

# Personal Umbrella Coverage

## 1. AGREEMENT

We provide the insurance described herein in return for the payment of the premium and subject to the terms and conditions set out.

The **Coverage Summary page** states the limit of insurance we have agreed to provide for **legal liability** and the period for which it is provided, but the insurance is in all respects governed by the following terms and conditions.

## 2. COVERAGE

We agree to pay on **your** behalf the **Ultimate Net Loss** in excess of the **underlying insurance**, which you are legally obligated to pay as compensatory damages because of **personal injury** or **property damage** caused by or arising out of an **occurrence**, up to the limit of liability shown on the **Coverage Summary page**.

This insurance applies only to **occurrences** which take place during the **policy period**.

## 3. AUTOMOBILE COVERAGE

We insure **your** liability arising from the ownership, use or operation of **automobiles** solely as provided by the **Standard Excess Automobile Policy**.

This coverage is extended to provide excess limits solely in accordance with the terms and conditions of the applicable **Family Protection Coverage** and **Standard Excess Automobile Policy** forms in effect.

If a loss arises from use or operation of an **automobile** outside Canada or the United States of America, such loss will be subject to the laws, regulations, policies, terms, conditions and exclusions in respect to ownership, use and/or operation of **automobiles**, applicable in the jurisdiction where the loss occurs. Such laws may restrict or limit the coverage provided herein.

### Coverage for rented or furnished automobiles

We will pay the **Ultimate Net Loss** which **you** become legally obligated to pay for **personal injury** or **property damage** caused by an **occurrence**, anywhere in the world during the **policy period**, resulting from **your** use of an **automobile**, rented or furnished for **your** use, provided the rental or loan does not exceed 60 days.

We will provide this coverage in excess of any **underlying insurance** that applies to the loss. If no **underlying insurance** exists, we will pay the **Ultimate Net Loss**.

### Excess Uninsured/Underinsured Motorists Protection Coverage

We cover damages for bodily injury an insured person is legally entitled to receive from the owner or operator of an uninsured or underinsured auto if the bodily injury is caused by an **occurrence** during the **policy period**. We cover these damages in excess of any **underlying insurance**, subject to the Limits of Liability shown on the **Coverage Summary page**. The most we will pay under this coverage for any one **occurrence** is the Limit of Liability shown on the **Coverage Summary page**, regardless of the number or type of autos listed on the Declarations Page and we will not pay more than this amount, in any one **occurrence**, regardless of how many claims, people, or automobiles are involved in the **occurrence**.

## 4. DEFENCE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

With respect to any **occurrence** insured by this coverage, but not covered by the **underlying insurance** or any other insurance collectible by **you**, we will defend any suit against **you** which alleges unintentional **personal injury** or **property damage** and seeks compensatory damages, even if it is groundless, false or fraudulent. We reserve the right to, investigate, negotiate and settle any claim or suit if we decide this is appropriate.

We will also pay:

1. all expenses we incur;
2. all costs charged against **you** in any suit insured by this coverage;
3. any interest accruing after judgment (or, in those jurisdictions where statute prescribes interest from some other date, from such prescribed date) on that part of the judgment which is within the **limit of liability** shown on the **Coverage Summary page**;
4. premiums for appeal bonds required in any insured lawsuit involving **you** and bonds to release any property that is being held for security, up to the **limit of liability**, but we are not obligated to apply for or provide these bonds;
5. expenses which **you** have incurred for emergency medical or surgical treatment to others following an **occurrence** insured by this coverage; and
6. reasonable expenses, including actual loss of earnings (but not loss of other income) up to \$500 per day, which **you** incur at our request.

We will pay all of the amounts incurred above, except settlement of claims and suits, in addition to the **Ultimate Net Loss**.

In jurisdictions where we may be prevented by law or otherwise from carrying out this agreement, we will pay any expense incurred with our written consent in accordance with this agreement.

With respect to any claim or suit seeking damages which are payable on **your** behalf under the terms of any **underlying insurance**, we, although not obligated to do so, will have the right and opportunity to associate, at our expense, with the **underlying insurer** in the defence and control of any claim or suit reasonably likely to involve us under this coverage. In addition, if the limits of the **underlying insurance** are exhausted by payment of judgements or settlements and, as a result, the obligation of the **underlying insurer** to defend **you** should cease, then, insofar as this policy provides coverage, we will defend **you** in accordance with the terms of the "Defence, Settlement and Supplementary Payments" coverage.

