

(NBPF NO. 4)

**NEW BRUNSWICK  
GARAGE  
AUTOMOBILE  
POLICY**

**Effective on and after  
December 1, 2018**

**PLEASE READ THIS CAREFULLY**



# NEW BRUNSWICK GARAGE AUTOMOBILE POLICY (NBPF No. 4)

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# **N.B.P.F. No. 4 – STANDARD GARAGE AUTOMOBILE POLICY**

## **INSURING AGREEMENTS**

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 and subject always to the condition that the Insurer shall be liable only under the Section(s) or subsection(s) of the Insuring Agreements for which a premium is specified in Item 5 of the application.

## **SECTION A – THIRD PARTY LIABILITY**

The Insurer agrees

**OWNED AUTOMOBILES** (a) to indemnify the Insured, and in the same manner and to the same extent as if named herein as the Insured, every other person who with the consent of the Insured personally drives any owned automobile or operates any part thereof, against the liability imposed by law upon the Insured or upon such other person for loss or damage arising from the ownership, use or operation of any such owned automobile; and

**NON-OWNED AUTOMOBILES** (b) 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 customer's automobile or non-owned automobile or part thereof;

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

## **EXCLUSIONS**

The Insurer shall not be liable under this Section:

- (a) for any liability imposed on any person insured by this Section
  - (1) by any workers' compensation law or plan; or
  - (2) for bodily injury to or the death of any partner, officer or employee of such person while engaged in the business of such person;
- (b) - deleted;
- (c) for loss or damage to property carried in or upon an automobile owned or driven by any person insured by this Section, or to any property owned or rented by, or in the care, custody or control of any person insured by this Section;
- (d) for loss or damage to any customer's automobile;
- (e) for any amount in excess of the limit(s) stated in Section A of Item 5 of the application, and expenditures provided for in the Additional Agreements of this Section; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or
- (f) for any liability arising from contamination of property carried in the automobile.

**See also General Provisions, Definitions, Exclusions and Statutory Conditions of this policy.**

## **ADDITIONAL AGREEMENTS OF INSURER**

Where indemnity is provided by this Section the Insurer shall:

- (1) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage to persons or property;

- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability;
- (4) where the injury is to a person, reimburse any person insured by this policy for outlay for such medical aid as is immediately necessary at the time;
- (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(s) stated in Section A of Item 5 of the application; and
- (6) not set up any defence to a claim that might not be set up if 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 this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the Insured arising out of the ownership, use or operation of the automobile;
- (2) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this policy.

### **SECTION A.1 – DIRECT COMPENSATION – PROPERTY DAMAGE**

Where section 254.1 of the **Insurance Act** applies, the Insurer agrees to indemnify the Insured under this section as though the Insured were a third party for damage caused to an automobile, its equipment, and its contents if not carried for reward, and for loss of use of the automobile, equipment, and contents arising from an accident for which another person would have been liable in the absence of section 254.1 of the **Insurance Act** if such automobile is,

- (a) owned by the Insured, provided that its use is not excluded under clause 11 of the General Provisions, Definitions and Exclusions and that it is not an Excluded Automobile under clause 12 of the General Provisions, Definitions and Exclusions, or
- (b) not owned by the Insured, provided that the automobile,
  - (i) is in the Insured's care, custody or control, and
  - (ii) is not being used for an Excluded Use under clause 11 of the General Provisions, Definitions and Exclusions and that it is not an Excluded Automobile under clause 12 of the General Provisions, Definitions and Exclusions, and
  - (iii) is not insured under another motor vehicle liability policy.

The amount paid will be based on the degree the Insured or driver is not at fault in the accident as determined, in accordance with the **Insurance Act** and the Fault Determination Rules made under the **Act**.

The amount paid in respect of loss or damage to the contents of the automobile which are not carried for reward will be paid to the owner of the contents.

#### **Deductible**

Each occurrence causing loss or damage covered under this section shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss in excess of the Direct Compensation Property Damage deductible, if any, stated in Section A.1 of Item 5 of the application multiplied by the percentage to which the driver of the automobile was determined to not be at fault under the Direct Compensation – Property Damage Fault Determination Rules.

If there is damage to both the automobile and its contents, the deductible will first be applied to the automobile loss. If there is any remaining deductible, the remainder will be applied to the contents loss.

The Insurer will pay that portion of the total damage that is equal to the percentage to which the Insured or driver was not at fault for the accident, less the applicable Direct Compensation-Property Damage deductible.

### **Exclusions**

The Insurer shall not be liable under this section:

- (a) for any amount in excess of the limit(s) stated in Section A of Item 5 of the application; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or
- (b) for any claims arising from contamination of property carried in the automobile.

**See also General Provisions, Definitions, Exclusions and Statutory Conditions of this policy.**

## **SECTION B – ACCIDENT BENEFITS**

### **SUBSECTION I – MEDICAL, REHABILITATION AND FUNERAL EXPENSES**

- (1) The Insurer will pay with respect to each insured person who sustains bodily injury as a result of an accident reasonable expenses resulting from the accident within the benefit period set out in clause (2) for,
  - (a) medical, surgical, dental, chiropractic, ambulance, hospital, or professional nursing services;
  - (b) any other service within the meaning of entitled services in the **Hospital Services Act** or the **Medical Services Payment Act**; and
  - (c) other goods and services, which, in the opinion of the insured person's attending physician and in the opinion of the Insurer's medical advisor, are essential for the treatment, occupational retraining or rehabilitation of the insured person.
- (2) The benefit period commences on the day of the accident and ends four years after the day of the accident.
- (3) The maximum amount payable under clause (1), in respect of any insured person, is \$50,000.00.
- (4) Medical services mentioned in subclause (a) of clause (1) means services;
  - (a) performed by a physician, or
  - (b) performed by a duly qualified health care professional and prescribed by a physician as necessary for the treatment of the person.
- (5) The Insurer will pay with respect to each insured person who dies as a result of an accident, funeral expenses incurred, up to the amount of \$2,500.00 in respect of the death of any insured person.
- (6) The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental, or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

