

# MANITOBA OFF ROAD VEHICLE INSURANCE POLICY

Where (a) an applicant for a contract gives false particulars of the described off road vehicle to be insured to the prejudice of the Insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; or (b) the Insured contravenes a term of the contract or commits a fraud; or (c) the Insured wilfully makes a false statement in respect of a claim under the contract, a claim by the Insured is invalid and the right of the Insured to recover indemnity is forfeited.

## INSURING AGREEMENTS

In consideration of the payment of the premium specified and of the statements contained in the application for this insurance and subject to Statutory Conditions contained herein and the applicable terms, conditions, provisions, definitions and exclusions specified in the Automobile Insurance Coverage Regulation under The Manitoba Public Insurance Corporation Act, as from time to time amended, the Insurer agrees to indemnify the Insured against those perils for which a limit or an amount and premium is specified in this contract but only for those vehicle(s) registered in accordance with the Highway Traffic Act (Manitoba) and described on the Coverage Summary page.

## 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 his consent personally drives the off road vehicle, 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 off road vehicle 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 worker's compensation law upon any person insured by this section; or
- (b) for loss or damage resulting from bodily injury to or the death of any person insured by this section while an occupant of the off road vehicle; or any person insured by this section, or
- (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 off road vehicle; or
- (d) for loss of or damage to property carried in or upon the off road vehicle of any property owned or rented by, or in the care, custody or control of any person insured by this section; or
- (e) for any amount in excess of the limit(s) stated in Section A of Item 4 of the application, and expenditures provided for in the Additional Agreements of this section; subject always to the provisions of the section of the Insurance Act (Automobile Insurance Part) relating to the nuclear energy hazard; or
- (f) for any amount, except to the extent that insurance money otherwise payable for liability for loss or damage to persons or property under The Manitoba Public Insurance Corporation Act, had this policy not been issued, does not constitute a complete indemnity to the insured for such liability, and in no event exceeding the limits stated in Section A of Item 4 of the Application; or
- (g) except where part 2 of the Manitoba Public Insurance Corporation Act does not apply under this section; or
- (h) for loss or damage occurring while the off road vehicle is used in or upon water or while it is being launched into or landed therefrom.
- (i) for bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere or any water of any description no matter where located or how contained, or into any watercourse, drainage or sewage system. This exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental, however is subject to a sub-limit of twenty-five thousand dollars (\$25,000) for any such sudden and accidental discharge, dispersal, release or escape, regardless of the limit applicable to Section A and this amount shall be part of and not in addition to the Section A limit.

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 judgement upon that part of the judgement which is within the limit(s) of the Insurer' liability; and
- (4) in case the injury 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, state or territory in which the accident occurred, if that limit(s) is higher than the limit(s) stated in Section A of Item 4 of the application; and
  - (6) not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province, state or territory 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 his irrevocable attorney to appear and defend in any province, state or territory in which action is brought against the Insured arising out of the ownership, use or operation of the off road vehicle.
- (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 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 off-road vehicle in accordance with part II of Manitoba Regulation P215-29088R and the regulations thereunder.

### 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 any uninsured or unidentified off road vehicle as described herein

- (1) The Insurer shall not be liable under this subsection,
  - (a) in respect to any accident which occurs in any province in Canada;
  - (b) to any person who has a right of recovery under an unsatisfied judgement or similar fund in effect in any jurisdiction of the United States of America;
  - (c) to any person who, without the written consent of the Insurer, makes directly or through his representative any settlement with or prosecutes to judgement any action against any person or organization which may be legally liable therefor;
  - (d) for any amount in excess of the minimum limit(s) for off road vehicle 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 application.

- (2) Uninsured off road vehicle defined

An "uninsured off road vehicle" under this section means an off road vehicle 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 off road vehicle 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 subdivision 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 his liability for the ownership, use or operation of off road vehicles.

