

COMMERCIAL UMBRELLA LIABILITY

DEFINITIONS

1. Advertising Injury

The term "Advertising Injury" wherever used herein shall mean

- a. Libel, slander or defamation;
- b. Any infringement of copyright or of title or of slogan;
- c. Piracy or unfair competition or idea misappropriation under an implied contract;
- d. Any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's advertising activities.

2. Aircraft

The term "Aircraft", wherever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property including air cushion vehicles.

3. Annual Period

The term "Annual Period", shall mean each consecutive period of one year commencing from the inception date of this policy.

4. Automobile

"Automobile" means any self-propelled land motor vehicle, trailer or semi-trailer (including machinery, apparatus, or equipment attached thereto) which is principally designed and is being used for transportation of persons or property on public roads.

5. Completed Operations Hazard

"Completed Operations Hazard" means "Personal Injuries" or "Property Damage" arising out of operations, but only if the "Personal Injuries" or "Property Damage" occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- a. When all operations to be performed by or on behalf of the Named Insured under the contract have been completed;
- b. When all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed;
- c. When the portion of the work out of which the "Personal Injuries" or "Property Damage" arises has been put to its intended use by any persons or organizations other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work; or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The completed operations hazard shall not include:

- a. Operations in connection with the pick-up and delivery of property;
- b. The existence of tools, uninstalled equipment or abandoned or unused materials.

6. "Data" means representations of information or concepts, in any form.

7. Declarations

The word "Declarations" shall mean Commercial Umbrella Liability Declarations.

8. Fungi

The word "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.

9. Named Insured and Insured

The words "Named Insured" include:

- a. Any subsidiary company of the Named Insured now existing or hereinafter acquired;
- b. Any other company the control and management of which is now held or hereafter acquired by the Named Insured;
provided under (a) with respect to any subsidiary hereafter acquired and under (b) with respect to any other company the control and management of which is hereafter acquired, this policy will apply only for the first 60 days following date of such acquisition unless the Named Insured reports such acquisition to the company and appropriate endorsement is used to form a part hereof.

The unqualified word "Insured", wherever used in this policy, includes not only the "Named Insured" but also:

- c. Any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such, and any organization or proprietor with respect to real estate management for the Named Insured.
 - d. Any person, organizations, trustee or estate to whom the Named Insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy, but only to the extent of such obligation, and only with respect to operations by or on behalf of the Named Insured or to facilities owned or used by the Named Insured.
 - e. Any additional Insured (not being the Named Insured under the policy) included in the underlying insurances, subject to the provisions in Condition 2; but not for broader coverage than is available to such additional Insured under any underlying insurances as set out in Item 2 (Schedule of Underlying Insurance) on the Declaration Page;
 - f. With respect to any aircraft hired with crew for use on behalf of the Named Insured, any person while using such aircraft and any person or organization legally responsible for the use thereof, provided that the actual use of the aircraft is with the permission of the Named Insured. The insurance extended by this sub-division (f) with respect to any person or organization other than the Named Insured, shall not apply;
 - (i) To any manufacturer of aircraft, engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of the operation thereof;
 - (ii) With respect to any hired aircraft, to the owner thereof or any employee of such owner.
 This sub-division (f) shall not apply if it restricts the insurance granted under sub-division (e) above;
 - g. If the Named Insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such. This policy does not apply to "Personal Injuries", "Property Damage" or "Advertising Injury" arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a Named Insured.
10. Occurrence
The term "Occurrence" wherever used herein, shall mean an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in "Personal Injuries", "Property Damage" or "Advertising Injury" during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence.
11. Personal Injuries
Except when it arises out of "Advertising Injury", the term "Personal Injuries" wherever used herein means bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful entry or eviction, detention, malicious prosecution, discrimination (unless prohibited by law), humiliation, libel, slander or defamation of character or invasion of rights of privacy, including death resulting at anytime therefrom.
12. Products Hazard
"Products' Hazard" means "Personal Injuries" and "Property Damage" arising out of the Named Insured's products but only if such "Personal Injuries" or "Property Damage" occurs away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others.
13. Property Damage
"Property Damage" means (1) Physical injury to or destruction of tangible property which occurs during the policy period including the loss of use thereof at any time resulting therefrom, or (2) Loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by an occurrence during the policy period.
14. Spores
The word "spores" includes, but is not limited to, any reproductive particle of microscopic fragment produced by, emitted from or arising out of any "fungi".
15. Ultimate Net Loss
The term "Ultimate Net Loss" means all sums which the Insured shall become legally obligated to pay as compensatory damages whether by final adjudication or compromise with the written consent of the Insurer, after making proper deduction for all recoveries and salvages collectible but excludes all loss expenses and legal expenses (including attorneys' fees, court costs and interest on any judgment or award) and all salaries of employees and office expenses of the Insured, the Insurer or any underlying Insurer so incurred.