# SUBSECTION 2 – DEATH BENEFITS AND LOSS OF INCOME PAYMENTS

## Part I – Death Benefits

**A.** Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, the Insurer will pay – based on the status at the date of the accident of the deceased in a household where a head of the household, spouse or common law partner or dependents survive – one of the following amounts:

Head of Household .....	\$50,000
Spouse or common law partner of the Head of the Household .....	\$25,000
Dependent within the meaning of sub-subparagraph (b) of subparagraph (3) of paragraph B .....	\$5,000

In addition, with respect to death of the head of the household, where there are two or more survivors – spouse or common law partner or dependents – the principal sum payable is increased \$1,000 for each survivor other than the first.

**B.** For the purpose of this Part:

- (1) “Spouse of the head of the household” means the spouse with the lesser income from employment in the twelve months preceding the date of the accident.
- (1a) “Common law partner of the head of the household” means the common law partner with the lesser income from employment in the twelve months preceding the date of the accident.
- (2) “Spouse” means either of two persons who,
  - (a) are married to each other;
  - (b) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
  - (c) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.
- (2a) “Common law partner” means a person who, not being married to another person, is residing with that person and who has cohabited continuously in a conjugal relationship with that other person for at least one year.
- (3) “Dependent” means
  - (a) the spouse or common law partner of the head of the household who resides with the head of the household; or
  - (b) a person,
    - (i) under the age of 19 years who resides with and is principally dependent upon the head of the household or the spouse or common law partner of the head of the household for financial support,
    - (ii) 19 years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse or common law partner of the head of the household for financial support, or
    - (iii) 19 years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse or common law partner of the head of the household for financial support, or
  - (c) a parent or relative,
    - (i) of the head of the household, or
    - (ii) of the spouse or common law partner of the head of the household,

residing in the same dwelling premises and principally dependent upon the head of the household or the spouse or common law partner of the head of the household for financial support.

- (4) The total amount payable shall be paid to a person who is the head of the household or the spouse or common law partner of the head of the household, as the case may be, if that person survives the deceased by at least 30 days.
- (5) The total amount payable with respect to death where no head of the household or spouse or common law partner survives the deceased by at least 30 days shall be divided equally among the surviving dependents.
- (6) No amount is payable on death, other than incurred funeral expenses, if no head of the household or dependent survives the deceased by at least 30 days.

## **Part II – Loss of Income**

Subject to the provisions of this Part, the Insurer will pay a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

- (a) such person was employed at the date of the accident;
- (b) within 30 days from the date of the accident, and as a result of the accident, the insured person suffers substantial inability to perform the essential duties of his occupation or employment for a period of not less than seven days;
- (c) no payments shall be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

## **Amount of Weekly Payment –**

- (a) The amount of a weekly payment shall be, 80 percent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
  - (i) the laws of any jurisdiction, other than payments available under any workers' compensation law or plan;
  - (ii) wage or salary continuation plans available to the person by reason of his employment,

but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his or her occupation or employment.

- (b) The maximum amount payable is \$250 per week in respect of any insured person.

## **For the purposes of this Part,**

- (1) there shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;
- (2) a principal unpaid housekeeper residing in the household, not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit for not more than 52 weeks at the rate of \$100 per week in respect of any insured person;
- (3) a person shall be deemed to be employed,
  - (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or

- (b) if 18 years of age or over and under the age of 65 years, so engaged for any six months out of the preceding 12 months and in these circumstances shall be deemed to have suffered loss of income at a rate equal to that of his most recent employment earnings;
- (4) a person receiving a weekly payment who, within 30 days of resuming his occupation or employment, is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments;
- (5) where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the Insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

### **SPECIAL PROVISIONS, DEFINITIONS AND EXCLUSIONS OF SECTION B**

#### **(1) "INSURED PERSON" DEFINED**

In this section, the words "insured person" mean,

- (a) any person while an occupant of an owned automobile or a customer's automobile;
- (b) any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by an owned automobile or a customer's automobile;
- (c) the Insured and, if residing in the same dwelling premises as the Insured, his or her spouse or common law partner and any dependent relative of either:
  - (i) while an occupant of any other automobile except an automobile used for carrying passengers for compensation or hire or for commercial delivery; or
  - (ii) while not the occupant of an automobile or of railway rolling-stock that runs on rails who is struck by any other automobile;

provided that, under (i) and (ii) above,

- (a) the Insured is an individual or a spouse or common law partner of the Insured;
- (b) such other automobile is not owned or regularly or frequently used by the Insured or by any person or persons residing in the same dwelling premises as the Insured;
- (d) any employee or partner of the Insured, for whose regular use an owned automobile is provided and, if residing in the same dwelling premises as such employee or partner, his or her spouse or common law partner and any dependent relative of either:
  - (i) while an occupant of any other automobile except an automobile used for carrying passengers for compensation or hire or for commercial delivery; or
  - (ii) while not the occupant of an automobile or of railway rolling-stock that runs on rails who is struck by any other automobile;

provided that, under (i) and (ii) above,

- (a) neither the employee nor partner or his or her spouse or common law partner is the owner of an automobile or is leasing an automobile for a period in excess of 30 days;
- (b) such other automobile is not owned or regularly or frequently used by the employee or partner or by any

person or persons residing in the same dwelling premises as such employee or partner.