- (3) unidentified off road vehicle defined

An "unidentified off road vehicle" under this subsection means an off road vehicle which causes bodily injury or death to an insured person arising out of physical contact of such off road vehicle with the off road vehicle 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 off road vehicle cannot be ascertained; and
- (b) the insured person or someone on his 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 his 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 his legal representative makes available for inspection the off road vehicle of which the insured person was an occupant at the time of the accident.

- (4) Limit 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 or Part II of the Manitoba Public Insurance Corporation Act 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 his representative shall institute any legal action for bodily injury or death against any other person owning or operating an off road vehicle 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.

## SECTION C - LOSS OR DAMAGE TO INSURED OFF ROAD VEHICLE

Coverage shall be for any amount not provided under the Manitoba Public Insurance Corporation Act subject to the deductibles noted on the Coverage Summary page for Section C and subject to the following provision.

If an amount for "declared value" is shown, the Insurer shall not be liable under Section C for any amount which, together with the amount payable under the Manitoba Public Insurance Corporation Act, is in excess of the actual cash value of the insured vehicle at the time the loss or damage occurs or the amount stated for "declared value", whichever is the lesser.

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 subsections of Insuring Agreement C for which a premium is specified in of the application and no other the Insurer agrees to indemnify the Insured against direct and accidental loss of or damage to the off road vehicle, including its equipment

### Subsection 1 – ALL PERILS – from all perils;

**Subsection 2 – COMPREHENSIVE – from any peril other than by collision with another object or by upset.** The words "another object" as used in this subsection 2 shall be deemed to include

- (a) a vehicle to which the off road vehicle is attached, and
- (b) the surface of the ground and any object therein or thereon

Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 3.

### Subsection 3 – Specified Perils – option not available

Equipment shall be deemed to include:

- a) one safety kit consisting of one first aid kit, one fire extinguisher, one flashlight, six warning flares and two warning cones or flags or reflectors, subject to a maximum of fifty dollars (\$50) for each item
- b) booster cables, towing cable, maximum of four snow chains, one wheel wrench, vehicle/tarp cover or dedicated tool kit subject to a maximum of fifty dollars (\$50) for each item
- c) any equipment that is permanently attached to the vehicle including windshield, mirrors, winch, carrying racks, security alarm system
- d) miscellaneous personal effects carried in the vehicle subject to a maximum of two-hundred and fifty dollars (\$250) in total

The Insurer shall not be liable for loss or damage to fire-fighting, rescue or salvage equipment that has been removed from the vehicle while the vehicle is at the location of a fire.

## DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of Section C 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 deductible amount, as stated in the applicable subsection of Section C of the policy declaration page.

## 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 vehicle 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; or
  - b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the vehicle under a mortgage, conditional sale, lease or other similar written agreement; or
  - 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 pretence; or
  - d) caused directly or indirectly by contamination by radioactive material; or
  - e) to contents of trailers or to rugs or robes; or
  - f) to tapes and equipment for use with a tape player or recorder when such tapes or equipment are detached there from; or
  - g) where the insured drives or operates the vehicle
    - i. while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle; or
    - ii. while in a condition for which he or she is convicted of an offence under section 253 (a) (impaired driving) or section 253 (b) (breathalyser offence) or under or in connection with circumstances for which he or she is convicted of an offence under section 254 (5) (failure or refusal to provide breath or blood sample) of the Criminal Code (Canada); or
  - h) where the insured permits, suffers, allows or connives at the use of the vehicle by any person contrary to the provisions of g);
- 2) **under subsection 2 (Comprehensive)** 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 insured vehicle whether the theft occurs during the hours of such service or employment or not.
- 3) **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 vehicle, 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 vehicles, or
    - (2) who has
      - i. committed a breach of any condition of this policy or
      - ii. driven or operated the vehicle in the circumstances referred to in i. or ii. of paragraph g) of the Exclusions to Section C of this policy;
  - c) to indemnify the Insured and any other person who personally drives a temporary substitute vehicle 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 vehicle 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 vehicle 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 any subsection of Section C hereof the Insurer further agrees, following a theft of the entire vehicle covered thereby, to reimburse the Insured for expense not exceeding twenty-five dollars (\$25.00) for any one day nor totalling more than seven-hundred and fifty dollars (\$750.00) incurred for the rental of a substitute vehicle. 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.

