

ALBERTA STANDARD OWNER'S AUTOMOBILE POLICY (S.P.F. NO. 1)

TABLE OF CONTENTS

| | pages |
|--|-------|
| INSURING AGREEMENTS..... | 2 |
| SECTION A - THIRD PARTY LIABILITY..... | 2 |
| BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY..... | 2 |
| ADDITIONAL AGREEMENTS OF INSURER..... | 2 |
| AGREEMENTS OF INSURED..... | 2 |
| SECTION A.1 – DIRECT COMPENSATION FOR PROPERTY DAMAGE..... | 2 |
| DEFINITIONS AND INTERPRETATION..... | 2 |
| DEDUCTIBLE CLAUSE..... | 3 |
| EXCLUSIONS..... | 3 |
| SECTION B - ACCIDENT BENEFITS..... | 3 |
| SUBSECTION 1 - MEDICAL PAYMENTS..... | 3 |
| SUBSECTION 2 - DEATH, GRIEF COUNSELLING, FUNERAL AND TOTAL DISABILITY..... | 3 |
| SUBSECTION 2(A) - SUPPLEMENTED BENEFITS RESPECTING ACCIDENTS OCCURRING OUTSIDE ALBERTA IN A NO-FAULT JURISDICTION..... | 5 |
| SUBSECTION 3 - UNINSURED MOTORIST COVER..... | 5 |
| SPECIAL PROVISIONS, DEFINITIONS, AND EXCLUSIONS OF SECTION B..... | 6 |
| SECTION C - LOSS OF OR DAMAGE TO INSURED AUTOMOBILE..... | 7 |
| SUBSECTION 1 - ALL PERILS..... | 7 |
| SUBSECTION 2 - COLLISION OR UPSET..... | 7 |
| SUBSECTION 3 - COMPREHENSIVE..... | 7 |
| SUBSECTION 4 - SPECIFIED PERILS..... | 7 |
| DEDUCTIBLE CLAUSE..... | 8 |
| EXCLUSIONS..... | 8 |
| ADDITIONAL AGREEMENTS OF INSURER..... | 8 |
| GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS..... | 8 |
| STATUTORY CONDITIONS..... | 10 |

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 following Insuring Agreements A, A.1, B, C for which a premium is set out in the Policy or in the Certificate of Automobile Insurance and no other

SECTION A - THIRD PARTY LIABILITY

The Insurer agrees 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 Insured's consent personally drives the automobile, or personally operates any part thereof, against the liability imposed by law upon the Insured or upon any such other person for loss or damage arising from the ownership, use or operation of the automobile and resulting from

BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY

The Insurer shall not be liable under this section,

- (a) for any liability imposed by any workers' compensation law upon any person insured by this section; or
- (b) — deleted
- (c) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by this section while engaged in the operation or repair of the automobile; or
- (d) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of any person insured by this section; or
- (e) — deleted
- (f) — deleted
- (g) for any amount in excess of the limit(s) stated in section A of item 4 of the Policy or in the Certificate of Automobile Insurance 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 Subpart) relating to the nuclear energy hazard; or
- (h) 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, serve any person insured by this Policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- (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 which may at any time be brought against such person on account of such loss or damage to persons or property; 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; and
- (4) in case the injury be to a person, reimburse any person insured by this Policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- (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 4 of the Policy or in the Certificate of Automobile Insurance; 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:

- (a) by the acceptance of this Policy, constitutes and appoints the Insurer as the insured person's irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured person arising out of the ownership, use or operation of the automobile;
- (b) 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 A.1 – DIRECT COMPENSATION FOR PROPERTY DAMAGE

Where section 585.1 of the *Insurance Act* applies, the Insurer agrees to indemnify the Insured under this section as though the Insured were a third party for loss of or damage to the automobile owned by the Insured, its equipment, and its contents if not carried for reward, and for loss of use of the automobile, equipment and contents in accordance with the *Insurance Act* and regulations made under the *Insurance Act*.

DEFINITIONS AND INTERPRETATION

For the purpose of this section, with respect to a claim for loss of or damage to the automobile and its equipment, the Insured is the owner of the automobile, and with respect to a claim for loss of or damage to contents, the Insured is the owner of the contents.

The Insurer will pay that portion of the total loss or damage that is equal to the percentage to which the Insured or driver was not at fault for the accident, less any applicable Direct Compensation for Property Damage deductible.

DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under this section 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 Direct Compensation for Property Damage deductible, if any, stated in Section A.1 of Item 4 of the Policy or in the Certificate of Automobile Insurance multiplied by the percentage to which the driver of the automobile was determined **not** at fault for the accident under the regulations. The Insured is not permitted to sue anyone (for instance an at-fault motorist) to recover this deductible. If there is loss of or damage to both the automobile and its contents, the deductible will first be applied to the automobile loss or damage. If there is any remaining deductible, the remainder will be applied to the contents loss or damage. The deductible applies separately to each automobile that is insured.

EXCLUSIONS

The Insurer shall not be liable under this section

- (a) for any amount in excess of coverages referenced in the *Insurance Act* (Automobile Insurance Subpart) relating to nuclear energy hazards; or
- (b) for any claim arising from contamination of property carried in the automobile.

