**NORTHWEST
TERRITORIES
GARAGE
AUTOMOBILE
POLICY**

(S.P.F No. 4)

**Effective on
and after**

**December 18, 2018**

**PLEASE READ THIS CAREFULLY**

**S.P.F. NO. 4 – STANDARD GARAGE AUTOMOBILE POLICY
(For Use in the Northwest Territories)**

**INSURING AGREEMENTS**

In consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated and subject always to the condition that the Insurer shall be liable only under the Section(s) or subsection(s) of the Insuring Agreements for which a premium is specified in Item 5 of the application.

**SECTION A – EXCESS THIRD PARTY LIABILITY**

The Insurer agrees

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

**OWNED**

**AUTOMOBILES**

(b) to indemnify the insured against the liability imposed by law upon the insured for loss or damage arising from the use or operation of any customer’s automobile or non-owned automobile or part thereof;

**NON-OWNED
AUTOMOBILES**

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

**EXCLUSIONS**

The Insurer shall not be liable under this Section:

1. for any liability imposed on any person insured by this Section
2. by any workmen’s compensation law or plan; or
3. for bodily injury to or the death of any partner, officer or employee of such person while engaged in the business of such person;
4. for loss or damage resulting from bodily injury to or the death of
5. any person insured by this Section; or
6. the son, daughter or spouse of any person insured by this Section while an occupant of any automobile which is driven by such insured person;
7. for loss or damage to property carried in or upon an automobile owned or driven by any person insured by this Section, or to any property owned or rented by, or in the care, custody or control of any person insured by this Section;
8. for loss or damage to any customer’s automobile;
9. for any amount in excess of the limit(s) stated in Section A of Item 5 of the application, and expenditures provided for in the Additional Agreements of this Section; subject always to the provisions of the section of **The Insurance Act (Automobile Insurance Part**) (**The Automobile Insurance Act)** relating to the nuclear energy hazard; or
10. for any liability arising from contamination of property carried in the automobile.

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

**ADDITIONAL AGREEMENTS OF INSURER** Where indemnity is provided by this Section the Insurer shall:

1. upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
2. defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage to persons or property;
3. pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer’s liability;
4. where the injury is to a person, reimburse any person insured by this policy for outlay for such medical aid as is immediately necessary at the time;
5. be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit(s) stated in Section A of Item 5 of the application; and
6. not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

**AGREEMENTS OF INSURED**

Where indemnity is provided by this section, every person insured by this policy:

1. by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising out of the ownership, use or operation of the automobile;
2. shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this policy.

**SECTION B – ACCIDENT BENEFITS
See wording attached**

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

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

**SUBSECTION 1 – COLLISION OR UPSET**Caused by collision with another object or by upset.

**SUBSECTION 2 – COMPREHENSIVE**

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

**SUBSECTION 3 – SPECIFIED PERILS**

Caused by fire, lightning, theft or attempt thereat, windstorm,

earthquake, hail, explosion, riot or civil commotion, falling or forced

landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning or derailment of any railway car or watercraft in or upon which the automobile is being transported.

**SUBSECTION 4 – SPECIFIED PERILS EXCLUDING THEFT**

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

**DEDUCTIBLE CLAUSE**

The Insurer’s liability shall be limited to the amount of loss or damage in excess of the sum payable by the insured stated in the applicable subsection of Section C of Item 5 of the application.

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

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

**LIMITS OF LIABILITY**

**APPLICABLE TO SUBSECTIONS 2, 3 AND 4**

(a) Subject to Clauses (b) and (c) below, the Insurer shall not be liable in respect of any one occurrence for:

1. any amount in excess of the limits of liability stated in subsections 2, 3 and 4 of Section C of Item 5 of the application at each specified location;
2. any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
3. loss or damage to more than four owned automobiles at any location not used by the insured in the business specified in Item 3 of the application.