INSURING AGREEMENTS

1. Coverage
In consideration of the premiums, and statements of the Insured contained in the Declarations, and subject to the definitions, exclusions, terms and conditions of this form, the Insurer agrees to indemnify the Insured for all sums which the Insured shall be obligated to pay by reason of the Liability

- a. Imposed upon the Insured by law, or
- b. Assumed under contract or agreement by the Named Insured or any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such,

for compensatory damages, as more fully defined by the term "Ultimate Net Loss" on account of

- i. Personal Injuries
- ii. Property Damage
- iii. Advertising Injury caused by or arising out of each occurrence which takes place during the policy period happening anywhere.

- 2. a. Automobile Coverage: If the Declaration Page shows coverage for the Excess Automobile Liability Endorsement, then the provision by this policy of insurance against liability arising out of the ownership, use or operation by or on behalf of the Insured of an "automobile" shall be subject to all the terms and conditions listed under the Excess Automobile Liability Endorsement.
- b. The Insurer agrees to extend this policy to include the coverage provided by the OPCF/SEF #44 - Family Protection Endorsement, but only if the Insured maintains this coverage on the underlying automobile insurance policy with a limit of not less than \$2,000,000.

3. Defense, Settlement and Supplementary Payments

With respect to any occurrence not covered by the underlying policy(ies) of insurance described in the Declarations hereof or any other underlying insurance collectible by the Insured, but covered by terms and conditions of this policy except for the amount of the retained limit specified in Item 1 on the Declaration Page, the Insurer will, in addition to the amount of the Ultimate Net Loss payable:

- a. Defend any suit against the Insured seeking damages on account of "Personal Injuries", "Property Damage" or "Advertising Injury" even if such suit is groundless, false, or fraudulent; and may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;
- b. Pay premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, pay premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;
- c. Pay all expenses incurred by the Insurer, all costs taxed against the Insured in any such suit defended by the Insurer and all interest on the entire amount of any judgment therein which accrues after entry of judgment (or, in those jurisdictions where statute prescribes interest from some other date, from such prescribed date) and before the Insurer has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Insurer's liability thereon;
- d. Pay reasonable expenses incurred by the Insured at the Insurer's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$100.00 per day because of this attendance at hearings or trials at such request.

In jurisdictions where the Insurer may be prevented by law or other wise from carrying out this agreement, the Insurer shall pay any expense incurred with its written consent in accordance with this Agreement. The Insured shall promptly reimburse the Insurer for any amount of Ultimate Net Loss paid on behalf of the Insured within the retained limit specified in Item 1 on the Declaration Page.

4. Limit of Liability

The Insurer shall only be liable for the Ultimate Net Loss the excess of either:

- a. The limits of the underlying insurance as set out in Item 2 (Schedule of Underlying Insurance) on the Declaration Page and the amount recoverable under any other underlying insurances collectible by the Insured in respect of each occurrence covered by said underlying insurances, or
- b. The retained limit stated in Item 1 on the Declaration Page in respect of each occurrence not covered by said underlying insurances; and then only up to a further sum as stated in Item 1 on the Declaration Page;
 - (i) in respect of each "occurrence"; and
 - (ii) in respect of the aggregate on account of all occurrences during each annual period;
 - (1) arising out of the "products hazard" or "completed operations hazard" or both combined; or
 - (2) arising out of any coverage contained in an underlying insurance listed in Item 2 (Schedule of Underlying Insurance) on the Declaration Page if such coverage is subject in such underlying insurance to an aggregate limit of liability for all insured damages, the aggregate limit under this policy applying separately to each such underlying insurance coverage

In the event of reduction or exhaustion of the aggregate limits of liability under said underlying insurance by reason of losses paid thereunder, this policy subject to all the terms conditions and definitions hereof shall:

- 1. In the event of reduction pay the excess of the reduced underlying limit;
- 2. In the event of exhaustion continue in force as underlying insurance.