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

SECTION B - ACCIDENT BENEFITS

The Insurer agrees to pay to or with respect to each insured person as defined in this section who sustains bodily injury or death directly and independently of all other causes by an accident arising out of the use or operation of an automobile.

SUBSECTION 1 - MEDICAL PAYMENTS

- (1) In respect of
 - (a) injuries to which the *Diagnostic and Treatment Protocols Regulation* applies and that are diagnosed and treated in accordance with the protocols under that Regulation, the expenses payable for any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment or making a report, or any other activity or function authorized under that Regulation, and payment must be made in the manner and subject to the provisions of that Regulation, notwithstanding anything to the contrary in Section B, and
 - (b) injuries
 - (i) to which the *Diagnostic and Treatment Protocols Regulation* applies but that are not diagnosed and treated in accordance with the protocols under that Regulation,
 - (ii) to which the *Diagnostic and Treatment Protocols Regulation* ceases to apply but for which the insured person wishes to make a claim under provision (3) of "Special Provisions, Definitions, and Exclusions of Section B", and
 - (iii) to which Section B applies, other than those injuries referred to in subclauses (i) and (ii),

all reasonable expenses incurred within 2 years from the date of the accident as a result of those injuries for necessary medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing and ambulance services and, in addition, for other services and supplies, including any medically necessary equipment, home modifications or vehicle modifications, that are, in the opinion of the insured person's attending physician and in the opinion of the Insurer's medical advisor, essential for the treatment or rehabilitation of the injured person, to the limit of \$50 000 per person.
- (2) Notwithstanding provision (1),
 - (a) expenses payable in respect of chiropractic services provided under provision (1)(b) are limited to \$1000 per person;
 - (b) expenses payable in respect of massage therapy services provided under provision (1)(b) are limited to \$350;
 - (c) expenses payable in respect of acupuncture services provided under provision (1)(b) are limited to \$350.
- (3) Subject to provision (4), the Insurer is not liable under this provision for those portions of 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.
- (4) Except for those portions of expenses payable or recoverable under any law, provision (3) does not apply to expenses payable or recoverable for an injury to which the *Diagnostic and Treatment Protocols Regulation* applies.

SUBSECTION 2 - DEATH, GRIEF COUNSELLING, FUNERAL AND TOTAL DISABILITY

Part I - Death, Grief Counselling and Funeral Benefits

Subject to the provisions of this Part I, for death, a payment of a principal sum - based on the age and status at the date of the accident of the deceased in a household where the head of the household or the spouse/adult interdependent partner or dependants survive - of the following amount:

| Age of Deceased at Date of Accident | Status of Deceased at Date of Accident | | |
|-------------------------------------|--|-------------------------------------|--------------------|
| | Head of Household | Spouse/Adult Interdependent Partner | Dependent Relative |
| Up to age of 4 years | — | — | \$1,000 |
| 5 to 9 years | — | — | \$2,000 |
| 10 to 17 years | \$10,000 | \$10,000 | \$3,000 |
| 18 to 64 years | \$10,000 | \$10,000 | \$2,000 |
| 65 to 69 years | \$10,000 | \$10,000 | \$2,000 |
| 70 years and over | \$10,000 | \$10,000 | \$1,000 |

In addition, funeral service expenses up to the amount of \$6 150 in respect of the death of any one person.
In addition, grief counselling expenses up to the amount of \$500 per family in respect of the death of any one person.
In addition, with respect to the death of the head of household,

- (a) where there are 2 or more survivors who are
 - (i) a spouse/adult interdependent partner and one or more dependent relatives, or
 - (ii) 2 or more dependent relatives,the principal sum payable is increased 20% for each survivor other than the first; and
- (b) where there is a spouse/adult interdependent partner or dependent relative survivor living in the household, the death benefit is increased
 - (i) by \$15 000 for the first spouse/adult interdependent partner or dependent relative survivor, and
 - (ii) by a subsequent \$4 000 for each of the remaining survivors.

For the purposes of this Part I

- (1) "head of household" means that member of a household with the largest income in the year preceding the date of the accident;
- (2) "dependent relative" means a person
 - (a) under the age of 18 years for whose support the head of household or the spouse/adult interdependent partner of the head of household (or both of them) is legally liable and who is dependent upon either or both of them for financial support; or
 - (b) 18 years of age or over and residing in the same dwelling premises as the head of household who, because of mental or physical infirmity, is principally dependent on the head of household or the spouse/adult interdependent partner of the head of household (or both the head of household and the spouse/adult interdependent partner) for financial support;
- (2.1) If the head of household has both a spouse and an adult interdependent partner, a reference to spouse/adult interdependent partner or surviving spouse/adult interdependent partner means
 - (a) the spouse or surviving spouse, or
 - (b) the adult interdependent partner or surviving adult interdependent partner,living in the same dwelling premises as the head of household.
- (3) the total sum payable shall be paid with respect to death of head of household or spouse/adult interdependent partner to the surviving spouse/adult interdependent partner. If there is no surviving spouse/adult interdependent partner in the household, no amount shall be payable unless there are surviving dependent relatives, and in that event the total sum payable shall be divided equally among the surviving dependent relatives;
- (4) the total amount payable with respect to death due to a common disaster of head of household and spouse/adult interdependent partner shall be paid equally to surviving dependent relatives;
- (5) the sum payable with respect to the death of a dependent relative shall be paid to the head of household or, if the head of household does not survive, to the surviving spouse/adult interdependent partner of the head of household but, if neither the head of household nor the spouse/adult interdependent partner survives, no amount is payable;
- (6) amounts payable under this Part I shall be paid only to a person who is alive 60 days after the death of the insured person;
- (7) the amount payable under this Part I for the death of any person shall be reduced by the amount of any payments made to or for such person with respect to the same accident under Part II, Total Disability;
- (8) the amount payable under this Part for grief counselling is payable to the spouse/adult interdependent partner or other immediate family member of the deceased in respect of grief counselling for the immediate family members of an insured person who dies as a result of the accident.