## 5. LIMIT OF LIABILITY

**We** are liable only up to the limit of insurance shown on the **Coverage Summary Page**, for that portion of the **Ultimate Net Loss**, which exceeds the greatest of 1 or 2 below:

1. the total amount of all limits of liability of **underlying insurance**;
2. the limit(s) of liability of any other collectible insurance available to the **insured** with respect to any covered claim or suit for which no **underlying insurance** applies.

The limits of liability of the **underlying insurance** are applied even if:

- any action by you releases the underlying insurer from any of its duties, or
- the underlying insurer is bankrupt or insolvent.

The Limit of Liability shown on the **Coverage Summary page** is the maximum amount **we** will pay for all compensatory damages in respect of one **occurrence** regardless of the number of **Insureds** against whom the claim is made or action is brought.

This insurance applies separately to each insured against whom the claim is made or action is brought, but this will not act to increase **our limit of liability**.

## 6. TERRITORY

This insurance applies to **occurrences** anywhere in the world.

## 7. EXCLUSIONS

**We** do not insure:

1. fines, penalties, punitive or exemplary damages, meaning that part of any award by a court which is in excess of compensatory damages and is intended to be a punishment to **you**;
2. any liability imposed upon **you** or assumed by **you** under any Worker's Compensation Statute, or laws, statutes or regulations dealing with unemployment compensation or disability benefits;
3. **personal injury** or **property damage** with respect to which compensation is provided by statute, except to the extent that the statutory compensation does not apply;

**We** do not insure claims arising from:

4. war, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection or military or usurped power or by operation of armed forces while engaged in hostilities, whether war be declared or not;
5. **personal injury** or **property damage** which is required to be insured under a nuclear energy liability policy issued by the Nuclear Insurance Association of Canada, or by any other group or pool of insurers, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
6. **personal injury** or **property damage** arising out of **your business** pursuits or your **business property**, except to the extent that coverage is provided by the **underlying insurance**;
7. the rendering or failure to render any professional service by **you** or by any person for whose acts or omissions **you** are legally responsible;
8. any act or omission of an **insured** as an officer or member of the Board of Directors of any corporation or other organization. This exclusion shall not apply to members of any non-profit organization or corporation;
9. any act committed by **you** or at **your** direction with intent to cause **personal injury** or **property damage**, but this exclusion does not apply to **personal injury** or **property damage** resulting from an act committed for the purpose of protecting or safeguarding persons or property;
10. **personal injury** to any **insured** other than a **residence employee**;
11. the ownership, maintenance, use, operation, loading or unloading of any watercraft unless coverage is provided by the **underlying insurance** and then only to the extent that coverage is provided by the **underlying insurance**;
12. the ownership, maintenance, use, operation, loading or unloading of any **recreational motor vehicle**, motorhome or motorcycle unless coverage is provided by the **underlying insurance**;
13. ownership, use or operation of:
  - a. any unmanned aircraft or drone not being operated according to Transport Canada regulations, or while being operated in an official race or speed test, or weighing more than 1 kg;
  - b. any other aircraft;
  - c. **premises** used as an airport or landing facility; and all activities related to either;
14. liability **you** have assumed by contract, except for the **legal liability** of other persons in relation to **your premises** assumed under a written contract, unless **your legal liability** would have applied even if no contract had been in force;
15. **property damage** to:
  - a. property **you** own, or previously owned;
  - b. any aircraft, watercraft or air cushion vehicle rented to or used by **you** or in **your** care, custody or control or upon which work is performed by **you**;
  - c. property that is in **your** care, custody or control, except for unintentional **property damage** to **premises** owned by others, or their contents, which **you** are using, renting or have in **your** custody or control caused by fire, explosion, water damage or smoke;

## 16. claims arising from:

- a) erasure, destruction, corruption, misappropriation, misinterpretation of **data**;
- b) erroneously creating, amending, entering, deleting or using **data**;  
including any loss of use arising from either a) or b);
- c) the distribution or display of **data** by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of **data**;

17. any claim that arises directly or indirectly, in whole or in part, out of **Terrorism** or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate **Terrorism**. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim. This exclusion does not apply to loss or damage to property which results directly from fire or explosion;18. to **personal injury** or **property damage** caused by contamination by radioactive material;19. to **personal injury** arising out of:

