

**COMMERCIAL GENERAL LIABILITY POLICY  
"OCCURRENCE" FORM  
NO. U.S.A. COVERAGE**

**READ YOUR POLICY CAREFULLY**

**INDEX OF COVERAGE**

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# **COMMERCIAL GENERAL LIABILITY POLICY (OCCURRENCE FORM)**

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurer providing this Insurance.

Note - For the purposes of this policy and all actions or proceedings related hereto, the place of business of the Insurer hereto is deemed to be that office of Markel, located at 200 Wellington Street West, Suite 400, Toronto, Ontario M5V 3C7 and that accordingly service of legal documents upon such attendant person who appears to be in control or management thereof shall constitute valid and effective service upon the Insurer.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning.

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## **SECTION I - COVERAGES**

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

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

- a. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "bodily injury" or "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. This insurance applies only to "bodily injury" and "property damage" which occurs during the policy period. The "bodily injury" or "property damage" must be caused by an "occurrence". The "occurrence" must take place in the "coverage territory".

We will have the right and duty to defend any "action" seeking those compensatory damages and to pay for the "defence expense" but:

- 1) The amount we will pay for compensatory damages are limited as described in SECTION III - LIMITS OF INSURANCE;
  - 2) We may investigate and settle any claim or "action" at our discretion; and
  - 3) Our right and duty to defend end when we have used up the Amount of Insurance available in the payment of judgments or settlements under Coverages A, B, or D or medical expenses under Coverage C.
- b. Compensatory damages because of "bodily injury" include compensatory damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
  - c. "Property damage" that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the "occurrence" that caused it.

## 2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Bodily injury" or "property damage" for which the insured is obligated to pay compensatory damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for compensatory damages.
  - 1) Assumed in a contract or agreement that is an "insured contract"; or
  - 2) That the insured would have in the absence of the contract or agreement.
- c. Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
- d. "Bodily injury" to an employee of the insured arising out of and in the course of employment by the insured.

This exclusion applies:

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

This exclusion does not apply:

- i) To liability assumed by the insured under an "insured contract"; or
  - ii) To employees on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.
- e. 1) "Bodily injury" or "property damage" arising out of the ownership, use or operation by or on behalf of any insured of:
    - a) Any "automobile";
    - b) Any motorized snow vehicle or its trailers;
    - c) Any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
    - d) Any vehicle which if it were to be insured would be required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, but this exclusion does not apply to the ownership, use or operation of machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use or operation of such equipment.
  - 2) "Bodily injury" or "property damage" with respect to which any motor vehicle liability policy is in effect or would be in effect but for its termination upon exhaustion of its limit of liability or is required by law to be in effect.

This Exclusion e. does not apply to "bodily injury" to an employee of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.

- f. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use, operation, loading or unloading, or entrustment to others, by or on behalf of any insured of any watercraft.

This exclusion does not apply to:

- 1) A watercraft while ashore on premises you own or rent;
  - 2) A watercraft you do not own that is:
    - a) Less than 8 metres long; and
    - b) Not being used to carry persons or property for a charge.
  - 3) Bodily injury" to an employee of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any workers compensation law.
- g. 1) "Bodily injury" or "property damage" arising out of the ownership, maintenance, use, operation, loading or unloading, or entrustment to others, by or on behalf of any insured of:
- a) Any aircraft; or
  - b) Any air cushion vehicle.
- 2) "Bodily injury" or "property damage" arising out of the ownership, existence, use or operation by or on behalf of any insured of any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.
- h. "Property damage" to:
- 1) Property you own, rent, or occupy;
  - 2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
  - 3) Property loaned to you;
  - 4) Personal property in your care, custody or control;
  - 5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
  - 6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 2) of this exclusion does not apply if the premises, are "your work" and were never occupied, rented or held for rental by you.