3) **DECK AND TRAILER**

This Policy is extended to insure loss or damage to the Truck Deck or Trailer. We agree to indemnify you against direct and accidental loss of or damage to the Truck Deck or Trailer, subject to a maximum amount that is equivalent to the lesser of:

- (a) the actual cash value at the time of the loss occurs subject to a maximum limit of one-thousand dollars (\$1,000.00); or
- (b) the increased amount purchased and shown for this endorsement on the Coverage Summary;

provided said loss or damage results from a peril that is listed on the Summary of Coverage page (Section C – LOSS OR DAMAGE TO INSURED VEHICLE).

“Trailer(s)” means a trailer used exclusively to transport the recreational vehicle(s) that is insured by this policy;

“Truck Deck” means a unit for temporary attachment to a truck designed for and used exclusively to transport the recreational vehicle(s) that is insured by this policy.

The deductible amount shown on the Summary of Coverage page also applies.

## **GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS**

**1. TERRITORY**

This policy applies only while the vehicle is being operated, used, stored or parked within Canada, the Continental 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 a vehicle.

**3. CONSENT OF OWNER**

No person shall be entitled to indemnity or payment under this Policy who is an occupant of any vehicle 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 vehicles shall be entitled to indemnity or payment under this policy for any loss or damage, injury or death sustained while engaged in the use or operation of or while working upon the vehicle in the course of that business or while so engaged is an occupant of the described vehicle or a newly acquired vehicle as defined in this Policy, unless the person is the owner of such vehicle or his employee or partner.

**5. OFF ROAD VEHICLE DEFINED**

In this Policy except where stated to the contrary the words “the vehicle” or “automobile” mean:

- a) The Described Vehicle –means any wheeled or tracked motorized vehicle designed or adapted for cross-country travel on land, water, ice, snow, marsh or swamp land or other natural terrain, and, without limiting the generality of the foregoing includes a four-wheeled drive motor vehicle, a motorcycle or snow vehicle not registered under the Highway Traffic Act; an a terrain vehicle or side by side utility vehicle; a dirt bike and trail bike; a miniature vehicle such as a dune or sport buggy; an amphibious vehicle; and a snowmobile but does not include an implement of husbandry; a farm tractor; a special mobile machine; a garden or lawn tractor; and a golf cart.
- b) A Newly Acquired Vehicle –vehicle, ownership of which is acquired by the Insured and, within fourteen days following the date of its delivery to him or her notified to the Insurer in respect of which the Insured has no other valid insurance, if either it replaces a vehicle described in the application or the Insurer insures (in respect of the section or subsection of the Insuring Agreements under which claim is made) all insured vehicles 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 vehicles;
- c) A Temporary Substitute vehicle – a vehicle 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 vehicle which is not in use by any person insured by this policy, because of its breakdown, repair, servicing, loss, destruction or sale;
- d) Any vehicle other than the described vehicle, while personally driven by the Insured, or by his or her spouse if residing in the same dwelling premises as the Insured provided that
  - i. the described vehicle is of the same vehicle type that is insured under this policy as defined in item a) above;
  - ii. the Insured is an individual or are husband and wife;
  - iii. neither the Insured nor his or her spouse is driving such vehicle in connection with the business of selling, repairing, maintaining, servicing, storing or parking vehicles;
  - iv. such other vehicle 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 vehicle 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 vehicle 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 vehicle other than the described vehicle, while personally driven by the employee or partner for whose regular use the described vehicle is furnished, or by his or her spouse if residing in the same dwelling premises as such employee or partner, provided that
  - i. neither such employee or partner or his or her spouse is the owner of the vehicle;
  - ii. the described vehicle is of the type as defined in this policy;
  - iii. neither such employee, partner or spouse is driving the vehicle in connection with the business of selling, repairing, maintaining, servicing, storing or parking vehicles;
  - iv. such other vehicle 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 vehicle is not used for carrying passengers for compensation or hire or commercial delivery.
- f) Trailers – any trailer used in connection with the vehicle excluding a trailer designed or used to carry passengers, or for demonstration purposes or to carry goods for a fee.