**(1.1) "ACCIDENT" DEFINED**

In this section "accident" means an accident arising out of the use and operation of an automobile.

**(2) "PHYSICIAN" DEFINED**

"Physician" means a legally qualified medical practitioner.

**(3) EXCLUSIONS**

(a) The Insurer shall not be liable under this section for bodily injury to or death of any person,

- (i) resulting from the suicide of such person or attempt thereof, whether sane or insane; or
- (ii) who is entitled to receive the benefits of any workers' compensation law or plan and has not exercised his option to recover damages as provided under said law or plan; or
- (iii) caused directly or indirectly by radioactive material; or
- (iv) while engaged in the repair or servicing of an automobile in the course of the business stated in Item 3 of the application except for road testing and pick-up and delivery.

(b) The Insurer shall not be liable under subsection I or Part II of subsection 2 of this section for bodily injury or death,

- (i) sustained by any person who, at the time of the accident, was driving or operating the automobile while in a condition for which he is convicted of an offence under Section 320.14 of the Criminal Code (Canada) or under or in connection with the circumstances of which he is convicted of an offence under Section 320.15 of the Criminal Code (Canada); or
- (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

**(4) NOTICE AND PROOF OF CLAIM**

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Province, within 30 days from the date of the accident or as soon as practicable thereafter;
- (b) within 90 days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby;
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a physician.

**(5) MEDICAL REPORTS**

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to examine the person of the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

**(6) RELEASE**

Notwithstanding any release provided for under the relevant sections of the Insurance Act, the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favor of the Insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

## **(7) WHEN MONEYS PAYABLE**

- (a) All amounts payable under this section, other than benefits under Part II of subsection 2, shall be paid by the Insurer within 30 days after it has received proof of claim. The initial benefits for loss of time under Part II of subsection 2 shall be paid within 30 days after it has received proof of claim, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
- (b) No person shall bring action to recover the amount of a claim under this section unless the requirements of provisions (4) and (5) are complied with, nor until the amount of the loss has been ascertained as provided in this section.
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within one year from the date on which the cause of action arose and not afterwards.

## **(8) LIMITATION ON BENEFIT PAYABLE**

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsections 1 or 2, he or his personal representative or any person claiming through or under him or by virtue of legislation providing for indemnity for fatal accidents may recover only an amount equal to one benefit.

Insofar as applicable the general provisions, definitions, exclusions and statutory conditions of the policy also apply.

## **SECTION C – LOSS OR DAMAGE TO OWNED AUTOMOBILES**

The Insurer agrees to indemnify the Insured against direct and accidental loss of or damage to any owned automobile, including its equipment while attached thereto and forming part thereof:

### **SUBSECTION 1 – COLLISION OR UPSET**

Caused by collision with another object or by upset.

### **SUBSECTION 2 – COMPREHENSIVE**

From any peril other than by collision with another object or another automobile upon which it is being transported or by the upset of either such automobile. The words “another object” as used in this subsection 2 include (a) another automobile to which the automobile is attached or upon which it is being transported and (b) the surface of the ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion, shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 2.

### **SUBSECTION 3 – SPECIFIED PERILS**

Caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in or upon which the automobile is being transported.

### **SUBSECTION 4 – SPECIFIED PERILS EXCLUDING THEFT**

Caused by fire, lightning, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in or upon which the automobile is being transported.

### **DEDUCTIBLE CLAUSE**

The Insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the Insured stated in the applicable subsection of Section C of Item 5 of the application. If the claim is one to which section 254.1 of the **Insurance Act** (Direct Compensation – Property Damage)

applies, the deductible under this section shall be the amount, if any, stated in the applicable subsection of section C of Item 5 of the application multiplied by the percentage to which the driver of the automobile was determined to be at fault under the Direct Compensation – Property Damage Fault Determination Rules.

The deductible clause shall apply to loss or damage to each automobile except with respect to automobiles insured under subsections 2, 3, and 4 where the deductible clause shall apply to each occurrence.

This deductible clause shall not apply to loss or damage caused by fire or lightning or theft of the entire automobile.

#### **LIMITS OF LIABILITY APPLICABLE TO SUBSECTIONS 2, 3 AND 4**

- (a) Subject to Clauses (b) and (c) below, the Insurer shall not be liable in respect of any one occurrence for:
- (i) any amount in excess of the limits of liability stated in subsections 2, 3 and 4 of Section C of Item 5 of the application at each specified location;
  - (ii) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
  - (iii) loss or damage to more than four owned automobiles at any location not used by the Insured in the business specified in Item 3 of the application.
- (b) Where the premium is computed on a MONTHLY AVERAGE BASIS, if at the time of loss the Insured has failed to file the report referred to in Clause 3(b)(ii) of the General Provisions, Definitions and Exclusions, the Insurer's liability shall be limited to the amounts included in the last report filed; furthermore, if the delinquent report is the first report required to be filed, the Insurer shall be liable for not more than 75% of the applicable limit of liability stated in Item 5 of the application. In the event of loss, the Insurer's liability at each location shall be limited to the proportion of the loss that the amounts reported to the Insurer on the last report filed prior to the loss bears to the actual cash value of all automobiles at the location on the date for which the report is made.
- (c) Where the premium is computed on a CO-INSURANCE BASIS, the Insured shall maintain insurance under this policy on the automobiles hereby insured at each specific location to the extent of at least 80% of the actual cash value thereof, and that, failing so to do, the Insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to 80% of the actual cash value of such automobiles at the time of loss or damage and, in that capacity, shall bear his proportion of any loss or damage that may occur. If the total loss or damage is confined to one automobile only, this co-insurance clause shall not apply.