PART II - Total Disability

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person, provided

- (a) such person was employed at the date of the accident;
- (b) within 60 days from the date of the accident such injury prevents the insured person from performing any and every duty pertaining to the insured person's occupation or employment;
- (c) no benefit shall be payable for the first seven days of such disability or for any period in excess of 104 weeks.

Amount of Weekly Benefit — The weekly benefit payable shall be the lesser of:

- (a) \$600 per week, and
- (b) 80% of the average gross weekly earnings, less any payments for loss of income from occupation or employment received by or available to such insured person under Subsection 2 (A) of this Section B.

The above benefits shall be subject to the terms of provision (3) below.

For the purpose of this Part II,

- (1) an insured person who is 18 years of age or over and who is not engaged in an occupation or employment for wages or profit and is completely incapacitated and unable to perform any of the insured person's household duties shall, while so incapacitated, receive \$200 per week for not more than 104 weeks;
- (1.1) average gross weekly earnings is the greater of
 - (a) average gross weekly earnings from an occupation or employment for the 4 weeks preceding the accident, and
 - (b) average gross weekly earnings from an occupation or employment for the 52 weeks preceding the accident;
- (2) a person shall be deemed to be employed
 - (a) if actively engaged in occupation or employment for wages or profit at the date of the accident, or
 - (b) if 18 years of age or over, so engaged for any six months during the 12 months preceding the date of the accident.
- (3) if the benefits for loss of time payable under this Part, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the average gross weekly earnings of the insured person, the weekly benefit shall be calculated in accordance with the following formula:

$$WB = \frac{80\% \text{ of } WE}{PB + OB} \times PB$$

where

WB is the weekly benefit,

WE is the average gross weekly earnings of the insured person,

PB is the lesser of \$600 and 80% of WE,

OB is the total of all other weekly benefits payable to the insured person under other contracts, including a contract of group accident insurance and a life insurance contract providing disability insurance, excluding benefits under the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* (Canada);

- (4) the disability of the insured person shall be certified by a duly qualified medical practitioner, if so required by the Insurer.

SUBSECTION 2(A) - SUPPLEMENTED BENEFITS RESPECTING ACCIDENTS

OCCURRING OUTSIDE ALBERTA IN A NO-FAULT JURISDICTION

- (1) In this Subsection,
- (a) "accident" means an event resulting in bodily injury caused by an automobile or by the use of an automobile or by the load of an automobile, including damage caused by a trailer;
 - (b) "applicable laws" means, with respect to a no-fault jurisdiction, the laws in force from time to time governing the system of no-fault automobile insurance in that jurisdiction;
 - (c) "insured person" means an individual who is a resident of Alberta and who
 - (i) is an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this Policy,
 - (ii) is an occupant of an automobile and is
 - (A) the named insured, or a spouse/adult interdependent partner of the named insured living in the same dwelling premises as the named insured, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as the named insured,
 - (iii) while a pedestrian, is struck by the described automobile or a newly acquired or temporary substitute automobile as defined in this Policy,
 - (iv) while a pedestrian, is struck by an automobile and is
 - (A) the named insured, or a spouse/adult interdependent partner of the named insured living in the same dwelling premises as the named insured, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as the named insured,
 - (v) is the occupant of an automobile or a pedestrian struck by an automobile and is
 - (A) an employee or partner of the named insured who is provided with the regular use of the described automobile, or a spouse/adult interdependent partner of the employee living in the same dwelling premises as the employee or a spouse/adult interdependent partner of the partner living in the same dwelling premises as the partner, or
 - (B) a dependent relative of an individual referred to in paragraph (A) living in the same dwelling premises as that individual,
 - or
 - (vi) is
 - (A) the occupant of an automobile, or
 - (B) a pedestrian struck by an automobile driven by an individual described in any of subclauses (i) through (v),
- but does not include an individual who is, at the time of an accident in Quebec, the owner or occupant of an automobile registered in Quebec;
- (d) "no-fault jurisdiction" means the Province of Quebec, Ontario, Manitoba, Saskatchewan or British Columbia;
 - (e) "pedestrian" means an individual who is not an occupant of an automobile;
 - (f) "resident of Alberta" means an individual who
 - (i) is authorized by law to be or to remain in Canada and is living and ordinarily present in Alberta, and
 - (ii) meets the criteria for non-residency in the no-fault jurisdiction established by the applicable laws of the no-fault jurisdiction.
- (2) The definition of "insured person" under the heading Special Provisions, Definitions, and Exclusions of Section B does not apply to this Subsection.
- (3) Where an insured person suffers personal injury as a result of an accident occurring in a no-fault jurisdiction, the insurer agrees to pay to the insured person the amount that would be payable under the applicable laws of the no-fault jurisdiction as if the insured person were a resident of the no-fault jurisdiction.
- (4) For the purposes of calculating an amount payable under (3) in respect of an accident occurring in Quebec, references in the *Automobile Insurance Act* (Quebec) to other statutes or regulations of Quebec used to calculate an amount payable under (3) shall be read as references to corresponding Alberta statutes or regulations or federal statutes or regulations that apply in Alberta.
- (5) In any claim or action in Alberta arising out of an accident in Alberta, the insurer agrees not to exercise its right of subrogation against a resident of Manitoba or Saskatchewan in respect of Section B - Accident Benefits paid to a resident of Alberta under this Policy.
- (6) No exclusion or limitation in Section B or in the General Provisions, Definitions and Exclusions and the Statutory Conditions of this Policy may be raised by the insurer in respect of a claim by an insured person under (3).