## 6. TWO OR MORE OFF ROAD VEHICLES

- a) When two or more vehicles are described hereunder
  - i. with respect to the use or operation of such described vehicles, each vehicle shall be deemed to be insured under a separate policy;
  - ii. with respect to the use or operation of a vehicle not owned by the Insured, the limit of the Insurer's liability shall not exceed the highest limit applicable to any one described vehicle;
- b) When the Insured owns two or more vehicles which are insured as described vehicles under two or more vehicle insurance policies, the limit of the Insurer under this Policy with respect to the use or operation of an vehicle not owned by the Insured shall not exceed the proportion that the highest limit applicable to any one vehicle 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 vehicle under any policy;
- c) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one vehicle with respect to the limit(s) of liability under Section A and separate vehicles with respect to the limit(s) of liability, including deductible provisions, under Section C.

## 7. WAR & TERRORISM EXCLUSION

- a) This policy does not cover any accident or injury arising out of or in connection with any act of terrorism or war regardless of any other cause or event contributing concurrently or in any other sequence to the liability, loss, damage, cost or expense.
- b) This policy also excludes from coverage all liability, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from, arising out of or in connection with any action taken in controlling, preventing, suppressing or retaliating against or responding to an act of terrorism and/or war as defined below.
- c) For the purpose of this policy an act of war or terrorism means:
  - i. any civil war, rebellion, revolution, insurrection, civil commotion, invasion, acts of foreign enemies, the release of bio-chemical weapons,
  - ii. hostilities or warlike operations (whether war is declared or not) by any government or sovereign,
  - iii. the use of force or violence or the threat thereof by military personnel or other agents,
  - iv. the commission or threat to commit a dangerous act, of any person or group(s) or government(s), committed for political, religious, ideological, social, economic or similar purposes including the intention to intimidate, coerce or overthrow a government (whether defacto or de jure) or to influence, affect or protest against any government and/or to put the civilian population, or any section of the civilian population, in fear.

## 8. NOTICE TO AUTHORITIES

Where the loss is due to malicious acts, burglary, robbery, theft, or attempt thereof, or is suspected to be so due, the Insured shall give immediate notice thereof to the police or other authorities having jurisdiction.

## 9. 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 vehicle is rented or leased to another; provided that the use by an employee of his vehicle on the business of his employer and for which he is paid shall not be deemed the renting or leasing of the vehicle to another;
- b) the vehicle is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- c) the vehicle 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 his vehicle for the carriage of another person in return for the former's carriage in the vehicle of the latter;
  - ii. the occasional and infrequent use of the Insured of his vehicle for the carriage of another person who shares the cost of the trip;

- iii. the use by the Insured of his vehicle for the carriage of a temporary or permanent domestic servant of the Insured or his spouse;
  - iv. the use by the Insured of his vehicle for the carriage of clients or customers or prospective clients or customers;
  - v. the occasional and infrequent use by the Insured of his vehicle for the transportation of children to or from activities conducted as part of an educational program.
- d) in any extreme activity such as but not limited to "Mud Bog" or "Hill Climb" or wheel to wheel or track to track competition or practice,
  - e) for business purposes other than ranching or farming
  - f) where the vehicle is being operated on any Public Highway or roadway
  - g) the operator or any passenger is not wearing a CSA, ULA, SNELL, or other similarly approved helmet
  - h) the vehicle is carrying more than an operator and one passenger except where rated and designed to carry more by the manufacturer
  - i) the vehicle is being used for purposes for which the vehicle was not intended as specified by the vehicle manufacturer.

## STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires the word "Insured" means a person insured by this contract whether named or not, and the word "automobile" includes off road vehicles.

*Statutory Conditions 1, 8 and 9 shall apply as policy conditions with respect to Section B.*

### Material Change in Risk

- 1 (1) The Insured named in this contract shall promptly notify the Insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:
- (a) any change in the insurable interest of the Insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act (Canada)*; and in respect of insurance against loss of or damage to the automobile;
  - (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
  - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

### Prohibited Use by Insured

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

### Prohibited Use by Others

- (2) The Insured shall not permit, suffer, allow or connive at 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 sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued; or
  - (b) by any person who is a member of the household of the Insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
  - (c) for any illicit or prohibited trade or transportation; or
  - (d) in any practice for or race or speed test.

### Requirements Where Loss or Damage to Persons or Property

- 3 (1) The Insured shall,

- (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 this contract; and
  - (c) forward immediately to the Insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The Insured shall not
- (a) voluntarily assume any liability or settle any claim except at his own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The Insured shall, whenever requested by the Insurer, aid in securing information and evidence and the attendance of any witness and shall 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 Automobile**

- 4 (1) Where loss of or damage to the automobile occurs, the Insured shall, if the loss or damage is covered by this contract,
- (a) promptly give notice thereon in writing to the Insurer with the 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 ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the Insured and of all others therein, the encumbrances thereon, 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 subcondition (1) of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
- (a) without the written consent of the Insurer; or
  - (b) until the Insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5
- (4) The Insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the Insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

**Insurer Liable for Cash Value of Automobile**

- (5) The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be 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 an appraisal has been made, the Insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

**No Abandonment; Salvage**

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

**In Case of Disagreement**

- (8) 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 payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under *The Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other question. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**Inspection of Automobile**

5. The Insured shall 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 shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has



been received by it or, where an appraisal is made under subcondition 6 of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

#### **When Action May be Brought**

(2) The Insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided 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.

#### **Limitation of Actions**

(3) Every action or proceeding under the contract against the Insurer in respect of a claim for indemnification for liability of the Insured for loss or damage to property of another person or for personal injury to or death of another person shall be commenced within two years after the liability of the Insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the Insurer under the contract, in respect of loss or damage to the automobile shall be commenced within two years from the time the loss or damage was sustained and not afterwards.

#### **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 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) This contract may be terminated,  
(a) by the Insurer giving to the Insured fifteen days' notice of termination by registered mail or five days written notice of termination personally delivered;  
(b) by the Insured at any time on request.

#### **Refund**

(2) Where this contract is terminated by the Insurer,  
(a) the 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  
(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.

#### **Excess Premium**

(3) Where this contract is terminated by the Insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the Insured for the expired time, but in no event shall the premium for the expired time be deemed to be less than any minimum retained premium specified.

#### **Mode of Payment**

(4) The refund may be made by money, postal or express company money order or cheque payable at par.

#### **Time**

(5) The fifteen days mentioned in clause (a) of subcondition (1) 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.

#### **Notice**

9. Any written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the Insurer in the Province. Written notice may be given to the Insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the Insurer. In this condition, the expression 'registered' means registered in or outside Canada.

## **ENDORSEMENTS**

The endorsements following apply only if they are shown on the Coverage Summary page forming part of this policy. If more than one off road vehicle is insured under this policy, the endorsement shall apply only to the vehicle for which the Endorsement is designated in the policy. If the Endorsement is designated with respect to more than one vehicle in the schedule of vehicles forming a part of this policy, then the coverages provided shall be construed as if provided by separate policies of insurance with respect to each vehicle to which the Endorsement is applicable.