Under Advertising Injury, where there is no primary insurance or other insurance available to the Insured, the Insured's Retained Limit shall not apply.

The inclusion or addition of more than one Insured shall not operate to increase the Insurer's limits of liability beyond those set forth in the Declarations.

EXCLUSIONS

This policy shall not apply to:

1. Any obligation for which the Insured or any company as its Insurer may be held liable under any Workers' Compensation, Unemployment Compensation, or Disability Benefits law provided, however, that this exclusion does not apply to liability of others assumed by the Named Insured under contract or agreement;
2. "Personal Injuries" or "Property Damage" arising out of the ownership, maintenance, use or operation by or on behalf of the Insured of any automobile except as provided by the Excess Automobile Liability Endorsement;
3. "Personal Injuries" caused by:
 - a. discrimination based on age, race, colour, sex, creed, national origin;
 - b. sexual molestation or sexual harassment;
 - c. wrongful dismissal;
4. "Property Damage" to property owned by the Insured;
5. "Property Damage" to the Insured's products arising out of such products or any part of such products;
6. "Property Damage" to work performed by or on behalf of the Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
7. Loss of use of tangible property which has not been physically injured or destroyed resulting from
 - a. A delay or lack of performance by or on behalf of the Insured of any contract or agreement, or
 - b. The failure of the Insured's products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Insured;but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Insured's products or work performed by or on behalf of the Insured after such products or work have been put to use by any person or organization other than the Insured;
8. Expenses claimed for the withdrawal, inspection, repair, replacement or loss of use of the Insured's products or work completed by or for the Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
9. With respect to advertising activities, claims made against the Insured for
 - a. Failure of performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract,
 - b. Infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;
 - c. Incorrect description of any article or commodity;
 - d. Mistake in advertised price;
10. Any liability of the Insured directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), Civil War, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority;
11. "Property Damage" to property owned or leased by one Insured while used by or in the care, custody or control of any other Insured;
12. "Personal Injuries" or "Property Damage" arising out of the ownership, maintenance, operation, use, loading or unloading of aircraft;

However, this exclusion shall not apply (i) if such aircraft is loaned or rented to or hired with crew by or on behalf of the Named Insured, nor (ii) for personal injuries to the employees of the Named Insured, unless such liability is already excluded under Exclusion 1;
13.
 - a. "Personal Injuries" or "Property Damage" or "Advertising Injury" or "Defense Settlement-Supplementary Payments" (as well as defined or provided for in this policy) arising out of the actual, alleged or threatened discharge, dispersal, release, or escape of any pollutants into or upon land, the atmosphere, or any water supply system, or any water of any description no matter where located or how contained, or into any water course, drainage or sewage system whether such actual, alleged or threatened discharge, dispersal, release, or escape occurs at or from premises owned, rented or occupied by an Insured (as defined in this policy) or by its agents, representatives, employees, contractors or subcontractors or whether the pollutant is owned, controlled, transported, handled, stored, treated, disposed of or processed by or for the Insured or any person or organization for whom the Insured may be legally responsible.
 - b. Any loss, cost, or expense arising out of any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants.

The Insurer shall not have the obligation to defend any suit, action or proceeding seeking to impose such liability.

Without limiting the generality of the foregoing, the term "Pollutants" includes any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals, waste materials and by-products therefrom. Without limiting the generality of the foregoing, "waste materials" include materials which are intended to be or have been recycled, reconditioned or reclaimed.

Part (a) of the Exclusion does not apply to "Personal Injuries" or "Property Damage" or "Advertising Injury" or "Defense-Settlement-Supplementary Payments" caused by heat, smoke or fumes from a "HOSTILE FIRE". As used in this exclusion, a "HOSTILE FIRE" means one which becomes uncontrollable or breaks out from where it was intended to be.

This entire Exclusion (Exclusion 13) shall not apply insofar as coverage is available to the Insured in Underlying Insurance as set out in the Declarations, but not for broader coverage than is afforded by such Underlying Insurance.