SUBSECTION 3 - UNINSURED MOTORIST COVER

All sums which every insured person shall be legally entitled to recover as damages for bodily injury and all sums which any other person shall be legally entitled to recover as damages because of the death of any insured person, from the owner or driver of an uninsured or unidentified automobile as defined herein.

- (1) **The Insurer shall not be liable under this subsection,**
- (a) to any person who has a right of recovery under an unsatisfied judgment or similar fund or plan in effect in any jurisdiction of Canada or the United States of America;
 - (b) to any person who, without the written consent of the Insurer, makes directly or through the person's representative any settlement with or prosecutes to judgment any action against any person or organization which may be legally liable therefor;
 - (c) for any amount in excess of the minimum limit(s) for automobile bodily injury liability insurance applicable in the jurisdiction in which the accident occurs regardless of the number of persons so injured or killed, but in no event shall such limit(s) exceed the minimum limit(s) applicable in the jurisdiction stated in Item 1 of the Policy or in the Certificate of Automobile Insurance.
- (2) **Uninsured automobile defined**
- An "uninsured automobile" under this section means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability insurance for its ownership, use or operation, but shall not include an automobile owned by or registered in the name of
- (a) the named insured or by any person residing in the same dwelling premises therewith; or
 - (b) the governments of Canada or the United States of America or any political sub-division thereof or any agency or corporation owned or controlled by any of them; or
 - (c) any person who is an authorized self-insurer within the meaning of a financial or safety responsibility law; or
 - (d) any person who has filed a bond or otherwise given proof of financial responsibility with respect to that person's liability for the ownership, use or operation of automobiles.
- (3) **Unidentified automobile defined**
- An "unidentified" automobile under this subsection means an automobile which causes bodily injury or death to an insured person arising out of physical contact of such automobile with the automobile of which the insured person is an occupant at the time of the accident, provided
- (a) the identity of either the owner or driver of such automobile cannot be ascertained, and
 - (b) the insured person or someone on the insured person's behalf has reported the accident within 24 hours to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall have filed with the Insurer within 30 days thereafter a statement under oath that the insured person or the insured person's legal 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 forth the facts in support thereof; and

- (c) at the request of the Insurer, the insured person or the insured person's legal representative makes available for inspection the automobile of which the insured person was an occupant at the time of the accident.
- (4) **Limitation of liability**
- (a) If claim is made under this subsection and claim is also made against any person who is an insured under Section A - Third Party Liability of this Policy, any payment under this subsection shall be applied in reduction of any amount which the insured person may be entitled to recover from any person who is insured under Section A;
- (b) Any payment made under Section A or under subsections 1 or 2 of Section B of this Policy to an insured person hereunder shall be applied in reduction of any amount which such person may be entitled to recover under this subsection.
- (5) **Determination of legal liability and amount of damages**
- The determination as to whether the insured person shall be legally entitled to recover damages and if so entitled, the amount thereof, shall be made by agreement between the insured person and the Insurer.
- If any difference arises between the insured person and the Insurer as to whether the insured person is legally entitled to recover damages and, if so entitled, as to the amount thereof these questions shall be submitted to arbitration of 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 insured person and the other by the Insurer and a third person to be appointed by the persons so chosen. The submission shall be subject to the provisions of The Arbitration Act and the award shall be binding upon the parties.
- (6) **Notice of legal action**
- If, before the Insurer makes payment of loss hereunder, the insured person or the insured person's representative shall institute any legal action for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other process served in connection with such legal action shall be forwarded immediately to the Insurer.