(b) Where the premium is computed on a MONTHLY AVERAGE BASIS, if at the time of loss the insured has failed to file the report referred to in Clause 3 (b) (ii) of the General Provisions, Definitions and Exclusions, the Insurer’s liability shall be limited to the amounts included in the last report filed; furthermore, if the delinquent report is the first report required to be filed, the Insurer shall be liable for not more than 75% of the applicable limit of liability stated in Item 5 of the application. In the event of loss, the Insurer’s liability at each location shall be limited to the proportion of the loss that the amounts reported to the Insurer on the last report filed prior to the loss bears to the actual cash value of all automobiles at the location on the date for which the report is made.

(c) Where the premium is computed on a COINSURANCE BASIS, the insured shall maintain insurance under this policy on the automobiles hereby insured at each specific location to the extent of at least 80% of the actual cash value thereof, and that, failing so to do, the insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to 80% of the actual cash value of such automobiles at the time of loss or damage and, in that capacity, shall bear his proportion of any loss or damage that may occur. If the total loss or damage is confined to one automobile only, this co-insurance clause shall not apply.

**EXCLUSIONS**

The Insurer shall not be liable:

(1) under any subsection of Section C for loss or damage:

1. to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection;
2. caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement;
3. caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense;
4. caused directly or indirectly by contamination by radioactive material;
5. to contents of automobiles or trailers;
6. to tapes and equipment for use with a tape player or recorder, when such tapes or equipment are detached therefrom;
7. where the insured drives or operates the automobile
8. while under the influence of intoxicating liquor or drugs to
such an extent as to be for the time being incapable of the proper control of the automobile;
9. an insured may not recover from the insured’s insurer any amount with respect to damage to the insured’s own automobile or injuries sustained by the insured while in a

condition for which the insured is convicted of an offence under section 320.14 or under or in connection with circumstances for which the insured is convicted of an offence under section 320.15 of the Criminal Code (Canada) unless the insured establishes that the insured’s impairment by alcohol or drug was not the proximate cause of the accident; or

1. an insured may not recover from the insured’s insurer any amount with respect to damage to the insured’s own automobile or injuries 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; or
2. where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (g); or
3. to any automobile sold by the insured and in the possession of a purchaser under any partial payment plan.
4. for loss or damage to any automobile while being carried in or upon any automobile owned, hired or leased by the insured which is designed for transportation of other automobiles, provided always that a tow truck shall not be deemed designed for such purpose;
5. under subsection 1, for loss or damage occurring after the theft of the automobile and before recovery by the insured, except where the theft has been committed by a person or persons (i) residing in the same dwelling premises as the insured, or (ii) employed by the insured in connection with the business described in Item 3 of the application;
6. under subsections 2 and 3, for loss or damage caused by theft by a person or persons (i) residing in the same dwelling premises as the insured, or (ii) employed by the insured in connection with the business described in Item 3 of the application;
7. under subsections 2 and 3, for loss or damage by theft from any open lot or unroofed space owned, rented or controlled by the insured except the theft of an entire automobile;
8. under subsection 4, for loss or damage occurring after theft of the automobile and before recovery of the automobile by the insured.

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

**ADDITIONAL AGREEMENTS OF INSURER**

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

1. to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the insured is legally liable;
2. to waive subrogation against every person who, with the insured’s consent, has care, custody or control of the automobile, provided always that this waiver shall not apply (i) to any person having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles other than an officer or employee of the insured, or (2) to any person who has (i) committed a breach of any condition of this policy or (ii) driven or operated the automobile in the circumstances referred to in (i) or (ii) of paragraph (1) (g) of the exclusions to Section C.

