The Tenants' Legal Liability Limit is the most the Insurer will pay under Coverage D for “compensatory damages” because of “property damage” to any one premises.
6. Subject to 2. above, the Medical Expense Limit is the most the Insurer will pay under Coverage C for all medical expenses because of “bodily injury” sustained by any one person.

The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations unless the policy period is extended after issuance for an additional period of less than 12 months. In that case the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## 7. Deductible

- a. The Insurer's obligation under Bodily Injury Liability, Property Damage Liability and Tenants' Legal Liability to pay "compensatory damages" on the Insured's behalf applies only to the amount of "compensatory damages" in excess of any deductible amounts stated in the Declarations. The limits of insurance applicable to "each occurrence" for Bodily Injury Liability and Property Damage Liability and "any one premises" for Tenants' Legal Liability will be reduced by the amount of such deductible. The "Aggregate Limit" for such coverages shall not be reduced by the application of such deductible amount.
- b. The deductible amounts stated in the Declarations apply as follows:
  - 1) Under Coverage A;
    - i. Bodily Injury Liability or Property Damage Liability respectively;
      - a) To all "compensatory damages" because of "bodily injury" as a result of any one "occurrence" or
      - b) To all "compensatory damages" because of "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
    - ii. Bodily Injury Liability and Property Damage Liability combined, to all "compensatory damages" because of "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
  - 2) Under Coverage D, Tenants' Legal Liability, to all "compensatory damages" because of "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
- c. The terms of this insurance, including those with respect to:
  - 1) The Insurer's right and duty to defend any "action" seeking those damages; and
  - 2) The Named Insured's duties in the event of an "occurrence", claim or action,

apply irrespective of the application of the deductible amount.

- d. The Insurer may pay any part or all of the deductible amount to effect settlement of any claim or “action” and, upon notification of the action taken, the Named Insured shall promptly reimburse the Insurer for such part of the deductible amount as has been paid by the Insurer.

## **Part IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

### **1. Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Insurer of its obligations under this Policy.

### **2. Canadian Currency Clause**

All limits of insurance, premiums and other amounts as expressed in this Policy are in Canadian currency.

### **3. Changes**

This policy contains all the agreements between the Named Insured and the Insurer concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with the Insurer’s consent. This policy’s terms can be amended or waived only by endorsement issued by the Insurer and made a part of this policy.

### **4. Conformity With Statute**

Where the terms of this policy and forms attached hereto are in conflict with the statutes of the Province in which the property insured is located, such terms are hereby amended to conform to such statutes.

### **5. Duties in the Event of Occurrence, Claim or Action**

- a. The Named Insured must see to it that the Insurer is notified promptly of an “occurrence” which may result in a claim. To the extent possible, notice should include:
  - 1) How, when and where the “occurrence” took place;
  - 2) The names and addresses of any injured persons and of witnesses; and
  - 3) The nature and location of any injury or damage arising out of the “occurrence”.
- b. If a claim is made or “action” is brought against any Insured, the Named Insured must see to it that the Insurer receives prompt written notice of the claim or “action”.

- c. The Named Insured and any other involved Insured must:
- 1) Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the claim or “action”;
  - 2) Authorize the Insurer to obtain records and other information;
  - 3) Cooperate with the Insurer in the investigation, settlement or defence of a claim or “action”; and
  - 4) Assist the Insurer, upon its request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the Insurer’s consent.

## **6. Examination of the Insured’s Books and Records**

The Insurer may examine and audit the Named Insured’s books and records as they relate to this policy at any time during the policy period and up to three years afterward.

## **7. Inspections and Surveys**

The Insurer has the right but is not obligated to:

- a. Make inspections and surveys at any time;
- b. Give the Named Insured reports on the conditions it finds; and
- c. Recommend any changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Insurer does not make safety inspections. The Insurer does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And the Insurer does not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards.

This condition applies not only to the Insurer, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

## 8. Legal Action Against the Insurer

No person or organization has a right under this policy:

- a. To join the Insurer as a party or otherwise bring the Insurer into an “action” asking for “compensatory damages” from an Insured; or
- b. To sue the Insurer on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgement against an Insured obtained after an actual trial; but the Insurer will not be liable for “compensatory damages” that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the Insured and the claimant or the claimant's legal representative.

Every “action” or proceeding against the Insurer shall be commenced within one year next after the date of such judgement or agreed settlement and not afterwards. If this policy is governed by the law of Quebec, every “action” or proceeding against the Insurer shall be commenced within three years from the time the right of action arises.

## 9. Other Insurance

If other valid and collectible insurance is available to the Insured for a loss the Insurer covers under Coverages A, B or D of this policy, the Insurer’s obligations are limited as follows:

- a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, the Insurer’s obligations are not affected unless any of the other insurance is also primary. Then, the Insurer will share with all that other insurance by the method described in c. below.

