**SECTION B – ACCIDENT BENEFITS COVERAGE – S.P.F. No. 4 (For use in the Northwest Territories)**

**The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:**

**SUBSECTION 1 – MEDICAL, REHABILITATION AND FUNERAL EXPENSES**

1. All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, where the chiropractic services are recommended by a legally qualified medical practitioner, hospital, professional nursing and ambulance service and for any other service within the meaning of insured services under the *Territorial Hospital Insurance Services Act* and for such other services and supplies which are, in the opinion of the legally qualified medical practitioner of the insured person’s choice and that of the Insurer’s medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of $25,000 per person.

2. Funeral expenses incurred up to the amount of $1,000 in respect of the death

of any one person.

The Insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of, any insured person.

**SUBSECTION 2 – DEATH BENEFITS AND LOSS OF INCOME PAYMENTS**

**Part I – Death Benefits**

1. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, an amount – based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive – as follows:

Head of the household $10,000

Spouse of the Head of the Household $10,000

Dependant within the meaning of Subparagraph b

of subparagraph 3 of paragraph B $ 2,000

In addition, with respect to death of the head of the household, where there are two or more survivors – spouse or dependents – the principal sum payable is increased $2,500 for each survivor other than the first and where there is one survivor – spouse or dependant – the principal sum payable is increased $1,500.

1. For the purposes of this Part,

(1) “Spouse of the head of the household” means the spouse with the lesser

income from employment in the twelve months preceding the date of the accident.

(2) “spouse” means either of a man and woman who,

1. are married to each other;
2. are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
3. have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

and includes,

1. either of a man and woman not being married to each other who have cohabited,
2. continuously for a period of not less than three years, or
3. in a relationship of some permanence where there is a child of whom they are the natural or adoptive parents,

and have so cohabited within the preceding year;

(3) “dependant” means,

(a) the spouse of the head of the household who resides with the head of the household;

(b) a person,

1. under the age of nineteen years who resides with and is principally dependent upon the head of the household or the spouse of the head of the household for financial support,
2. nineteen years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse of the head of the household for financial support, or
3. nineteen years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse of the head of the household for financial support; or

(c) a parent or relative,

1. of the head of the household, or
2. of the spouse of the head of the household,

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

1. The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least thirty days.
2. The total amount payable with respect to death where no head of the household or spouse survives the deceased by at least thirty days shall be divided equally among the surviving dependants.
3. No amount is payable on death under this Part if no head of the household or dependant survives the deceased by at least thirty days.

**Part II – Loss of Income**

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

1. such person was employed at the date of the accident;
2. within thirty days from the date of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment; and
3. no payments shall be made for the first seven days of such inability or for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

**Amount of Weekly Payment** – The amount of a weekly payment shall be the lesser of,

1. $140 per week; or
2. eighty per cent of the insured person’s gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
3. the laws of any jurisdiction, and
4. wage or salary continuation plans available to the person by reason of his employment,

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

For the purpose of this Part,

(1) there shall be deducted from an insured person’s gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;

(2) a principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of $100 per week for not more than twelve weeks;

(3) a person shall be deemed to be employed,

1. if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
2. if nineteen years of age or over and under the age of sixty-five years, so engaged for any six months out of the preceding twelve months;

(4) A person receiving a weekly payment who, within thirty days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments; and

(5) Where the payments for loss of income payable hereunder, together with actual loss of income of the insured person, the Insurer is liable only for that

payments for loss of income under another contract of insurance other than proportion of the payments for loss of income stated in this policy that the

a contract of insurance relating to any wage or salary continuation plan actual loss of income of the person insured bears to the aggregate of the

available to an insured person by reason of his employment, exceed the payments for loss of income payable under all such contracts.

**SUBSECTION 3 – UNINSURED MOTORIST COVER**

All sums that

1. a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
2. any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
3. a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile.

1. **Definitions:**

For the purposes of this section,

(a) “insured automobile” means the automobile as defined or described under the contract;

(b) “person insured under the contract” means,

1. in respect of a claim for damage to the insured automobile, the owner of the automobile;
2. in respect of a claim for damage to the contents of the insured automobile, the owner of the contents;
3. in respect of a claim for bodily injury or death, notwithstanding paragraph 138(c),

(a) any person while an occupant of the insured automobile,

(b) the insured and, if residing in the same dwelling premises as the insured, the insured’s spouse and any dependent relative of either,

1. while an occupant of an uninsured automobile, or
2. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,

(c) if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is furnished, and, if residing in the same dwelling premises as such person, the person’s spouse and any dependent relative of the person or the spouse,

1. while an occupant of an uninsured automobile, or
2. while not the occupant of an automobile or of railway rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,

where such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;

(c) “unidentified automobile” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

(d) “uninsured automobile” means an automobile neither the owner nor driver of which has applicable and collectable bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured’s spouse.