14. a. Liability imposed by or arising under the Nuclear Liability Act; nor
- b. "Personal Injuries" 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; nor
- c. "Personal Injuries" or "Property Damage" resulting directly or indirectly from the nuclear energy hazard arising from:
 - (i) The ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured.
 - (ii) The furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, and
 - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (other than 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 policy

- d. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material,
 - e. 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;
 - f. The term "nuclear facility" means:
 - (i) 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;
 - (ii) any equipment or device designed or used for (1) separating the isotopes of plutonium, thorium, and uranium or any one or more of them (b) processing or utilizing spent fuel, or (c) handling, processing or packaging radioactive waste;
 - (iii) 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;
 - (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of radioactive material waste; 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;
 - g. 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.
15. This policy does not apply to liability for:
 - a. erasure, destruction, corruption, misappropriation, misinterpretation of "data";
 - b. erroneously creating, amending, entering, deleting or using "data";including any loss of use therefrom.

This policy does not apply to "Personal Injury" or "Advertising Injury" arising out of the distribution or display of "data", by means of an Internet Web site, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "data".
 16. This policy does not apply to:
 - a. "Personal Injury" or "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" ; or

- 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 the cause of the loss or damage, other causes of the injury, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.

- 17. This policy shall not apply, except insofar as coverage is available to the Insured in underlying insurance as set out in the Declarations and then not for broader coverage than is afforded by such insurance
 - a. To "Personal Injuries" or "Property Damage" arising out of the ownership, maintenance, operation, use, loading or unloading of watercraft, if the occurrence takes place away from premises owned, rented or controlled by the Named Insured; However, this exclusion shall not apply (i) if such watercraft is loaned or rented to or hired with crew by or on behalf of the Named Insured nor (ii) for personal injuries to the employees of the Named Insured, unless such liability is already excluded under Exclusion 1;
 - b. To any employee with respect to injury to or the death of another employee of the same employer injured in the course of such employment.
- 18. This insurance does not apply to:
"Bodily Injury" or "Property Damage" arising out of any actual or alleged Liability whatsoever for any claim or claims in respect of loss or losses, damage, cost or expenses directly or indirectly caused by resulting from or 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 cause that contributes concurrently or in any sequence to the loss, damages, cost or expense.

CONDITIONS

1. **Additional Insured**

In the event of additional Insureds being added to the coverage under the underlying insurance during the currency hereof prompt notice shall be given to the Insurer who shall be entitled to charge an appropriate additional premium hereon.

2. **Prior Insurance and Non Cumulation of Liability**

It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Insured prior to the inception date hereof the limit of liability herein as stated in Item 2 (Schedule of Underlying Insurance) on the Declaration Page shall be excess of any amounts due to the Insured on account of such loss under such prior insurance.

3. **Inspection and Audit**

The Insurer shall be permitted but not obligated to inspect the Insured's property and operations but neither the Insurer's right 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 or others, to determine or warrant that such property or operations are safe. The Insurer may examine and audit the Insured's books and records 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.

4. **Cross Liability**

In the event of claims being made by reason of Personal Injuries and/or Property Damage suffered by one Insured herein for which another Insured herein is or may be liable, this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured herein. Nothing contained herein shall operate to increase the Insurer's limit of liability as set forth in Insuring Agreement 4.

5. **Notice of Occurrence**

Whenever it appears that an occurrence covered hereunder is likely to involve the Insurer, written notice shall be sent to the Insurer as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonable obtainable information respecting the time, place and circumstances of the occurrence.

6. **Assistance and Co-operation**

Except as provided in Insuring Agreement 3, the Insurer shall not be called upon to assume charge of the settlement or defense of any claim made, suit brought or proceeding instituted against the Insured but the Insurer shall have the right and shall be given the opportunity to associate with the Insured in the defense and control of any claim suit or proceeding reasonably likely to involve the Insurer. In such event the Insured and the Insurer shall cooperate fully.

7. Right of Insurer to Appeal

In the event the Insured or the Insured's underlying Insurer elects not to appeal a judgment in excess of the underlying limits, the Insurer may elect to make such appeal at his own cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Insurer for Ultimate Net Loss exceed the amount set forth in Insuring Agreement 3 for any occurrence and in addition the cost and expense of such appeal.

8. Canadian Currency Clause

All limits of liability, premiums and other amounts expressed in this policy are in Canadian currency

9. Action Against Insurer

No action shall lie against the Insurer with respect to any one occurrence unless as a condition precedent thereto the Insured shall have fully complied with all the terms of this policy nor until the amount of the Insured's obligation to pay an amount of Ultimate Net Loss in excess of the underlying insurance or retained limit shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer. The Insured shall make a definite claim for any loss for which the Insurer may be liable within twelve (12) months after such final determination. Claim for any subsequent payments made by the Insured on account of the same occurrence shall be similarly made.. All losses covered by this policy shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy.