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, the insured's spouse/adult interdependent partner and any dependent relative of either while an occupant of any other automobile; provided that
- (i) the insured is an individual or are two spouses/adult interdependent partners in a household;
- (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident;
- (iii) 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;
- (iv) 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;
- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsection 1 and 2 of Section B 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 subsection 1 and 2 of Section B only, the named insured, if an individual and the named insured's spouse/adult interdependent partner 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
- (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
- (ii) 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;
- (iii) 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;
- (e) if the insured is a corporation, unincorporated association, or partnership, or a sole proprietorship, any employee or partner of the insured for whose regular use the automobile is furnished, and the employee's or partner's spouse/adult interdependent partner 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
- (f) in subsections 1 and 2 of Section B only, any employee or partner of the insured, for whose regular use the automobile is furnished, and the employee's or partner's spouse/adult interdependent partner 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,
- (i) neither such employee nor partner or the employee's or partner's spouse/adult interdependent partner is the owner of an automobile;
- (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident;
- (iii) 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;
- (iv) 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,
- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.
- (1.1) **"Prescribed claim form" Defined** - In this section, the words "prescribed claim form" mean a form prescribed by the Minister under section 803 of the *Insurance Act*.
- (1.2) **"Spouse/adult interdependent partner" Defined** - In this section, the words "spouse/adult interdependent partner" mean the spouse or adult interdependent partner, as the case may be.
- (2) **Exclusions**
- (a) The Insurer shall not be liable under provision (1) of subsection 1 nor under Part II of subsection 2 of this section B for bodily injury to any person
- (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
- (ii) who is entitled to receive the benefits of any worker's compensation law or plan as a result of the accident; or
- (iii) where the person at the time of the accident is engaged in a race or speed test; or
- (iv) caused directly by sickness or disease; or
- (v) who is using the automobile for any illicit or prohibited trade or transportation.
- (b) The Insurer shall not be liable under Part II of Subsection 2 of this Section B for Bodily injury
- (i) sustained by any person who is convicted of an offence under section 320.14 of the *Criminal Code* (Canada) occurring at the time of the accident, or
- (ii) sustained by any person driving the automobile who is under the age prescribed by the law of the jurisdiction in which the accident occurs as being the minimum age at which a licence or permit to drive the automobile may be issued to the person; or
- (iii) 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) **Notice and Proof of Claim** - Subject to the *Diagnostic and Treatment Protocols Regulation*, the insured person or the insured person's agent, or the person otherwise entitled to make a claim or that person's agent, shall
- (a) deliver personally,
 - (b) mail,
 - (c) fax, or
 - (d) send by e-mail if both parties have agreed to this method of sending and receiving notices and other documents,
- a properly completed prescribed claim form, containing at least the information referred to in provision (3.1), to the chief agency or head office of the Insurer in Alberta within 30 days of the accident, or if giving notice within 30 days is not reasonable, as soon as practicable after that.
- (3.1) **Contents of Claim Form** - The completed prescribed claim form must include
- (a) details of the injury, and
 - (b) details of the accident that are within the personal knowledge of the insured person.
- (3.2) **Responsibility for Expenses Related to Completion of Claim Form** - The Insurer shall pay all expenses incurred by or on behalf of the insured person in completing the medical report portion of the prescribed claim form.
- (3.3) **Total Disability Claim** - With respect to a total disability claim, the insured person shall, if so required by the Insurer, furnish a certificate from a duly qualified medical practitioner 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.
- (4) **Medical Reports** - Subject to provision (4.1), the Insurer has the right and the claimant shall afford to a duly qualified medical practitioner named by the Insurer an opportunity to examine the person of the insured's 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.
- (4.1) **Exemption** - The Insurer has no right and the claimant is under no obligation under provision (4) with respect to
- (a) injuries to which the *Diagnostic and Treatment Protocols Regulation* applies during the period and with respect to any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment, making a report or other activity or function authorized under that Regulation;
 - (b) subject to provision (4.2), any other injuries for which the following services are provided:
 - (i) chiropractic services;
 - (ii) massage therapy services;
 - (iii) acupuncture services;
 - (iv) the following services to the extent of the specified limit:
 - (A) psychological services, up to \$750 per person;
 - (B) physical therapy services, up to \$750 per person;
 - (C) occupational therapy services, up to \$750 per person.
- (4.2) **Non-application** - Provision (4.1)(b) does not apply to those injuries to which the *Diagnostic and Treatment Protocols Regulation* ceases to apply.
- (5) **Release** - Notwithstanding any release provided for under the relevant sections of *The Insurance Act* of the Province, the Insurer may demand, as a condition precedent to payment of any amount under Section B 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**
- (a) Except for the expenses authorized to be paid in accordance with the *Diagnostic and Treatment Protocols Regulation*, all amounts payable under Section B other than benefits under Part II of Subsection 2 shall be paid by the Insurer within 60 days after it has received a completed prescribed claim form. The initial benefits for loss of time under Part II of Subsection 2 shall be paid within 30 days after the Insurer has received the completed prescribed claim form, and payments shall be made thereafter within each 30-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.
 - (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions (3) and (4) are complied with, nor until the amount of the loss has been ascertained as provided in this section.
 - (c) Every action or proceeding against the Insurer for the recovery of a claim under this Section B must be commenced not later than two years from the date on which the cause of action arose and not afterwards.

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

SECTION C - LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

The Insurer agrees to indemnify the Insured against direct and accidental loss of or damage to the automobile, including its equipment.