**AGREEMENT OF INSURED**

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

**SECTION D – UNINSURED MOTORIST COVER
See wording attached**

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

The Insurer agrees to indemnify the insured against the liability imposed by law upon the insured for loss of or damage to a customer’s automobile, including its equipment while attached thereto, including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile:

**SUBSECTION 1 – COLLISION OR UPSET**Caused by collision with another object or by upset.

**EXCLUSIONS**

The Insurer shall not be liable under this subsection 1:

1. for any amount in excess of the limit stated in subsection 1 of Section E of Item 5 of the application and expenditures provided for in the Additional Agreements of this section; or
2. for loss or damage:
3. to contents of automobiles or trailers;
4. occurring after theft of the automobile and before recovery by the insured; or
5. caused directly or indirectly by contamination by radioactive material.

**DEDUCTIBLE CLAUSE**

Each occurrence causing loss or damage covered under this subsection shall give rise to a separate claim in respect of which the Insurer’s liability shall be limited to the amount of loss or damage in excess of the sum payable by the insured stated in subsection 1 of Section E of Item 5 of the application, but always subject to the limit shown for any one customer’s automobile.

**SUBSECTION 2 – SPECIFIED PERILS**

Caused by fire, lightning, theft or attempt thereat, malicious mischief, windstorm, hail, explosion, riot or civil commotion, rising water or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in or upon which the automobile is being transported.

**LIMITS OF LIABILITY APPLICABLE TO SUBSECTION 2** The Insurer shall not be liable in respect of any one occurrence for:

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

**EXCLUSIONS**

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

1. from the explosion of tires or from explosion within the combustion chamber of the engine of the automobile, unless the loss or damage is coincident with other loss or damage covered by this subsection;
2. caused directly or indirectly by contamination by radioactive material;
3. by theft from any open lot or unroofed space owned, rented or controlled by the insured, except the theft of an entire automobile; or
4. to the contents of automobiles or trailers.
**CO-INSURANCE CLAUSE**

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

**ADDITIONAL AGREEMENTS OF INSURER** Where indemnity is provided by this Section the Insurer shall:

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

**GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS**

1. **TERRITORY**

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

1. **CONSENT OF INSURED**

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

1. **ADJUSTABLE PREMIUM COMPUTATION**
2. (i) The advance premiums are computed according to the terms shown on the Premium Computation Statement for the policy period.

(ii) The advance premiums referred to in (i) above are subject to adjustment at the end of the policy period when the insured shall deliver to the Insurer a written statement of the current information necessary to adjust the premium shown in the Premium Computation Statement. If the adjusted premium so computed exceeds the applicable advance premium stated in Item 5 of the application, the insured shall pay the difference. If such premium is less, the Insurer shall return to the insured the unearned premium subject to the Minimum Retained Premium stated in Item 5.

1. With respect only to subsections 2, 3 and 4 of Section C, if the premium is computed on a MONTHLY AVERAGE BASIS:
2. the advance premiums shall be 75% of the annual premium computed on the limits of liability and the rates applying at each location;
3. the advance premiums referred to in (i) above are subject to adjustment at the end of the policy period. The earned premium shall be computed as follows:
4. the insured shall report to the Insurer, in writing, not later than 30 days after the last day of each month the actual cash value of all owned automobiles held for sale at each location on the last business day of each month. The value of all owned automobiles not held for sale must be included in the values reported for the principal location in the municipality(ies) or district(s) in which the insured carries on business; and
5. an average of the total values reported at each location shall be made and if the premium on such average values exceeds the applicable advance premium stated in Item 5 of the application the insured shall pay an additional premium for such excess. If such premium is less, the Insurer shall return to the insured the unearned premium. In the event of any report not being made within the period stipulated then, for the purpose of adjustment of premium only, the limit of liability at each location shall be taken as the value at risk.
6. **AUDIT**

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

1. **TWO OR MORE AUTOMOBILES**

A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile as respects the limits of liability under Sections A, B and D, separate automobiles as respects the limits of liability, including any deductible provision under Section C and separate automobiles as respects the limits of liability under Section E.