- (i) violation of a penal statute or ordinance by **you** or with **your** knowledge;
- (ii) advertising, broadcasting, or telecasting activities by **you** or for **you**;
- (iii) libel, slander, defamation, or violation of privacy if the first injurious act takes place prior to the effective date of this coverage;
- (iv) discrimination based on age, race, colour, sex, creed or national origin;
- (v) sexual molestation or sexual harassment;
- (vi) wrongful dismissal;
- (vii) any communicable disease; or
- (viii) any virus, bacterium, or other micro-organism that induces or is capable of inducing physical distress, illness or disease;

20. to **occurrences** for which coverage under any other applicable policy is denied because of a violation of conditions in such other policies;21. to any claims or Uninsured/Underinsured motorists' coverage(s) or no-fault benefits unless coverage is provided under the **underlying insurance**;22. **personal injury** or **property damage** to **your** family trust, company of estate, its trustees and/or beneficiaries unless arising out of the ownership, use, and maintenance of the dwelling and **premises** shown on the **Coverage Summary page**;23. to **personal injury** or **property damage** arising out of any property for which insurance is not provided under the Underlying insurance listed in the **Coverage Summary page**.

## DEFINITIONS

When used in this Coverage:

**Automobile** means any self-propelled land motor vehicle, trailer or semi-trailer (including attached machinery, apparatus or equipment) which is subject to motor vehicle registration and was designed and is used for the transportation of persons and property on public roads.

**Business Pursuits** means any continuous or regular pursuit undertaken for compensation or financial gain including a trade, profession or occupation.

This does not include:

- (i) **Your** work for someone else as a sales representative, collector, messenger or clerk provided the claim does not involve injury to a fellow employee;
- (ii) **Your** work as a teacher, provided the claim does not involve physical disciplinary action to a student or injury to a fellow employee;
- (iii) The rental to others of a one - or two - family dwelling usually occupied in part by **you** as a residence, provided no family unit includes more than 2 roomers or boarders;
- (iv) The rental of space in **your** residence to others for incidental office, school or studio occupancy;
- (v) The rental to others, or holding for rent, of not more than 3 car spaces, or stalls in garages or stables;
- (vi) Activities during the course of **your** trade, profession or occupation which are ordinarily considered to be personal activities;
- (vii) The temporary or part-time **business pursuits** of an insured person under the age of 18. The following **business pursuits** are insured only if the properties or operations are declared on the residential insurance policy declaration pages of the **underlying insurance**:
  - 1. The rental of residential buildings containing not more than 6 dwelling units;
  - 2. The use of part of **your** residence by **you** for incidental office, school or studio of occupancy.

**Business Property** means property on which a business is conducted, property rented in whole or in part to others or held for rental.

**Coverage Summary page** means the **Coverage Summary page** and/or Declaration page issued by us. The **Coverage Summary page** shows the coverages, premiums, limits of **our** liability and the insured location.

**Data** means information, facts, concepts, code or any other information of any kind:

- a) that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a "computer system"; or
- b) that is used for records, including but not limited to books of account, drawing or card index systems.

**Excess Insurer** means Intact Insurance Company.

**Family Protection Coverage** means the insurance provided by one of the following:

- 1. NBEF 44 Family Protection Endorsement;
- 2. OPCF 44R Family Protection Coverage;
- 3. SEF 44 Family Protection Endorsement;
- 4. Part V – Family Security of the SGI Canada Auto Pak Policy form;

5. Part 10, Division 2 – Underinsured Motorist Protection of the British Columbia Insurance (Vehicle) Regulation, and/or any extension to Underinsured Motorist Protection, including Division 4 – Extension Underinsured Motorist Protection of the Insurance Corporation of British Columbia Autoplan Optional Policy form.

**Insured means** the person(s) named as **Insured(s)** on the **Coverage Summary page** and, while living in the same household:

- their **spouse**;
- the relatives of either; and
- any person under 21 in their care.

**Spouse** means a person:

- who is married to or has entered into a civil union with another person and is living with that person; or
- who has been living with another person of the opposite or the same sex and has been publicly represented as that person's **spouse** for at least three years or, in the following cases, for at least one year if:
  - a child has been born or is to be born of their union; or
  - they have adopted a child together; or
  - one of them has adopted a child of the other.