Subsection 1 - ALL PERILS

from all perils;

Subsection 2 - COLLISION OR UPSET

caused by collision with another object or by upset;

The words "another object" as used in this subsection 2 include (a) a vehicle to which the automobile is attached and (b) the surface of the ground and any object therein or thereon;

Subsection 3 - COMPREHENSIVE

from any peril other than by collision with another object or by upset;

The words "another object" as used in this subsection 3 do not include a live undomesticated animal. Loss or damage caused by an object, including another automobile, striking the automobile when the automobile is not in use or operation, 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 3;

Subsection 4 - SPECIFIED PERILS

caused by fire, lightning, theft or attempt thereof, 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, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water;

DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of Section C except loss or damage caused by fire or lightning or theft of the entire automobile covered by such 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 amount deductible, if any, stated in the applicable subsection of Section C of Item 4 of the Policy or in the Certificate of Automobile Insurance.

Where an occurrence causing loss or damage is covered under any subsection of Section C and Section A.1, the deductible under Section C will be the deductible stated in the applicable subsection of Section C of Item 4 of the Policy or in the Certificate of Automobile Insurance multiplied by the percentage to which the driver of the automobile was determined at-fault for the accident under the regulations.

EXCLUSIONS

The Insurer shall not be liable,

- (1) under any subsection of Section C for loss or damage
 - (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) caused directly or indirectly by contamination by radioactive material;
 - (e) to contents of trailers;
 - (f) to electronic accessories or electronic equipment, including radios, tape players/decks, stereo players/decks, compact disc players, DVD players, DVD screens, speakers, two-way radios, CB radios, ham radios, VHF radios, televisions, facsimile machines, electronic navigation assistance, positioning and location finding devices and items of a similar nature, when such electronic accessories and electronic equipment are detached from the automobile;
 - (g) to telephones or computers;
 - (h) where the insured drives or operates the automobile
 - (i) while under the influence of alcohol or drugs to such an extent as to be for the time being incapable of the proper control of the automobile;
 - (ii) while in a condition for which the insured is convicted of an offence under section 320.14 of the *Criminal Code* (Canada), under or in connection with circumstances for which the insured is convicted of an offence under section 320.15 of the *Criminal Code* (Canada), is convicted of an offence under section 130 of the *National Defence Act* (Canada) or contravenes section 88.1(1) of the *Traffic Safety Act* (Alberta);
 - (i) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (h); or
- (2) under subsections 3 (Comprehensive), 4 (Specified Perils) only, for loss or damage caused by theft by any person or persons residing in the same dwelling premises as the Insured, or by any employee of the Insured engaged in the operation, maintenance or repair of the automobile whether the theft occurs during the hours of such service or employment or not.

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

ADDITIONAL AGREEMENTS OF INSURER

- (1) Where loss or damage arises from a peril for which a premium is specified under a subsection of this section, the Insurer further agrees:
 - (a) 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;
 - (b) 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 to any person
 - (1) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or
 - (2) 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) (h) of the Exclusions to Section C of this Policy;
 - (c) to indemnify the Insured and any other person who personally drives a temporary substitute automobile as defined in the General Provisions of this Policy against the liability imposed by law or assumed by the Insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:
 - (i) such indemnity is subject to the deductible clause and exclusions of each such subsection;
 - (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this Policy;
 - (iii) the Additional Agreements under Section A of this Policy shall insofar as they are applicable, extend to the indemnity provided herein.
- (2) Loss of Use by Theft — Where indemnity is provided under subsections 1, 3 or 4 of Section C hereof the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the Insured for expense up to \$900 incurred for the rental of a substitute automobile including taxicabs and public means of transportation.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating, regardless of the expiration of the Policy period, (a) upon the date of the completion of repairs to or the replacement of the property lost or damaged, or (b) upon such earlier date as the Insurer makes or tenders settlement for the loss or damage caused by such theft.

GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

1. TERRITORY

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

2. OCCUPANT DEFINED

In this Policy the word "occupant" means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

3. CONSENT OF OWNER

No person shall be entitled to indemnity or payment under this Policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

4. GARAGE PERSONNEL 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 in the course of that business or while so engaged is an occupant of the described automobile or a newly acquired automobile as defined in this Policy, unless the person is the owner of such automobile or the owner's employee or partner.

5. AUTOMOBILE DEFINED

In this Policy except where stated to the contrary the words "the automobile" mean:

Under Sections A - Third Party Liability, A.1 - Direct Compensation for Property Damage, B - Accident Benefits, C - Loss of or Damage to Insured Automobile

- (a) The Described Automobile - an automobile, trailer or semi-trailer specifically described in the Policy or in the Certificate of Automobile Insurance;
- (b) A Newly Acquired Automobile - an automobile, ownership of which is acquired by the insured and, within fourteen days following the date of its delivery to the insured, notified to the Insurer in respect of which the insured has no other valid insurance, if either it replaces an automobile described in the Policy or in the Certificate of Automobile Insurance or the Insurer insures (in respect of the section or subsection of the Insuring Agreements under which claim is made) all automobiles owned by the Insured at such delivery date and in respect of which the Insured pays any additional premium required; provided however, that insurance hereunder shall not apply if the Insured is engaged in the business of selling automobiles;

and under Sections A - Third Party Liability, A.1 - Direct Compensation for Property Damage and B - Accident Benefits only