#### **EXCLUSIONS**

The Insurer shall not be liable:

- (1) under any subsection of Section C for loss or damage:
- (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection;
  - (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement;
  - (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense;
  - (d) caused directly or indirectly by contamination by radioactive material;
  - (e) to contents of automobiles or trailers, other than their equipment;

- (f) for more than \$50 for recorded material and equipment for use with a playing or recording unit. The insurer shall not be liable for recorded material or equipment not contained within or attached to the playing or recording unit. Recorded material includes, but is not limited to, tapes, compact discs, video cassettes and digital video discs;
  - (g) for more than \$1500 for loss or damage to electronic accessories or equipment other than factory installed equipment. The insurer shall pay the actual cash value of the equipment up to \$1500 in total. "Electronic accessories and equipment" includes, but is not limited to radios, tape players/decks, stereo players/decks, compact disc players, speakers, telephones, two-way radios including CB radios, ham radios and VHF radios, televisions, facsimile machines, electronic navigation assistance, positioning and location finding devices, computers, and items of a similar nature. "Factory installed equipment" means electronic accessories and equipment which was included in the original new purchase price of the automobile;
  - (h) where the Insured drives or operates the automobile
    - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
    - (ii) while in a condition for which he is convicted of an offence under Section 320.14 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under Section 320.15 of the Criminal Code (Canada);
  - (i) where the Insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (h); or
  - (j) to any automobile sold by the Insured and in the possession of a purchaser under any partial payment plan.
- (2) for loss or damage to any automobile while being carried in or upon or while being towed by any automobile owned, hired or leased by the Insured and designed for transportation of more than one automobile;
  - (3) under subsection 1, for loss or damage occurring after the theft of the automobile and before recovery by the Insured, except where the theft has been committed by a person or persons (i) residing in the same dwelling premises as the Insured, or (ii) employed by the Insured in connection with the business described in Item 3 of the application;
  - (4) under subsections 2 and 3, for loss or damage caused by theft by a person or persons (i) residing in the same dwelling premises as the Insured, or (ii) employed by the Insured in connection with the business described in Item 3 of the application;
  - (5) under subsections 2 and 3, for loss or damage by theft from any open lot or unroofed space owned, rented or controlled by the Insured except the theft of an entire automobile;
  - (6) under subsection 4, for loss or damage occurring after theft of the automobile and before recovery of the automobile by the Insured.

**See also General Provisions, Definitions, Exclusions and Statutory Conditions of this policy.**

#### **ADDITIONAL AGREEMENTS OF INSURER**

Where loss or damage arises from a peril for which a premium is specified under a subsection of this Section, the Insurer further agrees:

- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
- (b) to waive subrogation against every person who, with the Insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply (1) to any person having such

care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles other than an officer or employee of the Insured, or (2) to any person who has (i) committed a breach of any condition of this policy or (ii) driven or operated the automobile in the circumstances referred to in (i) or (ii) of paragraph (1) (h) of the exclusions to Section C.

### **AGREEMENT OF INSURED**

By the acceptance of this policy, the Insured agrees that in the event of loss or damage for which indemnity is provided by this policy, the Insured shall, if so requested by the Insurer, replace the property or make the necessary repairs at actual cost to the Insured.

## **SECTION D – UNINSURED AUTOMOBILE COVERAGE**

### **1. Definitions**

For the purposes of this section,

- (a) “insured automobile” means the automobile as defined or described under the contract;
- (b) “person insured under the contract” means,
  - (i) in respect of a claim for damage to the insured automobile, the owner of the automobile,
  - (ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents, and
  - (iii) in respect of a claim for bodily injuries or death,
    - a. any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,
    - b. the insured named in the contract and, if residing in the same dwelling premises as the insured named in the contract, his or her spouse or common law partner and any dependent relative,
      - (1) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or
      - (2) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails, and
    - c. if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, if residing in the same dwelling place, his or her spouse or common law partner and any dependent relative,
      - (1) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or
      - (2) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,
- if such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;
- (c) “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;
- (d) “uninsured automobile” means an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the Insured or his or her spouse or common law partner.

## 2. **Uninsured Automobile and Unidentified Automobile Coverage**

- (1) The insurer agrees to pay all sums that
  - (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile,
  - (b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile, and
  - (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from an accident involving an automobile.

### (2) **Qualification of Dependent Relative**

A dependent relative referred to in paragraph (b) of the definition "person insured under the contract" in clause 1 of this Section,

- (a) who is the owner of an automobile insured under a contract, or
- (b) who sustains bodily injuries or dies as the result of an accident while driving, being carried in or upon or entering or getting on to or alighting from his or her own uninsured automobile,

shall be deemed not to be a dependent relative for the purposes of this Section.