In addition, a student who is enrolled in and attends a school, college or university and who is dependent on the **Named Insured** or their **spouse** for support and maintenance is also insured even if temporarily residing away from the principal residence.

In addition, the following persons are insureds:

1. any person or organization legally liable for damage caused by a watercraft or animal owned by you, and to which this insurance applies. This does not include anyone using or having custody of the watercraft or animal in the course of any business or without the owner's permission;
2. a **residence employee**;
3. your legal representative having temporary custody of the **premises**, if you die while insured by this policy, for **legal liability** arising out of the **premises**; and
4. any person who is insured by this policy at the time of **your** death and who continues residing on the **premises**.

Only the **named insured** may take legal action against **us**.

**Legal Liability** means responsibility which courts recognize and enforce between persons who sue one another.

**Named Insured** means the Insured(s) named on the **Coverage Summary page**.

**Occurrence** means an accident, happening or event, or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injuries or **property damage** during the **policy period**. All such exposure to substantially the same general conditions existing at or emanating from one **premises** location shall be deemed one **occurrence**.

**Personal Injury** includes death resulting therefrom, sustained by any person, and means:

- a. bodily injury, sickness, disease, disability, shock, mental anguish and mental injury;
- b. false arrest, false imprisonment, wrongful entry, wrongful eviction, wrongful detention, malicious prosecution or humiliation; and
- c. libel, slander, defamation of character or invasion of rights of privacy.

**Policy Period** means the period from the inception date of this policy stated on the **Coverage Summary page** to the expiration date of this policy stated on the **Coverage Summary page** or to any earlier cancellation or termination of this policy.

**Property Damage** means physical damage to, destruction of, or loss of use of tangible property.

**Recreational Motor Vehicle** means a land motor vehicle, amphibious vehicle or air-cushion vehicle designed for recreational use off public roads and which is not subject to motor vehicle registration.

**Residence Employee** means a person employed by **you** to perform duties in connection with the maintenance or use of the insured **premises**. This includes persons who perform household or domestic services or duties of a similar nature for **you**, but does not include persons while performing duties in connection with **your business pursuits**.

**Terrorism** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

**Standard Excess Automobile Policy** means the coverage provided by the NBPF 7, QPF 7 or SPF 7.

**Ultimate Net Loss** means the amount actually paid or payable in cash in the settlement or satisfaction of losses for which **we** are liable after making proper deduction for all recoveries and salvages collectible, but excludes all loss expenses and legal expenses (include lawyers' fees, court costs and interest accruing after judgement on that part of the judgment within the limits of this insurance) and all **our** office expenses and the office expenses of the underlying insurer.

**Underlying Insurance** means:

1. the insurance provided by the policy to which this coverage attaches;
2. the insurance provided by the policies listed in the Schedule of Underlying Insurance as referenced on the **Coverage Summary page**;
3. any other valid and collectible insurance (except insurance specifically rated and issued as insurance excess to this policy); and
4. insurance under any form of Québec **Automobile** Insurance Policy, including QPF7 "Standard Excess Liability Form"(?).

**We** or **Us** or **Our** means the company providing this insurance.

**You** or **Your** refers to the **Insured**.

**CONDITIONS****1. Action Against Us**

No legal action shall lie against **us** unless, as a condition precedent thereto, **you** have fully complied with all terms of this coverage nor until the amount of **your** obligation to pay has been finally determined either by judgment against **you** after actual trial or by written agreement between **you**, the claimant and **us**.

Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement, shall thereafter be entitled to recover under this coverage to the extent of the insurance afforded by this coverage. Nothing contained in this coverage shall give any person or organization any right to join **us** as co-defendant in any action against **you** to determine **your** liability.

**2. Appeals**

In the event **you** or **your** underlying insurer elect not to appeal a judgment in excess of the underlying limits, **we** may elect to make such appeal at our cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall our liability for **Ultimate Net Loss** exceed the limit shown on the **Coverage Summary page** for any one **occurrence** and in addition the cost and expense of such appeal.

**3. Maintenance of Underlying Insurance**

**You** warrant that the forms of coverage and limits of liability applicable to the **underlying insurance** shall be maintained in full effect during the policy period;

**Your** failure to maintain such coverages and limits of liability in force shall not invalidate this coverage, but in the event of such failure **we** will only be liable to the same extent as **we** would have been had **you** maintained the warranted **underlying insurance**.