- (c) A Temporary Substitute Automobile - an automobile not owned by the Insured, nor by any person or persons residing in the same dwelling premises as the Insured, while temporarily used as the substitute for the described automobile which is not in use by any person insured by this Policy, because of its breakdown, repair, servicing, loss, destruction or sale;
- (d) Any Automobile of the Private Passenger type, other than the described automobile, while personally driven by the Insured, or by the Insured's spouse/adult interdependent partner if residing in the same dwelling premises as the Insured provided that
 - (i) the described automobile is of the private passenger type;
 - (ii) the Insured is an individual or are spouses/adult interdependent partners;
 - (iii) neither the Insured nor the Insured's spouse/adult interdependent partner is driving such automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) 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;
 - (v) 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;
 - (vi) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (e) If the Insured is a corporation, unincorporated association or registered co-partnership, any automobile of the private passenger type, other than the described automobile, while personally driven by the employee or partner for whose regular use the described automobile is furnished, or by the employee's or partner's spouse/adult interdependent partner if residing in the same dwelling premises as such employee or partner, provided that
 - (i) neither such employee or partner or the employee's or partner's spouse/adult interdependent partner is the owner of an automobile of the private passenger type;
 - (ii) the described automobile is of the private passenger type;
 - (iii) neither such employee, partner or spouse/adult interdependent partner is driving the automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
 - (iv) such other automobile is not owned, hired or leased or regularly or frequently used by the Insured or such employee or by any partner of the Insured or by any persons residing in the same dwelling premises as any of the aforementioned persons;
 - (v) such other automobile is not used for carrying passengers for compensation or hire or commercial delivery.
- (f) Trailers:
 - (i) for the purposes of Sections A - Third Party Liability and B - Accident Benefits, any trailer used in connection with the automobile;
 - (ii) for the purposes of Section A.1 – Direct Compensation for Property Damage only, any trailer owned by the insured and not described in the Policy, and its contents owned by the insured, whether or not attached to an automobile, provided such trailer is of the single axle, personal use and utility type, has a gross vehicle weight rating (GVWR) of 910 kilograms or less, and is not used for temporary or permanent accommodations; or
 - (iii) any trailer described in the Policy or in the Certificate of Automobile Insurance that provides Section A.1 - Direct Compensation for Property Damage coverage.

6. TWO OR MORE AUTOMOBILES

- (a) When two or more automobiles are described hereunder
 - (i) with respect to the use or operation of such described automobiles, each automobile shall be deemed to be insured under a separate policy;
 - (ii) with respect to the use or operation of an automobile not owned by the Insured, the limit of the Insurer's liability shall not exceed the highest limit applicable to any one described automobile;
- (b) When the Insured owns two or more automobiles which are insured as described automobiles under two or more automobile insurance policies, the limit of the Insurer under this Policy with respect to the use or operation of an automobile not owned by the Insured shall not exceed the proportion that the highest limit applicable to any one automobile described in this Policy bears to the sum of the highest limits applicable under each policy and in no event shall exceed such proportion of the highest limit applicable to any one automobile under any policy;
- (c) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the limit(s) of liability under Sections A - Third Party Liability and B - Accident Benefits and separate automobiles with respect to the limit(s) of liability, including deductible provisions, under Sections A.1 – Direct Compensation for Property Damage and C – Loss of or Damage to Insured Automobile.

7. WAR RISKS EXCLUDED

The Insurer shall not be liable under Section A.1 - Direct Compensation for Property Damage, B – Accident Benefits or C – Loss of or Damage to Insured Automobile 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 engaged in hostilities, whether war be declared or not.

8. EXCLUDED USES

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

- (a) the automobile is rented or leased to another person, but does not include the use by an employee of the employer's automobile in the business of the employee's employer for which the employee is paid;
- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental to those purposes. "Radioactive material" means
 - (i) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
 - (ii) radioactive waste material,
 - (iii) unused enriched nuclear fuel rods, or
 - (iv) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged;

- (c) 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 the carrying of passengers for compensation or hire:
 - (i) the use by the insured of the insured's automobile for the carriage of another person in return for the insured's carriage in the automobile of the other person.
 - (ii) the occasional and infrequent use by the insured of the automobile for the carriage of another person who shares the cost of the trip;
 - (iii) the use by the insured of the insured's automobile for the carriage of a temporary or permanent domestic servant of the insured or the insured's spouse/adult interdependent partner;
 - (iv) the occasional and infrequent use by the insured of the automobile for the transportation of children to or from activities conducted as part of an educational program,
 - (v) the use by an insured of the automobile for the carriage of a client or customer or prospective client or customer.

9. LIMITATION OF ACTIONS

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

STATUTORY CONDITIONS

In these Statutory Conditions, unless the context otherwise requires, "insured" means a person insured by the contract whether named in the contract or not.

- (i) Statutory Condition 3 does not apply when the contract does not insure against liability for loss or damage to persons and property;
- (ii) Statutory Condition 4 does not apply when the contract does not insure against loss of or damage to the automobile; and
- (iii) Statutory Conditions 2, 3, 4, 5, 6 and 7 shall not apply to Section B - Accident Benefits.