10. Bankruptcy or Insolvency

Bankruptcy or insolvency of the Insured shall not relieve the Insurer of any of its obligations hereunder.

11. Other Insurance

If other valid and collectible insurance with any other Insurer is available to the Insured covering a loss also covered by this policy, other than insurance that is specifically stated to be in excess of this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of other insurance.

12. Subrogation

Inasmuch as this policy is "Excess Coverage", the Insured's right of recovery against any person or other entity cannot be exclusively subrogated to the Insurer. It is, therefore, understood and agreed that in case of any payment hereunder, the Insurer will act in concert with all other interests (including the Insured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Insured) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Insurer is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the Insured) of whom this coverage is in excess are entitled to claim the residue, if any, expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Insured) concerned, in the ratio of their respective recoveries as finally settled.

13. Changes

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this policy or estop the Insurer from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the Insurer.

14. Assignment

Assignment of interest under this policy shall not bind the Insurer until its consent is endorsed hereon. If, however, the Named Insured shall die or be adjudged bankrupt or insolvent, this policy, unless cancelled, shall cover the Insured's legal representative for the unexpired portion of such period.

15. Cancellation

This policy may be cancelled by the Named Insured by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Insurer by mailing to the Named Insured at the address shown

in this policy written notice stating when not less than 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Insurer shall be equivalent to mailing. If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Insurer cancels, earned premium shall be computed pro-rate. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

16. Maintenance of Underlying Insurance

Each policy referred to in the Underlying Insurance including renewal or replacement thereof not more restrictive, shall be maintained without alteration of terms or conditions in full effect during this policy period, except for any reduction of the aggregate limits contained therein solely by payment of losses during this policy period. Failure of the Named Insured to comply with the foregoing shall not invalidate this policy but in the event of such failure the Insurer shall be liable only to the extent that it would have been liable had the Named Insured complied therewith.

ENDORSEMENTS

ENDORSEMENT NO. 1

EXCESS AUTOMOBILE LIABILITY ENDORSEMENT

NOW THEREFORE, IN CONSIDERATION of the payment of the premium specified and of the statements contained in the application and subject to the limits, special provisions and conditions herein stated and subject, insofar as applicable, to the terms, conditions, general provisions, definitions and exclusions set forth in the first loss policy described in Item 2 (Schedule of Underlying Insurance) on the Declaration Page, which said terms, conditions, general provisions, definitions and exclusions are by reference incorporated herein, the Excess Insurer agrees to indemnify the Insured under the first loss motor vehicle liability insurance against liability imposed by law upon the Insured for an amount or amounts in excess of the limit(s) of the first loss insurance and the underlying excess insurance for loss or damage arising from the ownership, use or operation of the automobile(s) covered under such first loss insurance and the underlying excess insurance resulting from Bodily Injury to or Death of any Person or Damage to Property.

SPECIAL PROVISIONS

1. The Excess Insurer's ultimate net loss liability shall not exceed the limit stated in Item 1 on the Declaration Page in excess of the limit(s) of the first loss policy, and the underlying excess policy or policies stated in Item 2 (Schedule of Underlying Insurance) on the Declaration Page thereof, or such amounts the first loss Insurer and the underlying excess Insurer shall be liable to pay under statute, whichever is the greater.
The words "ultimate net loss" used in this policy means the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurances excepting the first loss and underlying policy(ies) and shall exclude all expenses and costs.
2. The word "costs" used in this policy means interest accruing after entry of judgment upon that part of the judgment which is within the limit of the Excess Insurer's liability, investigation, adjustment and legal expenses, excluding, however, all office expenses of the Insured, all expenses of salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured.
3. The Excess Insurer agrees to pay costs incurred by or on behalf of the Insured where these costs are not covered by the first loss or underlying excess policy or policies, on the following basis:
 - (a) should any claim or claims become adjustable prior to the commencement of trial for not more than the first loss and underlying excess policy limit(s) then no costs shall be payable by the Excess Insurer;
 - (b) should, however, the amount for which said claim(s) may be so adjustable exceed the first loss and underlying excess policy(ies) limit(s), then the Excess Insurer shall contribute to the costs incurred on behalf of the insured in the ratio that the Excess Insurer's proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss;
 - (c) in the event that the Insured or the Insurer under the first policy loss elects not to appeal a judgment in excess of the limit(s) of the first loss and underlying excess policy(ies) the Excess Insurer may elect to conduct such appeal and shall be liable for the taxable costs and interest incidental thereto; but in no event shall the total liability of the Excess Insurer exceed the final limit of liability stated in Item 1 on the Declaration Page, plus the expense of such appeal.
4. All recoveries or payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the insured and the Excess Insurer, provided always that nothing in this policy shall be construed to mean that losses under this policy are not payable until the Insured's ultimate net loss has finally been ascertained.
5. Liability to pay under this policy shall not attach unless and until the first loss and underlying Excess Insurer(s) shall have admitted liability for the first loss and underlying excess limit(s) or unless and until the Insured has by final judgment has been adjudged to pay an amount which exceeds such first loss and underlying excess limit(s) and then only after the first loss and underlying Excess Insurer(s) has/have paid or has/have been held liable to pay the full amount of the first loss and underlying excess limit(s).
6. Neither the inclusion of more than one entity in the name of the Insured nor the addition of any additional Insured under this policy shall in any way operate to increase the limit of liability set forth in Item 1 on the Declaration Page.