**4. Other Insurance**

If other valid and collectible insurance with any other insurer is available to **you** covering a loss also covered by this form, other than insurance that is specified to be in excess of the insurance afforded by this coverage, the insurance provided by this coverage shall be in excess and shall not contribute with such other insurance.

**5. Termination**

By **Us**: This coverage will be terminated by **our** giving **you** fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered. The fifteen days will commence to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**We** will refund the excess of premium **you** have actually paid over the pro rata premium for the expired time, but we may keep any minimum retained premium specified on the **Coverage Summary page**. The refund will accompany **our** notice of termination unless the premium is subject to adjustment or determination as to amount, in which case the refund will be made as soon as practicable.

By **You**: **You** may terminate this coverage at any time on written request, stating when thereafter, the termination shall be effective.

**We** will refund the excess of premium **you** have actually paid over the short rate premium for the expired time, but **we** may keep any minimum retained premium specified on the **Coverage Summary page**. The refund will be made as soon as practicable.

**6. Notice**

Any written notice to **us** may be delivered at, or sent by registered or certified mail to, any of **our** offices in Canada.

**We** will give **you** written notice by letter personally delivered to you or by registered mail address to the latest postal address **you** have notified to **us**.

**7. Subrogation**

**We** shall be subrogated to the extent of any payment hereunder to all **your** rights of recovery therefore; and **you** shall do everything necessary to secure such rights. **You** shall do nothing after loss to prejudice such rights.

**8. Severability of Interests**

The words "**Insured**", "**You**" and "**Your**" in this coverage refer to each of the persons insured severally and not collectively. However, the inclusion of more than one person insured under this coverage shall not operate to increase **our** limits of liability.

**9. Assignment**

Assignment of interest under this coverage shall not bind **us** unless and until **our** consent is endorsed thereon.

**10. Changes**

Notice to or acknowledgment of any agent or other person shall not effect a waiver or change any part of this form nor stop **us** from asserting any right under it. The terms of this coverage shall not be waived or changed except by endorsement hereon.

**11. Currency**

All limits, premiums and other amounts expressed in this coverage are in Canadian currency.

**12. Notice of Accident or Occurrence**

When an accident or occurrence takes place and it appears that it may involve liability against anyone insured by this coverage, written notice must be sent to **us** as soon as practicable, including:

1. **your** name and the policy number under which this coverage is provided;
2. the time, place and circumstances of the accident or **occurrence**; and
3. the names and addresses of witnesses and potential claimants.

**You** must also:

4. co-operate with **us** in any legal actions including obtaining witnesses, information and evidence about the accident or **occurrence**, if **we** ask **you**;
5. immediately send to **us** legal documents and any other written communications you receive concerning the accident or **occurrence**.

The delay or failure to give notice as required by the present article is a cause of forfeiture of the rights of the insured under the policy if the breach of that obligation has caused prejudice to the insurer.

### 13. Co-operation

Except as provided in “**Defence, Settlement and Supplementary Payments**” above, **we** are not responsible to assume charge of the settlement or defence of any claim made or suit brought or instituted against **you**, but **we** have the right and must be given the opportunity to associate with **you** in the defence and control of any claim, suit or proceeding reasonably likely to involve **us**.

### 14. Bankruptcy or Insolvency

The bankruptcy or insolvency of **you** or of **your** estate will not relieve **us** of **our** obligations under this coverage.

### 15. Recourse of the Insurer Against the Insured

The insurer reserves the right to exercise its recourse against an insured if the insured has been obliged to pay an indemnity notwithstanding the fact that the insured was not entitled to the benefit of the insurance coverage.

#### Representation-By Accepting this policy, you agree:

- a. That the following are **your** agreements and representations:
  - i. Statements in application
  - ii. Statements in the policy declaration
  - iii. Statements or any subsequent notice to **us** relating to the **underlying insurance** term
- b. That **we** have relied upon the truth of these representations in issuing and continuing this coverage. **You** also agree that this coverage contains all agreements that exist between **you** and **us** or any of **our** authorized representatives relating to this insurance.

### 16. Provincial Law

Any time this coverage is in conflict with the law of the province in which it is issued, the law of the province shall apply

### 17. Breach of Conditions

Where a loss occurs and there has been a breach of condition relating to a matter before the occurrence of the loss, which breach would otherwise disentitle you from recovery under this coverage, the breach shall not disentitle you from recovery if you establish that the loss was not caused or contributed to by the breach of condition or if the breach of condition occurred in any portion of the **premises** over which you have no control.