Paragraph 3), 4), 5) and 6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

- i. "Property damage" to "your product" arising out of it or any part of it.
- j. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

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

- k. "Bodily injury" or "property damage" arising out of your premises and/or operations in the United States of America (including its possessions and territories). This exclusion will not apply if the injury or damage arises out of the activities of a person whose home is in Canada, but who is away for a short time on your business.
- l. "Bodily injury" or "property damage" included within the "products-completed operations hazard" occurring in the United States of America (including its territories and possessions) except where the particular product involved was sold for use or consumption in Canada.
- m. "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
  - 1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
  - 2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

- n. Any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - 1) "Your product";
  - 2) "Your work"; or
  - 3) "Impaired property";

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

- o.
  - 1) Claims or "actions" arising directly or indirectly from "abuse" committed or alleged to have been committed by an insured, including the transmission of disease arising out of any act of "abuse".
  - 2) Claims or "actions" based on your practices of "employee" hiring, acceptance of "volunteer workers" or supervision or retention of any person alleged to have committed "abuse".
  - 3) Claims or "actions" alleging knowledge by an insured of, or failure to report, the alleged "abuse" to the appropriate authority(ies).

- p. Pollution Liability - See Common Exclusions.
  - q. Nuclear Liability - See Common Exclusions.
  - r. War Risks - See Common Exclusions.
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## **COVERAGE B. PERSONAL INJURY LIABILITY**

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

- a. We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "personal injury" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. We will have the right and duty to defend any "action" seeking those compensatory damages but:
  - 1) The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;
  - 2) We may investigate and settle any claim or "action" at our discretion; and
  - 3) Our right and duty to defend end when we have used up the Amount of Insurance available in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.
- b. This insurance applies to "personal injury" only if caused by an offence:
  - 1) Committed in the "coverage territory" during the policy period; and
  - 2) Arising out the conduct of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you.

### **2. Exclusions.**

This insurance does not apply to:

"Personal injury":

- 1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- 2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

- 3) Arising out of the wilful violation of a penal statute or ordinance committed by or with the consent of the insured; or
- 4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for compensatory damages that the insured would have in the absence of the contract or agreement.
- 5) Arising in the United States of America (including its possessions and territories). This exclusion will not apply if the injury arises out of activities of a person whose home is in Canada but who is away for a short time on your business.

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## **COVERAGE C. MEDICAL PAYMENTS**

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

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- 1) On premises you own or rent;
- 2) On ways next to premises you own or rent; or
- 3) Because of your operations;

provided that:

- a) The accident takes place in the "coverage territory" and during the policy period;
- b) The expenses are incurred and reported to us within one year of the date of the accident; and
- c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- 1) First aid at the time of an accident;
- 2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- 3) Necessary ambulance, hospital, professional nursing and funeral services.

### **2. Exclusions.**

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, who at the time of injury is entitled to benefits under any workers' compensation or disability benefits law or a similar law.

- e. To a person injured while taking part in athletics.
- f. The payment of which is prohibited by law.
- g. Included within the "products-completed operations hazard".
- h. Excluded under Coverage A.
- i. Pollution Liability - See Common Exclusions.
- j. Nuclear Liability - See Common Exclusions.
- k. War Risks - See Common Exclusions.

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

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

We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "property damage" to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. This insurance applies only to "property damage" to premises of others rented to you or occupied by you. This insurance applies only to "property damage" which occurs during the policy period. The "property damage" must be caused by an "occurrence". The "occurrence" must take place in the "coverage territory".

We will have the right and duty to defend any "action" seeking compensatory damages and to pay for "defence expense" but:

- a. The amount we will pay for compensatory damages is limited as described in SECTION III - LIMITS OF INSURANCE;
- b. We may investigate and settle any claim or "action" at our discretion; and
- c. Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

### **2. Exclusions.**

This insurance does not apply to:

- a. "Property damage" expected or intended from the standpoint of the insured.
- b. "Property damage" for which the insured is obligated to pay by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for compensatory damages that the insured would have in the absence of the contract or agreement.



- c. Pollution Liability - See Common Exclusions.
- d. Nuclear Energy Liability - See Common Exclusions.
- e. War Risks - See Common Exclusions.