Except as otherwise provided in the endorsement, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.

## **PERMISSION TO RENT OR LEASE ENDORSEMENT (SPECIFIED LESSEE)**

This endorsement shall be effective only with respect to an off road vehicle leased to the Lessee by the Lessor. Permission is given to the Lessor for the off road vehicle to be rented or leased to the Lessee.

The Insurer agrees to indemnify, in the same manner and to the same extent as if named herein as the Insured, the Lessee and every other person who with the Lessee's consent personally drives the off road vehicle. The amount of insurance provided by the policy including this endorsement shall not exceed the limit and amounts specified in the Coverage Summary page forming part of this policy.

It is hereby understood and agreed that:

- (1) Exclusion (d) of Section A of the policy to which the endorsement is attached is amended to read as follows:
  - (d) for loss of or damage to property carried in or upon the off road vehicle or to any property owned or rented by, or in the care, custody or control of the Lessee or any other person who personally drives the off road vehicle; or
- (2) with respect to part (b) of paragraph 5 of the General Provisions, Definitions and Exclusions of this policy ("Off road vehicle Defined") the words "ownership of which is acquired by the Insured" shall mean leased by the Lessee from the Lessor.
- (3) with respect to paragraph 5 of the General Provisions, Definitions and Exclusions of this policy the word "Insured" shall mean the Lessee specified herein.
- (4) with respect to part (b) of paragraph (1) ("Insured Person" Defined) of the Special Provisions, Definitions and Exclusions of Section B of this policy, the word "Insured" shall mean the Lessee specified herein.

The application, Extension Off road vehicle Policy is varied to provide that:

- (5) (a) where the Lessee as applicant (i) gives false particulars of the described off road vehicle(s) to be insured to the prejudice of the Insurer or (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein, a claim by the Lessee is invalid and the right of the Lessee to recover indemnity is forfeited.
  - (b) where either the Lessee or the Lessor contravenes a term of the contract or commits a fraud or wilfully makes a false statement in respect of a claim under the policy, a claim by such party is invalid and the right to recover indemnity is forfeited.

## **VALUED OFF ROAD VEHICLE ENDORSEMENT**

It is understood and agreed that under Section C of this policy the Insurer agrees that the described off road vehicle is valued at and insured for the value shown on the Coverage Summary page forming part of this policy subject to any applicable deductible clause.

Where the loss involving the described off road vehicle specified in Clause 1 is a partial loss only, the Insurer's liability is limited to the cost of repair but such cost shall not exceed the value shown on the Coverage Summary page forming part of this policy,

The Insurer's liability under this endorsement for loss or damage to the described off road vehicle shall be reduced by the amount payable therefor under The Manitoba Public Insurance Corporation Act had this policy not been issued.

## **EXCLUDING OPERATION OF ATTACHED MACHINERY ENDORSEMENT**

In consideration of the premium charged it is hereby understood and agreed that the Insurer shall not be liable under Section A and B of the Policy to which this endorsement is attached for loss or damage arising from the ownership, use or operation of machinery or apparatus, including it's equipment, mounted on or attached to the off road vehicle, while at the site of the use or operation of such machinery or apparatus, wherever applicable.

If more than one off road vehicle is insured under this Policy, this endorsement shall apply only to the off road vehicle(s) for which this endorsement is designated in the policy,

## **S.E.F. 44—Family Protection Coverage**

I. DEFINITIONS {words and terms defined here will appear in quotation marks throughout this Endorsement, except the word off road vehicle).  
As used in this Endorsement:

1. "off road vehicle" means a motor-driven land vehicle for which motor vehicle liability insurance would be required by law in Manitoba. The words "the described off road vehicle", "newly acquired off road vehicle" and "temporary substitute off road vehicle" as used in this Endorsement have the same meanings as defined in the General Definitions of this policy.
2. (a) "dependent relative" means a person who is principally dependent on you or your "spouse" for financial support and is:
  - (i) less than 18 years of age and living with you or in full time attendance at an educational institution away from your home; or
  - (ii) 18 years of age or older and in your care because of a physical or mental handicap; or