2. **Qualification of Dependent Relative**

Where a dependent relative referred to in subparagraph (1)(c)(ii) or (iii) of the definition of “person insured under the contract”,

1. is the owner of an automobile insured under a contract, or
2. sustains bodily injury or dies as the result of an accident while the occupant of his own uninsured automobile, such relative shall be deemed not to be a dependent relative for the purposes of this section.

The following terms, and conditions, provisions, exclusions and limits prescribed by the Regulations made under Section 156(4) of The Insurance Act apply to the coverage under this Subsection of this Section B.

3. **Limits and Exclusions**

(1) The Insurer shall not be liable to make any payment,

1. for any amount in excess of the minimum limits for automobile liability insurance in the jurisdiction in which the accident occurs regardless of the number of persons injured or killed or the damage to the automobile and contents, and in no event is the insurer liable for any amount in excess of the minimum limits set out in section 144 of the Act;
2. where a person insured under the contract is entitled to recover money under any valid policy of insurance, other than money payable on death, except for the difference between such entitlement and the relevant minimum limits determined under paragraph (a);
3. where the person insured under the contract is entitled to recover money under the third party liability section of a motor vehicle liability policy;
4. to any person involved in an accident in a jurisdiction in which a valid claim may be made for such payment against an unsatisfied judgment or similar fund;
5. for any loss or damage caused directly or indirectly by radio-active material; or
6. in respect of damages for accidental damage to the insured automobile and its contents, for the first $100 of any loss in any one occurrence nor any amount in excess of $25,000.

(2) Where by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents,

1. claims arising out of bodily injury or death have priority to the extent of ninety-five per cent of the amount payable over claims arising out of damages to the insured automobile and its contents; and
2. claims arising out of damage to the insured automobile and its contents have priority to the extent of five per cent over claims arising out of bodily injury or death.

4. **Accidents Involving Unidentified Automobiles**

Where an unidentified automobile has caused bodily injury or death to a person insured under the contract,

1. the person insured under the contract, or someone on his behalf, shall report the accident within twenty-four hours, or as soon as reasonably practicable after the accident, to a police officer and shall file with the insurer within thirty days, or as soon as reasonably practicable after the accident, a written statement that the person insured under the contract or his representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained and setting out the facts in support of the cause or causes of action; and
2. at the request of the insurer, the person insured under the contract, or his representative, shall make available for inspection the automobile of which the person insured under the contract was an occupant at the time of the accident.

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

(1) The determination as to whether the person insured under the contract is legally entitled to recover damages and, if so entitled, the amount of the damages must be determined,

1. by agreement between the person insured under the contract and the insurer;
2. at the request of the person insured under the contract, and with the consent of the insurer, by arbitration by some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the person insured under the contract and the other by the insurer and a third person to be appointed by the persons so chosen; or
3. by a court of competent jurisdiction in the Territories in an action brought against the insurer by the person insured under the contract, and unless the determination has been previously made in a contested action by a court of competent jurisdiction in the Territories, the insurer may include in its defence the determination and amount of liability.

(2) The *Arbitration Act* applies to every arbitration under paragraph (1)(b) of this section.

6. **Notice of Legal Action**

1. Where the person insured under the contract or his representative commences a legal action for damages against any other person owning or operating an automobile involved in the accident, a copy of the statement of claim or other proceeding shall be delivered or sent by registered mail immediately to the chief agency or head office of the insurer in the Territories.
2. Subject to section 2 of this Schedule, where the person insured under the contract or his representative obtains a judgment against the other person referred to in subsection (1) but is unable to recover, or to recover fully the amount of that judgment, the insurer shall, on request, pay the amount of that judgment or, as the case may be, the difference between the amount recovered under that judgment and the amount of that judgment.
3. Before making any payment under subsection (2), the insurer may require that the person insured under the contract or his representative assign his judgment, or the balance of his judgment, as the case may be, to the insurer and the insurer shall account to the person insured under the contract for any recovery it makes under that judgment for any amount in excess of the amount paid to that person and its costs.