### 18. Bankruptcy of Underlying Insurer

Bankruptcy, insolvency, or receivership of any insurer which has issued required **underlying insurance** will not relieve **us** of **our** obligation under this coverage. With regard to bankruptcy, insolvency, or receivership of any such insurer this coverage shall not apply as a replacement of a policy of required **underlying insurance** and **our** umbrella liability coverage limit will apply only in excess of required **underlying insurance** as listed under residential insurance declaration page. If **you** learn of the bankruptcy or insolvency of any insurer providing required **underlying insurance** you must notify **us** immediately.



## S.P.F. No. 7

SUPPLEMENTARY EXCESS AUTOMOBILE POLICY  
(THIRD PARTY LIABILITY ONLY)

WHEREAS an application has been made by the applicant (herein called "Insured") to the insurer (hereinafter called the Excess Insurer) for a contract of excess automobile insurance and the said application forms part of this contract and is as follows:

**APPLICATION**

Items 1 through 7 are as stated in the declarations

<b>Item 1.</b>	Full name and postal address of the applicant (including county or district) Occupation or business
<b>Item 2.</b>	The policy Period: from _____ to _____ 12:01 a.m. Standard time at the applicant's address stated herein as to each of said dates.
<b>Item 3.</b>	The Insured is warned that by statute this excess contract automatically terminates concurrently with the termination of any policy mentioned in Item 5.
<b>Item 4.</b>	This application is for excess Insurance against legal liability for bodily injury or death or damage to property of others upon the terms and conditions of the Excess Insurer's standard policy form for excess insurance and for the following specified limit.  <b>Limit</b> \$ _____ (exclusive of Costs) excess of \$1,000,000 being the amount of the first loss and underlying excess insurance described in Item 5, for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property regardless of the numbers of claims arising from any one accident.
<b>Item 5.</b>	(a) Description of the first loss motor vehicle liability insurance. Name of Insurer: Policy No: Type of Policy: (state S.P.F. No.) Limit(s): Policy Period:  (b) Description of underlying excess insurance(s) if any: Name of Insurer(s): Policy No.(s): Limit(s): Policy Period(s):
<b>Item 6.</b>	Premium \$ _____ Minimum retained premium \$ _____ NOTE: If the premium is subject to adjustment, an appropriate endorsement stated in the Declarations, will be attached to this policy.
<b>Item 7.</b>	Claims must be reported to: Refer to special provisions 7 and 9 of this policy.

NOW THEREFORE IN CONSIDERATION of the payment of the premium specified and of the statements contained in the application and subject to the limits, special provisions and conditions herein stated and subject, insofar as applicable to the terms, conditions, general provisions, definitions and exclusions set forth in the first loss policy described in Item 5 of the application, which said terms, conditions, general provisions, definitions and exclusions are by reference incorporated herein, the Excess Insurer agrees to indemnify the Insured under the first loss motor vehicle liability insurance against liability imposed by law upon the Insured for an amount or amounts in excess of the limit(s) of the first loss insurance and the underlying excess insurance for loss or damage arising from the ownership, use or operation of the automobile(s) covered under such first loss insurance and the underlying excess insurance resulting from Bodily Injury to or Death of any Person or Damage to Property.

**SPECIAL PROVISIONS**

1. The **Excess Insurer's Ultimate Net Loss** liability shall not exceed the limit stated in Item 4 of the application in excess of the limit(s) of the first loss policy, and the underlying excess policy(ies) stated in Item 5 thereof, or such amounts as the first loss Insurer and the underlying excess Insurer shall be liable to pay under statute, whichever is the greater.