- b. Excess Insurance

This insurance is excess over:

- 1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - a) That is Fire, Extended Coverage, Builder’s Risk, Installation Risk or similar coverage for “the Named Insured’s work”;
  - b) That is Fire insurance for premises rented by the Insured or temporarily occupied by the Insured with permission of the owner;

- c) If the loss arises out of the maintenance or use of watercraft or “automobile” to the extent not subject to either Exclusion e. or f. of Section I – Coverage A – Bodily Injury and Property Damage Liability.
- 2) Any other primary insurance available to the Insured covering liability for “compensatory damages” arising out of the premises or products-completed operations for which the Insured has been added as an additional insured by attachment of an endorsement.

When this insurance is excess over other insurance, the Insurer will pay only the Insurer’s share of the amount of the loss, if any, that exceeds the sum of:

1. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
2. The total of all deductible and self-insured amounts under all that other insurance.

The Insurer will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations.

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**10. Premium Audit**

- a. The Insurer will compute all premiums for this policy in accordance with its rules and rates.
- b. Premium shown in the Declarations as total premium is a deposit premium only. At the close of each audit period the Insurer will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the total and audit premiums paid for the policy term is greater than the earned premium, the Insurer will return the excess to the first Named Insured subject to the retention of the minimum premium shown in the Declarations.
- c. The first Named Insured must keep records of the information the Insurer needs for premium computation, and send the Insurer copies at such times as the Insurer may request.

## **11. Premiums**

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums the Insurer pays.

## **12. Representations**

By accepting this policy, the Named Insured agrees that:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations the Named Insured made to the Insurer; and
- c. The Insurer has issued this policy in reliance upon the Named Insured's representations.

## **13. Separation of Insureds, Cross Liability**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or "action" is brought.

## **14. Termination**

- a. The first Named Insured shown in the Declarations may terminate this policy by mailing or delivering to the Insurer advance written notice of termination.
- b. The Insurer may terminate this policy by mailing or delivering to the first Named Insured written notice of termination at least:
  - 1) 15 days before the effective date of termination if the Insurer terminates for non-payment of premium; or
  - 2) 30 days before the effective date of termination if the Insurer terminates for any other reason.

Except in Quebec, if notice is mailed, termination takes effect 15 or 30 days after receipt of the letter by the post office to which it is addressed, depending upon the reason for termination. Proof of mailing will be sufficient proof of notice.

- In Quebec, termination takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for termination.
- c. The Insured will mail or deliver its notice to the first Named Insured's last mailing address known to the Insurer.
  - d. The policy period will end on the date the termination takes effect.
  - e. If the policy is terminated, the Insurer will send the first Named Insured any premium refund due. If the Insured terminates, the refund will be pro rata. If the first Named Insured terminates, the refund may be less than pro rata. The termination will be effective even if the Insurer has not made or offered a refund.

**15. Transfer of Rights of Recovery Against Others to the Insurer**

If the Insured has rights to recover all or part of any payment the Insurer has made under this policy, those rights are transferred to the Insurer. The Insured must do nothing after loss to impair them. At the Insurer's request, the Insured will bring "action" or transfer those rights to the Insurer and help the Insurer enforce them.

**16. Transfer of the Named Insured's Rights and Duties Under this Policy**

The Named Insured's rights and duties under this policy may not be transferred without the Insurer's written consent except in the case of death of an individual Named Insured.

If the Named Insured dies, the Named Insured's rights and duties will be transferred to the Named Insured's legal representative but only while acting within the scope of duties as the Named Insured's legal representative. Until the Named Insured's legal representative is appointed, anyone having proper temporary custody of the Named Insured's property will have the Named Insured's rights and duties but only with respect to that property.

**Part V – DEFINITIONS**

- 1. "Action" means a civil proceeding in which "compensatory damages" because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Action" includes:
  - a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the insured must submit or does submit with the Insurer's consent; or
  - b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the insured submits with the Insurer's consent.

2. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about the Named Insured's goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about the Named Insured's goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
3. "Aircraft" means any lighter or heavier than air craft capable of flight.

"Aircraft" does not include equipment or craft intended in whole or in part for use outside of the atmosphere.
4. "Automobile" means a land motor vehicle, trailer or semitrailer that is required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, including any attached machinery or equipment.
5. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
6. "Compensatory Damages" means damages due or awarded in payment for actual injury or economic loss. "Compensatory damages" does not include punitive or exemplary damages or the multiplied portion of any multiplied damage award.
7. "Coverage territory" means:
  - a. Canada and the United States of America (including its territories and possessions);
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All parts of the world if
    - 1) The injury or damage arises out of:
      - a) Goods or products made or sold by the Named Insured in the territory described in a. above;
      - b) The activities of an Insured whose business is located or incorporated in the territory described in a. above, but is away on business for a period of one year or less; or

- c) “Personal and advertising injury” offenses that take place through the Internet or similar electronic means of communication

provided the Insured's responsibility to pay “compensatory damages” is determined in an “action” on the merits, in the territory described in a. above or in a settlement the Insurer agrees to in writing.