## 3. **Limits and Exclusions**

- (1) The insurer is not liable under paragraph (1) of clause 2 of this Section
  - (a) in any event to pay in respect of any one accident a total amount in excess of the minimum limit for a contract evidenced by a motor vehicle liability policy established under subsection 243(1) of the **Insurance Act**,
  - (b) where an accident occurs in a jurisdiction other than New Brunswick, to pay in respect of the accident a total amount in excess of
    - (i) the minimum limit for motor vehicle liability insurance coverage in the other jurisdiction, or
    - (ii) the minimum limit referred to in paragraph (a),whichever is less, regardless of the number of persons sustaining bodily injury or dying or the amount of damages for accidental damage to the insured automobile or its contents or both the insured automobile and its contents,
  - (c) to make any payment to a claimant who claims damages resulting from an accident that occurred in a jurisdiction in which the claimant may make a valid claim for payment of such damages from an unsatisfied judgment fund or similar fund,
  - (d) to make any payment to a claimant who is legally entitled to recover a sum of money under the third party liability section of any motor vehicle liability policy,
  - (e) to make any payment to a claimant who would otherwise be legally entitled to recover a sum of money under any contract of insurance as a result of the accident, other than money payable on death, that exceeds the sum that the person is legally entitled to recover under paragraph (1) of clause 2 of this section,
  - (f) subject to paragraphs (a), (b) and (e), to pay a claimant with respect to any one accident a sum in excess of the difference between the sum that the claimant is legally entitled to recover as damages from the owner or driver of

the automobile and the sum that the claimant is otherwise legally entitled to recover under any valid contract of insurance, other than money payable on death, as a result of the accident,

- (g) to pay a claimant the first two hundred and fifty dollars in respect of any damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from any one accident, and
  - (h) to make any payment respecting bodily injury, death or damage caused directly or indirectly by radioactive material.
- (2) Where, by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents or to both the insured automobile and its contents
- (a) claims arising out of bodily injury or death have priority to the extent of ninety per cent of the total amount legally payable under the contract over claims arising out of damage to the insured automobile or its contents or to both the insured automobile and its contents, and
  - (b) claims arising out of damage to the insured automobile or its contents or to both the insured automobile and its contents have priority to the extent of ten per cent of the total amount legally payable under the contract over claims arising out of bodily injury or death.

#### 4. **Accidents Involving Unidentified Automobiles**

Where bodily injuries to or the death of a person insured under the contract results from an accident involving an unidentified automobile, the claimant or a person acting on behalf of the claimant shall

- (a) report the accident within a period of twenty-four hours after the accident or as soon after that period as practicable to a peace officer, a judicial officer or an administrator of motor vehicle laws,
- (b) deliver to the insurer within a period of thirty days after the accident or as soon after that period as practicable a written notice, stating that the claimant has a cause of action arising out of the accident for damages against a person whose identity cannot be ascertained and setting out the facts in support of the cause of action, and
- (c) at the request of the insurer, make available for inspection by the insurer, where practicable, any automobile involved in the accident in which the person insured under the contract was an occupant at the time of the accident.

#### 5. **Determination of Legal Liability and Amount of Damages**

- (1) Issues as to whether or not a claimant is legally entitled to recover damages and as to the amount of such damages shall be determined
- (a) by written agreement between the claimant and the insurer,
  - (b) at the request of the claimant and with the consent of the insurer, by arbitration by
    - (i) one person, if the parties are able to agree on such person, or
    - (ii) where the parties are unable to agree on one person, three persons, one of whom is chosen by the claimant, one of whom is chosen by the insurer and one of whom is selected by the two persons so chosen, or
  - (c) subject to subsection (3), by The Court of Queen's Bench of New Brunswick in an action brought against the insurer by the claimant.
- (2) The **Arbitration Act** applies to an arbitration under paragraph (1)(b).

- (3) An insurer may, in its defense of an action referred to in paragraph (1)(c), contest the issue of
  - (a) the legal entitlement of the claimant to recover damages, or
  - (b) the amount of damages payable,

only if such issue has not already been determined in a contested action in The Court of Queen's Bench of New Brunswick.

## **6. Notice and Proof of Claim**

- (1) A claimant claiming damages for bodily injury to or the death of a person resulting from an accident involving an uninsured automobile or unidentified automobile or a person acting on behalf of the claimant shall
  - (a) within a period of thirty days after the date of the accident or as soon after that period as practicable, give written notice of the claim to the insurer by delivering it personally or by sending it by registered mail to the chief agent or head office of the insurer in New Brunswick,
  - (b) within a period of ninety days after the date of the accident or as soon after that period as practicable, deliver to the insurer as fully detailed a proof of claim as is reasonably possible in the circumstances respecting the events surrounding the accident and the damages resulting from it,
  - (c) provide the insurer, at the insurer's request, with the certificate of a medical practitioner legally qualified to practice medicine, describing the cause and nature of the bodily injury or death to which the claim relates and the duration of any disability resulting from the accident, and
  - (d) provide the insurer with details of any policies of insurance, other than life insurance, to which the claimant may have recourse.
- (2) Statutory condition 4 of subsection 230(2) of the Insurance Act applies with the necessary modifications where a claimant claims damages for accidental damage to an insured automobile or its contents or to both an insured automobile and its contents.

## **7. Notice of Legal Proceeding**

- (1) A claimant who is a person insured under the contract or is a person claiming damages for bodily injury to or the death of a person insured under the contract and who commences an action or other legal proceeding seeking damages against another person owning or operating an automobile involved in the accident shall immediately deliver a copy of the notice of action or other originating process to the chief agent or head office of the insurer in New Brunswick by delivering it personally or by sending it by registered mail.
- (2) Subject to subsection (3), if a claimant referred to in subsection (1) obtains a judgment against the other person referred to in subsection (1) and is unable to recover all or a portion of the sum awarded to the claimant in the judgment, the insurer shall, at the claimant's request, pay to the claimant the sum or portion of the sum remaining due.
- (3) Before making payment under subsection (2), the insurer may require the claimant to assign the claimant's judgment to the insurer and the insurer shall account to the claimant for any recovery it makes under the judgment of a sum in excess of the total of the sum paid to the claimant, after deducting the insurer's costs.