7. Notwithstanding Statutory Condition 3(1) contained in the first loss policy the Insured is only required to give the Excess Insurer notice of any accident if the claim or claims possibly arising therefrom appear likely to exceed the first loss insurance, in which case immediate written notice thereof must be given to the Insurer.
 8. (a) This policy may be terminated
 - (i) by the Excess Insurer giving to the Insured fifteen days notice of termination by registered mail, or five days written notice of termination personally delivered; or
 - (ii) by the Insured at any time on request.
 - (b) Where this policy is terminated by the Excess Insurer
 - (i) the Excess Insurer shall refund the excess of the 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
 - (ii) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
 - (c) Where this policy is terminated by the Insured the Excess 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.
 - (d) The refund may be made by money, postal or express company order, or by cheque payable at par.
 - (e) The fifteen days mentioned in clause (i) of sub-condition (a) 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.
 - (f) Nothing in this special provision shall in any way affect the operation of the statutory provision in The Insurance Act providing that where the contract or contracts designated in the excess contract terminates or is terminated, the excess contract is automatically terminated. In the event that this policy is automatically terminated, the Excess Insurer agrees to refund the excess of premium actually paid over the pro rata premium for the expired term (subject to any minimum retained premium specified) as soon as practicable, but if there is any pro rata premium unpaid the Insured agrees to pay this.
9. Any written notice to the Excess Insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the Excess Insurer in this province. Written notice may be given to the Insured named in this policy by letter personally delivered to him or by registered mail addressed to him at his latest post office address notified to the Excess Insurer. In this condition the expression "registered" means in or outside of Canada.

ENDORSEMENT NO. 2

EXCLUSION OF CERTAIN PROPERTY DAMAGE LIABILITY REAL AND PERSONAL PROPERTY

It is agreed that this policy shall not apply to property damage:

1. to property owned or occupied by or rented to the Insured;
2. to property used by the Insured;
3. to property in the care, custody or control of the Insured or property as to which the Insured is for any purpose exercising physical control;
4. to personal property or fixtures as the result of any work performed thereon by the Insured or anyone on his behalf

ENDORSEMENT NO. 3

EMPLOYERS' LIABILITY

It is agreed that this policy does not apply to bodily injury sustained by any employee of the Insured and arising out of and in the course of his employment by the Insured, unless such liability is covered by valid and collectible underlying insurance as described in the schedule of underlying insurance, and then only for such hazards for which coverage is afforded under said underlying insurance.

ENDORSEMENT NO. 4**AUTOMOBILE LIABILITY COVERAGE ENDORSEMENT**

It is agreed that, in respect to all automobiles owned or leased by the Insured, the Insured will maintain the following minimum underlying insurance in force during the currency of this policy covering the Insured's liability arising out of ownership, use of operation of such automobiles. In the event of failure by the Insured to so maintain such policies in force or to meet all conditions and warranties subsequent to loss under such policies, the insurance afforded by this policy shall apply in the same manner it would have applied had such policies been so maintained in force.

MINIMUM UNDERLYING INSURANCE

Automobile liability written without special restrictive endorsements on standard forms in general use with limits of at least; \$2,000,000 for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property regardless of the number of claims arising from any one incident.