6. **ADDITIONAL INSUREDS**

The Insurer agrees to indemnify in the same manner and to the

same extent as if named herein as the Insured:

**BUSINESS** (a) with respect to Sections A, B and E of this

**USE** policy, every other person who, with the consent

of the owner thereof, drives in connection with the business described in Item 3 of the application any automobile other than (i) an automobile owned by or registered in the name of such additional insured person, or (ii) an automobile whose operation or use is excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy;

**DRIVING** (b) with respect to Sections A and B of this

**OTHER** policy, every active partner or full time employee

**AUTOMOBILES** of the insured for whose regular and frequent use an automobile is provided by the insured and the spouse of such person and the spouse of the insured, who with the consent of the owner thereof drives for pleasure purposes any automobile of the private passenger or station wagon type, provided that (i) neither such partner or employee or his or her spouse or the spouse of the insured is the owner of an automobile of the private passenger or station wagon type; (ii) such other automobile is not owned, hired or leased or regularly or frequently used by the insured or such employee or partner of the insured or by any persons residing in the same dwelling premises as any of the aforementioned persons; (iii) the operation or use of such other automobile is not excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy.

7. **OTHER INSURANCE**

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

8. **AUTOMOBILE DEFINED
Under Sections A, B, C and D**

1. Owned Automobile

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

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

1. Customer’s Automobile

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

1. owned or hired by any person insured by this policy or by

any person residing in the same dwelling premises as such insured; or

1. sold by the insured but not delivered to the purchaser

thereof;

**Under Sections A and B**

1. Non-owned automobile

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

9. **OCCUPANT DEFINED**

The word “occupant” means a person driving, being carried in or

upon or entering or getting on to or alighting from an automobile.

10. **NEWLY ACQUIRED LOCATION DEFINED**

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

11. **EXCLUDED USES**

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

1. the automobile is rented or leased to another, provided that the

following shall not be deemed to be renting or leasing of an

automobile to another:

(i) the use by an employee of his automobile on the business of his employer and for which he is being paid;

1. the use of an owned automobile by a customer pending return of the customer’s automobile which has been left with the insured for repairs or servicing; or
2. the use of an owned automobile by a customer for a period not exceeding 30 days, pending future delivery of an automobile for which a purchase order or a lease agreement has been placed with the insured by such customer;

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

1. the automobile is used to carry explosives, or to carry radioactive material for research, education, development or

industrial purposes, or for purposes incidental thereto;

1. the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be carrying passengers for compensation or hire:
2. the use by the insured of the automobile for the carriage of another person in return for the former’s carriage in the automobile of the latter;
3. the occasional and infrequent use by the insured of the automobile for the carriage of another person who shares the cost of the trip;
4. the use by the insured of the automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse;
5. the use by the insured of the automobile for the carriage of clients or customers or prospective clients or customers; or
6. the occasional and infrequent use by the insured of the automobile for the transportation of children to or from school or school activities conducted within the education program; or
7. the automobile is being used
8. for the carrying of goods or materials for compensation;
9. for public road construction, repair or maintenance; or
10. as farm or contractor’s equipment on behalf of others for compensation.

12. **EXCLUDED AUTOMOBILES**

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

1. owned by the insured in connection with or used for the purpose of any business conducted by or any employment or occupation for wages or profit engaged in by the insured other than as stated in Item 3 of the application;
2. owned by the insured which is designed or modified for racing purposes;
3. provided by the insured to any person for regular or frequent use, except an active partner or a full time employee of the business stated in Item 3 of the application, and provided that this exclusion does not apply while such person is using the automobile in the business stated in Item 3 of the application;
4. owned or hired by the insured, and
5. designed for the bulk transportation of petroleum products or other materials while being used for such purposes; or
6. designed for the transportation of other automobiles, but a tow truck shall not be deemed designed for such purpose.

13. **PERSONNEL OF OTHER GARAGES EXCLUDED**

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

14. **WAR RISKS EXCLUDED**

The Insurer shall not be liable under Sections B, C, D or E of this policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engage in hostilities, whether war be declared or not.