## **8. Physical or Mental Examinations and Autopsies**

- (1) The insurer has the right and the claimant shall afford the insurer an opportunity

- (a) to conduct a physical or mental examination of any person insured under the contract to whom the claimant's claim relates at the time and as often as the insurer reasonably requires and while the claim is pending, and
  - (b) where a claim relates to the death of a person insured under the contract, to initiate an autopsy at the insurer's expense subject to the law relating to autopsies.
- (2) The insurer shall provide the claimant, at the claimant's request, with a copy of any medical, psychological or autopsy report relating to an examination or autopsy under subsection (1).

**9. Limitations**

- (1) No person shall commence an action to recover the amount of a claim provided for under the contract and under subsection 255(2) of the Insurance Act unless the requirements of this Section have been complied with.
- (2) Every action or other legal proceeding against an insurer for the recovery of an amount of damages shall be commenced within two years after the date on which the cause of action against the insurer arose and not afterward.

**10. Limitation of Benefit Payable**

A claimant who is entitled to claim under more than one contract providing insurance of the type provided for under subsection 255(2) of the Insurance Act may not recover an amount exceeding the amount which the claimant would be entitled to receive if the claimant were entitled to recover under only one of the contracts.

**11. Application of General Provisions**

In so far as applicable, the general provisions, definitions and exclusions and the statutory conditions of this policy apply with the necessary modifications to this Section.

**SECTION E – LEGAL LIABILITY FOR DAMAGE TO A CUSTOMER'S AUTOMOBILE WHILE IN THE CARE, CUSTODY OR CONTROL OF THE INSURED**

**SUBSECTION 1 – COLLISION OR UPSET**

The Insurer agrees:

- (a) to indemnify the Insured against the liability imposed by law upon the Insured for loss of or damage to a customer's automobile, including its equipment while attached thereto, including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile caused by collision with another object or by upset.
- (b) to indemnify the Insurer of a customer's automobile the amount paid by that Insurer because of the operation of section 254.1 of the Insurance Act and the Fault Determination Rules made under that section, based on the degree that the Insured or driver was at fault in the accident.

**EXCLUSIONS**

The Insurer shall not be liable under this subsection 1:

- (a) for any amount in excess of the limit stated in subsection 1 of Section E of Item 5 of the application and expenditures provided for in the Additional Agreements of this section; or
- (b) for loss or damage:
  - (i) to contents of automobiles or trailers, other than their equipment, except for those amounts that the Insurer is required to indemnify the Insurer of a customer's automobile the amount paid by that Insurer because of the operation of section 254.1 of the Insurance Act and the Fault Determination Rules made under that section, based on the degree that the Insured or driver was at fault in the accident

- (ii) occurring after theft of the automobile and before recovery by the Insured; or
- (iii) caused directly or indirectly by contamination by radioactive material.

### **DEDUCTIBLE CLAUSE**

Each occurrence causing loss or damage covered under this subsection shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the Insured stated in subsection 1 of Section E of Item 5 of the application, but always subject to the limit shown for any one customer's automobile. If the claim is one to which section 254.1 of the **Insurance Act** (Direct Compensation – Property Damage) applies, the deductible under this section shall be the amount, if any, stated in subsection 1 of Section E of Item 5 of the application multiplied by the percentage to which the driver of the automobile was determined to be at fault under the Direct Compensation – Property Damage Fault Determination Rules.

### **SUBSECTION 2 – SPECIFIED PERILS**

The Insurer agrees to indemnify the Insured against the liability imposed by law upon the Insured for loss of or damage to a customer's automobile, including its equipment while attached thereto, including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile caused by fire, lightning, theft or attempt thereof, malicious mischief, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in or upon which the automobile is being transported.

#### **LIMITS OF LIABILITY APPLICABLE TO SUBSECTION 2**

The Insurer shall not be liable in respect of any one occurrence for:

- (i) any amount in excess of the limits of liability stated in subsection 2 of Section E of Item 5 of the application at each specified location and expenditures provided for in the Additional Agreements of this Section;
- (ii) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
- (iii) loss or damage to more than four automobiles at any location not used by the Insured in the business specified in Item 3 of the application.

#### **EXCLUSIONS**

The Insurer shall not be liable under this subsection 2 for loss or damage:

- (a) from the explosion of tires or from explosion within the combustion chamber of the engine of the automobile, unless the loss or damage is coincident with other loss or damage covered by this subsection;
- (b) caused directly or indirectly by contamination by radioactive material;
- (c) by theft from any open lot or unroofed space owned, rented or controlled by the Insured, except the theft of an entire automobile;
- (d) to the contents of automobiles or trailers, other than their equipment; or
- (e) for more than \$50 for recorded material and equipment for use with a playing or recording unit. The insurer shall not be liable for recorded material or equipment not contained within or attached to the playing or recording unit. Recorded material includes, but is not limited to, tapes, compact discs, video cassettes and digital video discs.

#### **CO-INSURANCE CLAUSE**

If at the time the loss occurs there are in or on the premises at the location where the loss occurs a greater number of customers' automobiles than the "Maximum Number of Customers' Automobiles" stated for such location in Section E of Item 5 of the application, the Insurer shall not be liable for a greater proportion of the amount for which it otherwise would be liable than the "Maximum Number of Customers' Automobiles" stated for such location bears to the total number of customers' automobiles in or on the premises at the location at the time the loss occurs.

## **ADDITIONAL AGREEMENTS OF INSURER**

Where indemnity is provided by this Section the Insurer shall:

- (1) upon receipt of notice of loss or damage, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage; and
- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability.

