

## FARM UMBRELLA LIABILITY

In consideration of the premium stated in the Declarations and subject to the terms, provisions and conditions thereof, the Insurer and the Named Insured do hereby agree as follows:

(1) **COVERAGE**

The Insurer agrees to pay on behalf of the Insured the "Ultimate Net Loss" in excess of the applicable underlying (or retained) limit, which the Insured shall become legally obligated to pay as compensatory damages because of "Personal Injury" or "Property Damage", caused by or arising out of an "Occurrence".

(2) **AUTOMOBILE INSURANCE**

- (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 44R/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 insurance specified in the Declarations or any other underlying insurance collectible by the Insured, but covered by the terms and the conditions of this Policy except for the amount of the retained limit specified in Item 1 on the Declaration Page, the Insurer shall, 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" or "Property Damage" 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 the Insured's attendance at Hearings or Trials at such request.

In Jurisdictions where the Insurer may be prevented by law or otherwise 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 the 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 applicable underlying insurances 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;

The limit of the Insurer's liability shall not exceed the amount stated in Item 1 on the Declaration Page as the result of any one occurrence.

(5) **TERRITORY**

This policy applies to occurrences happening anywhere in the world except with respect to owned Secondary Residence(s) and Automobile Coverages which are restricted to Canada and the United States.

(6) **EXCLUSIONS**

This insurance does not apply to:

1. Liability imposed upon or assumed by an Insured under any Worker's Compensation Statute except, however, claims arising out of legal liability imposed upon the Insured by Common Law as amended by such Statute;
2. Any act committed by or at the direction of the Insured with intent to cause "Personal Injury" or "Property Damage", but this exclusion does not apply to "Personal Injury" resulting from an act committed for the purpose of protecting or safeguarding persons or property;
3. The rendering of any professional service or the omission thereof;
4. Any business pursuits or business property (other than farms) of an Insured, unless insurance

- therefore is provided by an underlying policy listed in the Declarations;
5. Any act or omission of the Insured as an officer or a member of the Board of Directors of any corporation or other organization;
  6. "Property Damage" to:
    - (a) Property owned by the Insured;
    - (b) Aircraft or watercraft rented to, used by or in the care, custody or control of the Insured;
    - (c) Property rented to, occupied or used by or in the care, custody or control of the Insured, to the extent the Insured is under contract to provide insurance therefore;
  7. Any liability arising out of the ownership, maintenance, use, loading or unloading of any aircraft or unmanned air vehicle;
  8. Any liability arising out of the ownership, maintenance, use, loading or unloading of any watercraft or recreation motor vehicle, unless coverage is afforded with respect thereto by underlying insurance listed in the Declarations and then not for broader coverage than is provided by such underlying insurance;
  9.
    - (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 used, distributed, handled or sold by an Insured, other than radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose.

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 (a) 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 waste material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations;
- (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.
10. "Personal Injury" or "Property Damage" caused by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.
11.
  - (a) "Bodily Injury" or "Property Damage" arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants
    - (i) At or from the premises owned, rented or occupied by the Insured;
    - (ii) At or from any site or location used by or for the Insured or others for the handling, storage, disposal, processing or treatment of waste;
    - (iii) Which are at any time transported, handled, stored, treated, disposed of, or processed as

- waste by or for the Insured or any person or organization for whom the Insured may be legally responsible, or
- (iv) At or from any site or location on which the Insured or any contractors or sub-contractors working directly or indirectly on behalf of the Insured are performing operations:
    - (a) if the pollutants are brought on or to the site or location in connection with such operations; or
    - (b) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
  - (b) Any loss, cost, or expense arising out of any governmental direction or request that the Insured tests for, monitors, cleans up, removes, contains, treats, detoxifies or neutralizes pollutants.
 

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

Sub-paragraphs (i) and (iv)(a) of paragraph (a) of this exclusion do not apply to "bodily injury" or "property damage" 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.

- 12. 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".
- 13. "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".
- 14. 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.