2. The word “**costs**” used in this policy means interest accruing after entry of judgement upon that part of the judgement which is within the limit of the **Excess Insurer’s** liability, investigation, adjustment and legal expenses, excluding, however, all office expenses of the **Insured**, all expenses of salaried employees of the **Insured** and general retainer fees for counsel normally paid by the **Insured**.
3. The **Excess Insurer** agrees to pay costs incurred by or on behalf of the **Insured** where these costs are not covered by the first loss or underlying excess policy(ies), on the following basis:
  - (a) should any claim or claims become adjustable prior to the commencement of trial for not more than the first loss and underlying excess policy limit(s) then no costs shall be payable by the **Excess Insurer**;
  - (b) should, however, the amount for which said claim or claims may be so adjustable exceed the first loss and underlying excess policy(ies) limit(s), then the **Excess Insurer** shall contribute to the costs incurred on behalf of the **Insured** in the ratio that the **Excess Insurer’s** proportion of the **Ultimate Net Loss** as finally adjusted bears to the whole amount of such **Ultimate Net Loss**; and
  - (c) in the event that the **Insured** or the Insurer under the first loss policy elects not to appeal a judgement in excess of the limit(s) of the first loss and underlying excess policy(ies) the **Excess Insurer** may elect to conduct such appeal and shall be liable for the taxable costs and interest incidental thereto; but in no event shall the total liability of the **Excess Insurer** exceed the **limit of liability** stated in Item 4 of the application, plus the expense of such appeal.
4. All recoveries or payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the **Insured** and the **Excess Insurer**, provided always that nothing in this policy shall be construed to mean that losses under this policy are not payable until the **Insured’s Ultimate Net Loss** has finally been ascertained.
5. Liability to pay under this policy shall not attach unless and until the first loss underlying excess Insurer(s) shall have admitted liability for the first loss and underlying excess limit(s) or unless and until the **Insured** has by final judgement been adjudged to pay an amount which exceeds such first loss and underlying excess limit(s) and then only after the first loss and underlying **excess insurer(s)** has/have paid or has/have been held liable to pay the full amount of the first loss and underlying excess limit(s).
6. Neither the inclusion of more than one entity in the name of the **Insured** nor the addition of any additional **Insureds** under this policy shall in any way operate to increase the **limit of liability** set forth in Item 4 of the application.
7. Notwithstanding Statutory Condition 3(1) contained in the first loss policy the **Insured** is only required to give the **Excess Insurer** notice of any accident if the claim or claims possibly arising therefrom appear likely to exceed the first loss insurance, in which case immediate written notice thereof must be given to the person or firm mentioned in Item 7 of the application.
8. (a) This policy may be terminated
  - (i) by the **Excess Insurer** giving to the **Insured** fifteen (15) days’ notice of termination by registered mail, or five (5) days written notice of termination personally delivered; or
  - (ii) by the **Named Insured** at any time on request.
 (b) Where this policy is terminated by the **Excess Insurer**:
  - (i) the **Excess Insurer** shall refund the excess of premium actually paid by the **Insured** over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (ii) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
 (c) Where this policy is terminated by the **Insured**, the **Excess Insurer** shall refund as soon as practicable the excess of premium actually paid by the **Insured** over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (d) The refund may be made by money, postal or express company money order, or by cheque payable at par.
- (e) The fifteen (15) days mentioned in clause (i) of subcondition (a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.
- (f) Nothing in this special provision shall in any way affect the operation of the statutory provision in The Insurance Act providing that where the contract or contracts designated in the excess contract terminates or is terminated, the excess contract is automatically terminated. In the event that this policy is automatically terminated, the **Excess Insurer** agrees to refund the excess of premium actually paid over the pro rata premium for the expired time (subject to any minimum retained premium specified) as soon as practicable, but if there is any pro rata premium unpaid the **Insured** agrees to pay this.
9. Any written notice to the **Excess Insurer** may be delivered at, or sent by registered mail to, the chief agency or head office of the **Excess Insurer** in this province. Written notice may be given to the **Insured** named in this policy by letter personally delivered to him or by registered mail addressed to him at his latest post office address notified to the **Excess Insurer**. In this condition the expression “registered” means registered in or outside Canada.

This Policy provides the insurance stipulated in the declarations and is made and accepted subject to the declarations and the provisions, conditions and exclusions contained herein which are made a part of this Policy together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto. No term or condition of a contract shall be deemed to be waived by the Insurer in whole or in part unless the waiver is clearly expressed in writing signed by a person authorized for that purpose by the Insurer.

In Witness Whereof, the Insurer has duly executed this Policy PROVIDED, however, that this Policy shall not be valid or binding until countersigned on the declarations by a duly authorized representative of the insurer.

**IF WE BROADEN COVERAGE WHILE THE POLICY IS IN EFFECT, YOU WILL RECEIVE THE BENEFIT OF THE INCREASED COVERAGE AT NO ADDITIONAL CHARGE.**