## **GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS**

### **1. TERRITORY**

This policy applies only while the automobile is being operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.

### **2. CONSENT OF INSURED**

No person shall be entitled to indemnity or payment under this policy who drives or uses any owned automobile as defined in this policy without the consent of the Insured, or who is an occupant of any other automobile which is being used without the consent of the owner thereof.

### **3. ADJUSTABLE PREMIUM COMPUTATION**

- (a)
  - (i) The advance premiums are computed according to the terms shown on the Premium Computation Statement for the policy period.
  - (ii) The advance premiums referred to in (i) above are subject to adjustment at the end of the policy period when the Insured shall deliver to the Insurer a written statement of the current information necessary to adjust the premium shown in the Premium Computation Statement. If the adjusted premium so computed exceeds the applicable advance premium stated in Item 5 of the application, the Insured shall pay the difference. If such premium is less, the Insurer shall return to the Insured the unearned premium subject to the Minimum Retained Premium stated in Item 5.
- (b) With respect only to subsections 2, 3 and 4 of Section C, if the premium is computed on a MONTHLY AVERAGE BASIS:
  - (i) the advance premiums shall be 75% of the annual premium computed on the limits of liability and the rates applying at each location; and
  - (ii) the advance premiums referred to in (i) above are subject to adjustment at the end of the policy period. The earned premium shall be computed as follows:
    1. the Insured shall report to the Insurer, in writing, not later than 30 days after the last day of each month the actual cash value of all owned automobiles held for sale at each location on the last business day of each month. The value of all owned automobiles not held for sale must be included in the values reported for the principal location in the municipality(ies) or district(s) in which the Insured carries on business; and
    2. an average of the total values reported at each location shall be made and if the premium on such average values exceeds the applicable advance premiums stated in Item 5 of the application, the Insured shall pay an additional premium for such excess. If such premium is less, the

Insurer shall return to the Insured the unearned premium. In the event of any report not being made within the period stated stipulated then, for the purpose of adjustment of premium only, the limit of liability at each location shall be taken as the value at risk.

#### **4. AUDIT**

The Insurer, through any authorized representative, and at all reasonable times, shall have access to the Insured's books and records for the purpose of determining any fact relating to this insurance.

#### **5. TWO OR MORE AUTOMOBILES**

A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the limit(s) of liability under Sections A, B and D, separate automobiles with respect to the limits of liability, including any deductible provisions, under Sections A.1 and C and separate automobiles with respect to the limit(s) of liability under Section E.

#### **6. ADDITIONAL INSURED**

The Insurer agrees to pay on behalf of the following persons in the same manner and to the same extent as if named in this policy as the Insured:

##### **Business Use**

- (a) with respect to Sections A, B, D and E of this policy, every other person who, with the consent of the owner thereof, drives in connection with the business described in Item 3 of the application any automobile other than (i) an automobile owned by or registered in the name of such additional insured person; or (ii) an automobile whose operation or use is excluded in the General Provisions, Definitions and Exclusions or Statutory Conditions of this policy;

##### **Driving Other Automobiles**

- (b) with respect to Section A, A.1, B and D of this policy, every active partner or full-time employee of the Insured for whose regular and frequent use an automobile is provided by the Insured and the spouse or common law partner of such person and the spouse or common law partner of the Insured, who with the consent of the owner thereof drives for pleasure purposes any automobile of the private passenger or station wagon type, provided that (i) neither such partner or employee or his or her spouse or common law partner or the spouse or common law partner of Insured is the owner or the lessee for more than 30 days of an automobile of the private passenger or station wagon type; (ii) such other automobile is not owned, hired or leased or regularly or frequently used by the Insured or such employee or partner of the Insured or by any persons residing in the same dwelling premises as any of the aforementioned persons; (iii) the operation or use of the other automobile is not excluded in the General Provisions, Definitions and Exclusions or Statutory Conditions of this policy; and (iv) Section A.1 coverage applies only when such other automobile is in the care, custody or control of a person referred to in this subclause and is not insured under another motor vehicle liability policy.

#### **6.1 DIRECT COMPENSATION-PROPERTY DAMAGE**

The Insurer agrees to provide coverage under Section A.1 to a person whose automobile is in the care, custody or control of the Insured, provided that the automobile is not (i) insured under another motor vehicle liability policy, or (ii) being used for an Excluded Use under clause 11 of the General Provisions, Definitions and Exclusions and is not an Excluded Automobile under clause 12 of the General Provisions, Definitions and Exclusions of this policy.

## **7. OTHER INSURANCE**

Insurance under Sections A, B and D of this policy is, in respect of a customer's automobile, first loss insurance. Section A coverage under any other valid motor vehicle liability policy in respect of that automobile is excess insurance only.

## **8. AUTOMOBILE DEFINED**

### **Under Sections A, A.1, B, C and D**

#### **(a) Owned Automobile**

The words "owned automobile" mean an automobile, including trailers and equipment, owned by the Insured and used for pleasure or in connection with the business stated in Item 3 of the application and an automobile sold in such business by the Insured but not delivered to the purchaser thereof, except an automobile the ownership, operation or use of which is excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy.

### **Under Sections A, B, D and E**

#### **(b) Customer's Automobile**

The words "customer's automobile" mean an automobile owned by another while such automobile is being towed or pushed by an automobile driven by the Insured or an employee or partner or while in the care, custody or control of the Insured in the business stated in Item 3 of the application but do not include an automobile:

- (i) owned or hired by any person insured by this policy or by any person residing in the same dwelling premises as such Insured, or
- (ii) sold by the Insured but not delivered to the purchaser thereof.