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## **COMMON EXCLUSIONS - COVERAGES A, C AND D**

This insurance does not apply to:

### **1. Pollution Liability**

- a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - 1) At or from premises owned, rented or occupied by an Insured;
  - 2) At or from any site or location used by or for an Insured or others for the handling, storage, disposal, processing or treatment of waste;
  - 3) Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for an Insured or any person or organization for whom the Insured may be legally responsible; or
  - 4) At or from any site or location on which an Insured or any contractors or subcontractors working directly or indirectly on behalf of an 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 you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

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

Sub paragraph 1) and 4) 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 is intended to be.

### **2. Nuclear Energy Liability**

- a. Liability imposed by or arising under the Nuclear Liability Act;
- b. "Bodily injury" or "property damage" with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

- c. "Bodily injury" or "property damage" resulting directly or indirectly from the nuclear energy hazard arising from:
- 1) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured;
  - 2) the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
  - 3) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

As used in this policy:

- 1) The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- 2) 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;
- 3) The term "nuclear facility" means:
  - a) 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;
  - b) any equipment or device designed or used for
    - (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them,
    - (ii) processing or utilizing spent fuel, or
    - (iii) handling, processing or packaging waste;
  - c) 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;
  - d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- 4) 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.

### 3. War Risks

"Bodily injury" or "property damage" due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

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#### **SUPPLEMENTARY PAYMENTS- COVERAGES A, B AND D**

We will pay, with respect to any claim or "action" we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defence of the claim or "action", including actual loss of earnings up to \$100 a day because of time off from work.
- d. All costs taxed against the insured in the "action" and any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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#### **SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:
    - 1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment; or
    - 2) "Bodily injury" or "personal injury" to any person who at the time of injury is entitled to benefits under any workers compensation or disability benefits law or a similar law; or
    - 3) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

- 4) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
  - b. Any person (other than your employee), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - 1) With respect to liability arising out of the maintenance or use of that property; and
    - 2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
    - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - b. Coverages A and D do not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - c. Coverage B does not apply to "personal injury" arising out of an offence committed before you acquired or formed the organization.

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

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### **SECTION III - LIMITS OF INSURANCE**

1. The Limits of Insurance stated in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "actions" brought; or
  - c. Persons or organizations making claims or bringing "actions".
2. The Each Occurrence Limit is the most we will pay for the sum of:
  - a. Compensatory damages under coverage A, coverage B, and coverage D; and
  - b. Medical expenses under coverage C;because of all "bodily injury", "personal injury" and "property damage" arising out of any one "occurrence".
3. The Aggregate Limit is the most we will pay under coverage A for compensatory damages because of "bodily injury" and "property damage" included in the products-completed operations hazard".

4. Subject to 2. above, the Personal Injury Limit is the most we will pay under Coverage B for the sum of all compensatory damages because of all "personal injury" sustained by any one person or organization.
5. Subject to 2. above, the Tenants' Legal Liability Limit is the most we will pay under Coverage D for compensatory damages because of "property damage" to any one premises.
6. Subject to 2. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

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#### **DEDUCTIBLE ON CLAIMS - COVERAGES A, B AND D**

1. Our obligation to pay compensatory damages on your behalf applies only to the amount of compensatory damages in excess of any deductible amounts stated in the policy Declarations, as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for as shown in the policy Declarations will be reduced by the amount of such deductible. The "Aggregate Limit" for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amount applies as the result of any one "occurrence", regardless of the number of persons or organizations who sustain compensatory damages because of that "occurrence".
3. The terms of this Insurance, including those with respect to:
  - a) our right and duty to defend any "action" seeking those compensatory damages; and
  - b) your duties in the event of an "occurrence", claim or actionapply irrespective of the application of the deductible amount.
4. We may pay any part or all of the deductible amount to effect settlement of any claim or "action" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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#### **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy.**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

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

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

##### **3. Cancellation.**

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - 1) 15 days before the effective date of cancellation if we cancel for non-payment of premium; or
  - 2) 30 days before the effective date of cancellation if we cancel for any other reason.

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

In Quebec, cancellation takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for cancellation.

- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. The policy period will end on the date cancellation takes effect.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

#### **4. Changes.**

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

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

- a. You must see to it that we are notified promptly of an "occurrence" which may result in a claim. Notice should include:
  - 1) How, when and where the "occurrence" took place; and
  - 2) The names and addresses of any injured persons and witnesses; and
- b. If a claim is made or "action" is brought against any insured, you must see to it that we receive prompt written notice of the claim or "action".
- c. You and any other involved insured must:
  - 1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or an "action";
  - 2) Authorize us to obtain records and other information;
  - 3) Cooperate with us in the investigation, settlement or defence of the claim or "action"; and
  - 4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## **6. Examination of Your Books and Records.**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

## **7. Inspections and Surveys.**

We have the right but are not obligated to:

- a. Make inspections and surveys at any time;
- b. Give you reports on the conditions we find; and
- c. Recommend any changes.

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

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

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

## **8. Legal Action Against Us.**

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into an "action" asking for compensatory damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.
- c. To sue the First excess insurer(s) or Second excess Insurer(s) on this policy until the amount of the Insured's obligation to pay an amount of loss in excess of the primary or First Excess Insurer(s) shall have been finally determined either by judgement against the Insured after actual trial or by written agreement of the Insured,

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for compensatory damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative. Every "action" or proceeding against us shall be commenced within one year next after the date of such judgment or agreed settlement and not afterwards. If this policy is governed by the law of Quebec every action or proceeding against us shall be commenced within three years from the time the right of action arises.

## 9. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverage A, B or D of this policy, our obligations are limited as follows:

### a. Primary Insurance

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

### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- 1) That is Property Insurance such as, but not limited to, Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work" or for premises rented to you; or
- 2) If the loss arises out of the maintenance or use of watercraft to the extent not subject to Exclusion f. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A, B or D to defend any claim or "action" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to all the insured's rights against all those other insurers. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

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

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

### c. Method of Sharing

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

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



## **10. Premium Audit.**

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

## **11. Premiums.**

The first Named Insured shown in the Declarations:

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

## **12. Representations.**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

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

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

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

## **14. Transfer of Rights of Recovery Against Others to Us.**

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

The Excess Insurer(s) (if any) recoveries shall be applied in the inverse order in which liability attaches.

## 15. Transfer of Your Rights and Duties Under this Policy.

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

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

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## SECTION V - DEFINITIONS

1. **"Abuse"** means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.
2. **"Action"** means a civil proceeding in which compensatory damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies are alleged.

"Action" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.

3. **"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.
4. **"Bodily injury"** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
5. **"Coverage territory"** means:
  - a. Canada and the United States of America (including its territories and possessions);
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - 1) The injury or damage arises out of:
      - a) Goods or products made or sold by you in Canada; or
      - b) The activities of a person whose home is in Canada, but is away for a short time on your business; and
    - 2) The insured's responsibility to pay compensatory damages is determined in an "action" on the merits, in the territory described in a. above or in a settlement we agree to in writing.

6. **"Impaired property"** means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfil the terms of a contract or agreement;

if such property can be restored to use by:

1) The repair, replacement, adjustment or removal of "your product" or "your work"; or

2) Your fulfilling the terms of the contract or agreement.

7. **"Insured contract"** means:

a. A lease of premises;

b. A sidetrack agreement;

c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;

d. Any other easement agreement;

e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;

f. An elevator maintenance agreement; or

g. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay compensatory damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

2) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failing to render professional services, including those listed in 1) above and supervisory, inspection or engineering services.

- 8. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 9. "Personal Injury"** means injury, other than "bodily injury", arising out of one or more of the following offences:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. Wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
  - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
  - e. Oral or written publication of material that violates a person's right of privacy.
- 10. "Products-completed operations hazard"** includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- 1) Products that are still in your physical possession; or
  - 2) Work that has not yet been completed or abandoned.

"Your work" will be deemed completed at the earliest of the following times:

- 1) When all of the work called for in your contract has been completed.
- 2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- 3) When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

This hazard does not include "bodily injury" or "property damage" arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.

**11. "Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

**12. "Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

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

**14. "Your product"** means:

a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

1) You;

2) Others trading under your name; or

3) A person or organization whose business or assets you have acquired; and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

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

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

**15. "Your work"** means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

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