7. **Notice and Proof of Claim**

(1) In respect of a claim for bodily injuries or death, the person insured under the contract or his representative, or the person otherwise entitled to make a claim or his representative, shall,

1. give written notice of claim to the insurer by personal service on, or registered mail sent to, the chief agency or head office of the insurer in the Territories, within thirty days from the date of accident or as soon as is reasonably practicable;
2. within ninety days from the date of the accident for which the claim is made, or as soon as reasonably practicable, furnish to the insurer such proof of claim as is reasonably possible in the circumstances of the happening of, and the loss occasioned by, the accident;
3. if so required by the insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused by the accident from a medical practitioner legally qualified to practice; and
4. give details to the insurer of any policies of insurance, other than policies of life insurance, to which such person may have recourse.

(2) In respect of a claim for damage to the insured automobile or its contents, or to both the insured automobile and its contents, the provisions of statutory condition 4 of sub-section 129(1) of the Act apply with necessary modifications to the insured automobile and to any contents with respect to which a claim is made.

8. **Medical Reports**

1. The insurer has the right and the claimant shall afford to the insurer an opportunity to examine the person of the person insured under the contract when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the person insured under the contract, to make an autopsy subject to the law relating to autopsies.
2. At the request of the claimant or his representative, the insurer shall supply to the claimant or his representative, as the case may be, a copy of any medical or autopsy report obtained as a result of an examination or autopsy under subsection (1).

9. **When Moneys Payable**

1. No person shall bring an action to recover the amount of a claim provided for under the contract under subsection 156(4) of the Act unless the requirements of this Schedule have been complied with.
2. Every action or proceeding against the insurer for the recovery of a claim must be commenced within two years from the date on which the cause of action against the insurer arose and not afterwards.

10. **Limitation of Benefit Payable**

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection 156(4) of the Act, he or his representative of any person claiming through or under him may recover only an amount equal to one benefit.

11. **Application of General Provisions**

1. Insofar as applicable, the general provisions, definitions, exclusions and statutory conditions as contained in a motor vehicle liability policy also apply to payments under the contract under subsection 156(4) of the Act.
2. Special Provisions, Definitions and Exclusions of Section B of this policy do not apply to the insurance provided by this Subsection 3.

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

1. “Insured person” defined

In this Section, the words “insured person” mean,

(a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;

(b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,

1. the insured is an individual or are husband and wife;
2. such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident;
3. such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured;
4. such other automobile is not owned, hired or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the insured; and
5. such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;

(c) in subsections (1) and (2) of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;

(d) in subsections (1) and (2) of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

1. such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident;
2. that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured;
3. that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
4. if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile; and
5. in subsections (1) and (2) of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,

in respect of (e) and (f) above,

1. neither such employee nor partner or his or her spouse is the owner of an automobile;
2. such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
3. such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner;
4. such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured;

in respect of (e) above only,

1. such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) **Exclusions**

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

1. resulting from the suicide of such person or attempted suicide, whether sane or insane; or
2. who is entitled to receive the benefits of any workers’ compensation law or plan; or
3. caused directly or indirectly by radioactive material;

(b) The Insurer shall not be liable under subsection (1) or Part II of subsection (2) of this section for bodily injury or death,

1. sustained by any person who, at the time of the accident, was driving or operating the automobile while in a condition for which they are convicted of an offence under section 320.14 or under or in connection with circumstances for which they are convicted of an offence under section 320.15 of the **Criminal Code (Canada)** unless they establish that their impairment by alcohol or drug were not the proximate cause of the accident; or
2. sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile,
3. sustained by the insured during or in connection with circumstances for which the insured is convicted of an offence under section 320.13 or 320.17 of the **Criminal Code (Canada)** unless the insured establishes that such circumstances were not the proximate cause of the accident.

(3) **Notice and proof of claim**

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

1. give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in the Territory, within thirty days from the date of the accident or as soon as practicable thereafter;
2. within ninety days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby; and
3. if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) **Medical reports**

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

(5) **Release**

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

(6) **When moneys payable**

1. All amounts payable under this section, other than benefits under Part II of subsection (2), shall be paid by the Insurer within thirty days after it has received proof of claim. The initial benefits for loss of income under Part II of subsection (2) shall be paid within thirty days after the Insurer has received proof of claim, and payments shall be made thereafter within each thirty-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability.
2. No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this section.
3. Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within two years from the date on which the cause of action arose and not afterwards.
4. **Limitation of benefit payable**

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection (1) or (2), he or his personal representative or any person claiming through or under him may recover only an amount equal to one benefit.

In so far as applicable, the general provisions, exclusions and statutory conditions of the policy also apply.