### **Under Sections A, B and D**

#### **(c) Non-owned Automobile**

The words "non-owned automobile" mean an automobile not owned by the Insured and, not being a customer's automobile, used for pleasure or in connection with the business stated in Item 3 of the application.

## **9. OCCUPANT DEFINED**

The word "occupant" means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

## **10. NEWLY ACQUIRED LOCATION DEFINED**

The words "newly acquired location" mean any new location acquired by the Insured in the business specified in Item 3 of the application, and notified to the Insurer within fourteen days following the date of such acquisition.

## **11. EXCLUDED USES**

Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while:

- (a) the automobile is rented or leased to another, provided that the following shall not be deemed to be renting or leasing of an automobile to another,
  - (i) the use by an employee of his automobile on the business of the employer and for which the employee is being paid;
  - (ii) the use of an owned automobile by a customer pending return of the customer's automobile which has been left with the Insured for repairs or servicing; or
  - (iii) the use of an owned automobile by a customer for a period not exceeding 30 days, pending delivery of an automobile for which a purchase order or a lease agreement has been placed with the Insured by such customer;

and further provided that this exclusion shall not apply while an owned automobile, rented or leased to another, is in the care, custody or control of the Insured for the purpose of maintenance or repair, and in such case this policy shall be first loss insurance;

- (b) the automobile is used to carry explosives, or radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance, or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be carrying passengers for compensation or hire:
  - (i) the use by the Insured of the automobile for the carriage of another person, in return for the former's carriage in the automobile of the latter;
  - (ii) the occasional and infrequent use by the Insured of the automobile for the carriage of another persons who shares the cost of the trip;
  - (iii) the use by the Insured of the automobile for the carriage of a temporary or permanent domestic servant of the Insured or his spouse or common law partner;
  - (iv) the use by the Insured of his automobile for the carriage of clients or customers or prospective clients or customers;
  - (v) the occasional and infrequent use by the Insured of the automobile for the transportation of children to or from school or school activities conducted within the educational program; or
- (d) the automobile is being used,
  - (i) for the carrying of goods or materials for compensation;
  - (ii) for public road construction, repair or maintenance; or
  - (iii) as farm or contractor's equipment on behalf of others for compensation.

## 12. EXCLUDED AUTOMOBILES

The Insurer shall not be liable under this policy for loss, damage, injury or death arising from the ownership, use or operation of any automobile,

- (a) owned by the Insured in connection with or used for the purpose of any business conducted by or any employment or occupation for wages or profit engaged in by the Insured other than as stated in Item 3 of the application;
- (b) owned by the Insured which is designed or modified for racing purposes;
- (c) provided by the Insured to any person for regular or frequent use, except an active partner or a full time employee of the business stated in Item 3 of the application, and provided that this exclusion does not apply while the person is using the automobile in the business stated in Item 3 of the application;
- (d) owned or hired by the Insured, and
  - (i) designed for the bulk transportation of petroleum products or other materials while being used for such purposes; or
  - (ii) designed for the transportation of more than one automobile.
- (e) leased by the Insured from another under a lease contract for a period exceeding thirty days and which requires the Insured to effect and maintain insurance.

## 13. Personnel of other Garages Excluded

No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon or occupying the automobile as defined in this policy in the course of the business, unless the person is the Insured or an employee or partner.

#### 14. War Risks Excluded

The Insurer shall not be liable under Sections A.1, B, C, D, or E of this policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, coup, or actions of armed forces while engaged in a war, whether declared or not.

### STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not. **Statutory conditions 1, 8 and 9 shall apply as policy conditions with respect to section B.**

#### Material Change in Risk

1. (1) 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 his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:
  - (a) 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 proceedings under the Bankruptcy Act (Canada);  
and in respect of insurance against loss of or damage to the automobile,
  - (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
  - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

#### Prohibited Use by Insured

2. (1) The insured shall not drive or operate the automobile,
  - (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
  - (b) while he is prohibited under order of any court from driving or operating an automobile; or
  - (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he 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 him; or
  - (d) for any illicit or prohibited trade or transportation; or
  - (e) in any race or speed test.

#### Prohibited Use by Others

- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,
  - (a) by any person,
    - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
    - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
  - (b) by any person who is a member of the household of the insured while that person is prohibited under order of any court from driving or operating an automobile; or

- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

### **Requirements Where Loss or Damage to Persons or Property**

- 3. (1) The insured shall,
  - (a) 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;
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and whether or not the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The insured shall not,
  - (a) voluntarily assume any liability or settle any claim except at his own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall cooperate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

### **Requirements Where Loss or Damage to Automobile**

- 4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
  - (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
  - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
  - (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his 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.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.
- (3) 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 or damage shall be removed,
  - (a) without the written consent of the insurer; or
  - (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

### **Examination of Insured**

- (4) 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 his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

### **Insurer Liable for Cash Value of Automobile**

- (5) 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.

### **Repair or Replacement**

- (6) 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.

### **No Abandonment; Salvage**

- (7) 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.

### **In Case of Disagreement**

- (8) 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 appraisal as provided under the Insurance 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 proof of loss has been delivered.

### **Inspection of Automobile**

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

### **Time and Manner of Payment of Insurance Money**

6. (1) 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 subcondition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

### **When Action May be Brought**

- (2) 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 judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

### **Limitation of Actions**

- (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within two years 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 two years next after the cause of action arose and not afterwards.

## **Who May Give Notice and Proofs of Claim**

7. 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 the 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.

## **Termination**

8. (1) This contract may be terminated,
  - (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
  - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
  - (a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

## **Notice**

9. 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 him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.



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