Material Change in Risk

1. (1) The insured named in this contract must promptly notify the insurer or its agent in writing, of any change in the risk material to the contract and within the insured's knowledge.
- (2) Without restricting the generality of subparagraph (1) of this condition, "change in the risk material to the contract" includes
 - (a) any change in the insurable interest of the insured named in the contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada); and
 - (b) in respect to insurance against loss of or damage to the automobile,
 - (i) any mortgage, lien or encumbrance affecting the automobile after the application for the contract, and
 - (ii) any other insurance of the same interest, whether valid or not, covering loss or damage insured by the contract or any portion of the contract.

Prohibited Use by Insured

2. (1) The insured must not drive or operate the automobile
 - (a) unless the insured is for the time being either authorized by law or qualified to drive or operate the automobile,
 - (b) while the insured's licence to drive or operate an automobile is suspended or while the insured's right to obtain a licence is suspended or while the insured is prohibited under order of any court from driving or operating an automobile,
 - (c) while the insured is under the age of 16 years or under any other age prescribed by the law of the province in which the insured resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the insured,
 - (d) for any illicit or prohibited trade or transportation, or
 - (e) in any race or speed test.

Prohibited Use by Others

- (2) The insured must not permit or allow the use of the automobile
 - (a) by any person
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
 - (ii) while that person is under the age of 16 years or under any other age prescribed by the law of the province in which the person resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the person,
 - (b) by any person who is a member of the household of the insured while the person's licence to drive or operate an automobile is suspended or while the person's right to obtain a licence is suspended or while the person is prohibited under order of any court from driving or operating an automobile,
 - (c) for any illicit or prohibited trade or transportation, or
 - (d) in any race or speed test.

Requirements Where Loss or Damage to Persons or Property

3. (1) The insured must
 - (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident,
 - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under the contract, and
 - (c) forward immediately to the insurer every letter, document, advice or writ received by the insured from or on behalf of the claimant.
- (2) The insured must not
 - (a) voluntarily assume any liability or settle any claim except at the insured's own cost, or
 - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured must, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and must co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements Where Loss or Damage to the Automobile

4. (1) When loss of or damage to the automobile occurs, the insured must, if the loss or damage is covered by the contract,
 - (a) promptly give notice of the loss or damage in writing to the insurer with fullest information obtainable at the time,
 - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and
 - (c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of the insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others in the automobile, the encumbrances on the automobile, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subparagraph (1) of this condition is not recoverable under the contract.

- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, may be undertaken and no physical evidence of the loss or damage may be removed
- (a) without the written consent of the insurer, or
 - (b) until the insurer has had a reasonable opportunity to make the inspection for which provision is made in Statutory Condition 5.

Examination of Insured

- (4) The insured must submit to examination under oath and must produce for examination at any reasonable place and time designated by the insurer or its representative all documents in the insured's possession or control that relate to the matters in question, and the insured must permit extracts and copies of the documents to be made.

Insurer Liable for Cash Value of Automobile

- (5) The insurer is not liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage must be ascertained or estimated according to that actual cash value with proper deductions for depreciation, however caused, and must not exceed the amount that it would cost to repair or replace the automobile, or any part of the automobile, with material of similar kind and quality, but if any part of the automobile is obsolete and unavailable, the liability of the insurer in respect of the automobile is limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or Replacement

- (6) Except where a dispute resolution process has been initiated, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of similar kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No Abandonment, Salvage

- (7) There must be no abandonment of the automobile to the insurer without the insurer's consent.
- (8) If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, vests in the insurer.

In Case of Disagreement

- (9) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount of the loss or damage, those questions must be determined by a dispute resolution process as provided under the *Insurance Act* before there can be recovery under the contract, whether the right to recover under the contract is disputed or not, and independently of all other questions.
- (10) There is no right to a dispute resolution process until
- (a) a specific demand for it is made in writing, and
 - (b) the proof of loss has been delivered.

Inspection of Automobile

5. The insured must permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and Manner of Payment of Insurance Money

6. (1) The insurer must pay the insurance money for which it is liable under the contract within 60 days after the proof of loss has been received by it or, where a dispute resolution process is conducted under Statutory Condition 4(9), within 15 days after the decision is rendered.

When Action May Be Brought

- (2) The insured may not bring an action to recover the amount of a claim under the contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided for under Statutory Conditions 3 and 4 or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

Who May Give Notice and Proofs of Claim

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in the case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8. (1) The contract may be terminated
- (a) by the insurer giving to the insured 15 days' notice of termination by recorded mail or 5 days' written notice of termination personally delivered, or
 - (b) by the insured at any time on request.
- (2) If the contract is terminated by the insurer,
- (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event, may the prorated premium for the expired time be less than any minimum retained premium specified, and
 - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund must be made as soon as practicable.
- (3) If the contract is terminated by the insured, the insurer must 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 may the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The 15-day period referred to in subparagraph 1(a) of this condition starts to run on the day the recorded letter or notification of it is delivered to the insured's postal address.

Notice

8. (1) Any written notice to the insurer may be delivered at, or sent by recorded mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by recorded mail addressed to the insured at the insured's latest postal address as notified to the insurer.
- (3) In this condition, "recorded" means recorded in or outside Canada.