8. “Data” means representations of information or concepts, in any form.
9. "Employee" includes a "leased worker" and a "temporary worker".
10. "Executive officer" means a person holding any of the officer positions created by the Named Insured's charter, constitution, by-laws or any other similar governing document
11. "Fungi" includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens or pathogens.
12. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
13. “Impaired property” means tangible property, other than “the Named Insured’s product” or “the Named Insured’s work”, that cannot be used or is less useful because:
- a. It incorporates “the Named Insured’s product” or “the Named Insured’s work” that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. The Named Insured has failed to fulfil the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of “the Named Insured’s product” or “the Named Insured’s work”; or
  - b. The Named Insured fulfilling the terms of the contract or agreement.
14. “Incidental medical malpractice injury” means "bodily injury" arising out of the rendering of or failure to render, during the Policy Period, the following services:
- a. Medical, surgical, dental, x-ray or nursing services or treatment or the furnishing of food or beverages in connection therewith; or
  - b. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;

by any insured or any indemnitee causing the “incidental medical malpractice injury” who is not engaged in the business or occupation of providing any of the services described in a. and b. above.

15. “Insured contract” means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to the Insured or temporarily occupied by the Insured with permission of the owner is not an “insured contract”;
- b. A sidetrack agreement;
- c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
- d. Any other easement agreement;
- e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- f. An elevator maintenance agreement; or
- g. That part of any other contract or agreement pertaining to the Named Insured’s business under which the Named Insured assumes the tort liability of another to pay for “compensatory damages” because of “bodily injury” or “property damage” to a third person or organization, provided the “bodily injury” or “property damage” is caused, in whole or in part, by the Named Insured or by those acting on the Named Insured’s behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An “Insured contract” does not include that part of any contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for injury or damages arising out of:
  - 1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - 2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- b. Under which the Insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the Insured's rendering or failing to render

“professional services”, including those listed in 1) above and supervisory, inspection, architectural or engineering activities.

16. "Leased worker" means a person leased to the Named Insured by a labour leasing firm under an agreement between the Named Insured and the labour leasing firm, to perform duties related to the conduct of the Named Insured's business. "Leased worker" does not include a "temporary worker".

17. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an “aircraft”, watercraft or "automobile";
- b. While it is in or on an “aircraft”, watercraft or "automobile"; or
- c. While it is being moved from an “aircraft”, watercraft or "automobile" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the “aircraft”, watercraft or "automobile".

18. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

19. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. Wrongful entry into, wrongful eviction from, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication in any manner of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. Misappropriation of advertising ideas or styles of doing business; or
- g. Infringement of copyright, title or slogan.

20. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

21. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises the Named Insured owns or rents and arising out of "the Named Insured's product" or "the Named Insured's Work" except:

1) Products that are still in the Named Insured's physical possession; or

2) Work that has not yet been completed or abandoned. "The Named Insured's Work" will be deemed completed at the earliest of the following times:

a) When all of the work called for in the Named Insured's contract has been completed.

b) When all of the work to be done at the site has been completed if the Named Insured's contract calls for work at more than one site.

c) When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of

1) The existence of tools, uninstalled equipment or abandoned or unused materials; or

2) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by the Named Insured, and that condition was created by the "loading or unloading" of that vehicle by any Insured.

22. "Professional services" shall include but not be limited to:

a. Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;

b. Any professional service or treatment conducive to health;

c. Professional services of a pharmacist;

- d. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
- e. The handling or treatment of deceased human bodies including autopsies, organ donations or other procedures;
- f. Any cosmetic, body piercing, tonsorial, massage, physiotherapy, chiropody, hearing aid, optical or optometrical services or treatments;
- g. The preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications;
- h. Supervisory, inspection, architectural, design or engineering services;
- i. Accountant's, advertiser's, notary's (Quebec), public notary's, paralegal's, lawyer's, real estate broker's or agent's, insurance broker's or agent's, travel agent's, financial institution's, or consultant's professional advices or activities;
- j. Any computer programming or re-programming, consulting, advisory or related services; or
- k. Claim, investigation, adjustment, appraisal, survey or audit services.

23. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property; or
- b. Loss of use of tangible property that is not physically injured.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

24. "Spores" includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi".

25. "Temporary worker" means a person who is furnished to the Named Insured to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

26. "Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

27. "The Named Insured's product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - 1) the Named Insured;
  - 2) Others trading under the Named Insured's name; or
  - 3) A person or organization whose business or assets the Named Insured has acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"The Named Insured's product" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of the items included in a. and b. above.

"The Named Insured's product" does not include vending machines or other property rented to or located for the use of others but not sold.

28. "The Named Insured's work" means:

- a. Work or operations performed by the Named Insured or on the Named Insured's behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"The Named Insured's work" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in a. or b. above.

29. "Volunteer worker" means a person who is not the Named Insured's "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by the Named Insured, and is not paid a fee, salary or other compensation by the Named Insured or anyone else for their work performed for the Named Insured.

30. Wherever used in this policy, the term "Named Insured" means the Insured named in the Declarations to which this policy is attached.