(7) **DEFINITIONS**

When used in this Policy:

- 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. **Automobile**  
 "Automobile" means a land motor vehicle, trailer or semi-trailer (including any machinery or apparatus attached thereto) but does not include, except while being towed or carried on a motor vehicle, any of the following:
  - (a) utility boat, camp or home trailer;
  - (b) recreational motor vehicle;
  - (c) crawler or farm type tractor;
  - (d) self-propelled implement of husbandry;
  - (e) if not required to be registered under any government authority, any equipment which is designed for use principally off roads.
- 3. **Business**  
 "Business" includes, trade, profession or occupation, but does not include farming;
- 4. **Business Property**  
 "Business Property" includes:
  - (a) Property on which a business is conducted, or
  - (b) Property, or any portion thereof, rented to others, or held for such rental, except a part of a one or two family dwelling occupied by the Named Insured as a residence;
- 5. "Data" means representations of information or concepts, in any form.
- 6. **Insured**  
 The unqualified word "Insured" includes:
  - (a) The Named Insured as defined in the underlying policies; or

- (b) If residents of his household, his spouse, the relatives of either and any other person under the age of 21 in the care of an Insured;
- (c) Any residence employee of an Insured but only while acting in his capacity as such;
- (d) 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/her liability as such;
- (e) If the Named Insured is designated in the Declarations as other than an individual, partnership or joint venture, the corporation or organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his/her duties as such;
- (f) A farm employee while engaged in the employment of the Insured;

7. 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 or property damage 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.

8. Personal Injury

"Personal Injury" means:

- (a) Bodily injury, sickness, disease, disability, shock, mental anguish and mental injury;
  - (b) False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or humiliation;
  - (c) Libel, slander, defamation of character or invasion of rights of privacy;
- Including death resulting therefrom, sustained by any person.

9. Property Damage

"Property Damage" means damage to or destruction of tangible property including loss of use thereof.

10. Recreational Motor Vehicle

"Recreational Motor Vehicle" means a land motor vehicle designed for recreational use off public roads, if not required to be registered under any government authority.

11. Self-Propelled Implement of Husbandry

"Self-propelled Implement of Husbandry" means a self-propelled vehicle (other than a crawler or farm type tractor) manufactured, designed, redesigned, converted or reconstructed for a specific use in farming, while used for such purposes or when traveling from farm to farm or to such places as may be necessary for the maintenance or repair of the vehicle.

12. Ultimate Net Loss

The term "Ultimate Net Loss" means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which the Insured is liable either by 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.

(8) CONDITIONS

(a) Severability of Interests

The term "Insured" is used severally, not collectively, but the inclusion in this policy of more than one Insured shall not operate to increase the Insurer's limit of liability.

(b) Maintenance of Underlying Insurance

Each policy referred to in the Schedule of Underlying Insurance including renewal or replacement thereof not more restrictive, shall be maintained without alteration of terms or conditions in full effect during the term of this policy. 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.

(c) 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 excess of this policy, the insurance afforded by this policy shall be in excess of and 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.

(d) Changes

Notice to or knowledge possessed by any person shall not affect a waiver or change in any part of this policy or stop 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.

(e) 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 reasonably obtainable information respecting the time, place and circumstances of the occurrence.

(f) Action Against Insurer

No action shall lie against the Insurer 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 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. Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Insurer as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Insurer of any of its obligations hereunder.

(g) Canadian Currency Clause

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

(h) Appeals

If the Insured or the underlying Insurers elect not to appeal a judgment in excess of the limits of liability afforded by the underlying insurance or in excess of the retained limit, the Insurer may elect to appeal. The Insurer's limit of liability shall not be increased because of such appeal except that the Insurer shall bear the following costs and expenses while the case is in appeal; Attorney's fees and expenses, bond premiums, court fees, costs and expenses taxed against the Insured by the appellate court and interest accruing on a judgment against the Insured.

(i) Subrogation

The Insurer shall be subrogated to the extent of any payment hereunder to all the Insured's right of recovery therefore; and the Insured shall do everything necessary to secure such rights. The Insured shall do nothing after a loss to prejudice such rights.

(j) 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, such insurance as it is afforded hereunder shall apply

- (i) to the Named Insured's legal representative as the Named Insured, but only while acting within the scope of his duties as such, and
- (ii) with respect to the property of the Named Insured, to the person having proper temporary custody thereof as Insured, but only until the appointment and qualification of the legal representative.

(k) Cancellation

This policy may be cancelled by the Named Insured by surrender thereof to the Insurer or any of its authorized agents, or by mailing to the Insurer written notice stating when thereafter such 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 fifteen (15) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient notice and the effective date 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 rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable.

## 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.