- (iii) 18 years of age or older and in full time attendance at an educational institution; or
  - (iv) your parent or relative, or the parent or relative of your "spouse", who is living with you.
- (b) The following are included in the definition of "dependent relative", but only if the person injured or killed is not an "insured person" as defined in the "Family Protection Coverage" of any policy of insurance or does not own an off road vehicle which is licenced in any jurisdiction of Canada where "Family Protection Coverage" is available:
- (i) any relative of yours or your "spouse" who lives with you, and
  - (ii) any other relative of yours or your "spouse" while an "occupant" of "the described off road vehicle", a "newly acquired off road vehicle" or a "temporary substitute off road vehicle".
- (c) If you are an "organization", the words "you" and "your" in this definition applies to your officer, employee or partner for whose regular use "the described off road vehicle" is provided.
3. "eligible claimant" means:
- (a) the "insured person" sustaining bodily injury; and
  - (b) any other person who, according to the law of the province, territory, or state where the accident occurs, has the right to bring an action against the "underinsured motorist" for damages because of bodily injury to or death of an "insured person".
4. "Family Protection Coverage" means the insurance provided by this Endorsement and any similar kind of coverage under any insurance plan or contract whether or not described as Family Protection Coverage, Family Security or Underinsured Motorist Coverage.
5. "insured person" means:
- (a) you and your "spouse", if your "spouse" is living with you, and any "dependent relative" of either, while
    - (i) an "occupant" of "the described off road vehicle", a "newly acquired off road vehicle" or a "temporary substitute off road vehicle";
    - (ii) an "occupant" of any other off road vehicle, but this does not include the person who owns the other off road vehicle or leases it for more than 30 days, unless "Family Protection Coverage" is in force in respect of such other off road vehicle, or
    - (iii) not an "occupant" of an off road vehicle who is hit by an off road vehicle,
  - (b) If you are an "organization", "insured person" means your officer, employee or partner for whose regular use "the described off road vehicle" is provided and his or her "spouse", if living with such officer, employee or partner, and any "dependent relative" of either while:
    - (i) an "occupant" of "the described off road vehicle", a "newly acquired off road vehicle" or a "temporary substitute off road vehicle";
    - (ii) an occupant of an off road vehicle other than an off road vehicle referred to in (b)(i) above leased by you for more than 30 days or owned by you and provided "Family Protection Coverage" is in force or such other off road vehicle, or
    - (iii) not an occupant of an off road vehicle who is hit by an off road vehicle.
- If this policy has been endorsed to grant permission to rent or lease "the described off road vehicle" for more than 30 days, the words "you" or "your" in this Endorsement will refer to the lessee named on the Coverage Summary page.
6. "Limit of Family Protection Coverage" means the limit shown for this Endorsement on the Coverage Summary page. If no limit is shown, then the Section A limit applicable to "the described off road vehicle" to which this Endorsement applies is the "Limit of Family Protection Coverage." If a policy condition is breached and the Section A limit of this policy is reduced to the minimum limits of the jurisdiction where the accident took place, then the "Limit of Family Protection Coverage" will also be reduced to that same limit.
7. "limits of motor vehicle liability insurance" means the amount or amounts shown on a motor vehicle liability policy of insurance as the insurer's limit of liability with respect to liability claims, even if those limits have been reduced by the payment of claims or otherwise. However, if a policy condition is breached and the liability coverage under a motor vehicle liability policy is reduced to the statutory minimum limits of the jurisdiction where the accident took place, then those minimum limits will apply as the "limits of motor vehicle liability insurance." The words "limit of motor vehicle liability insurance" also means the value of all bonds, cash deposits or other financial guarantees which the law requires instead of motor vehicle liability insurance.
8. "spouse" means your legal husband or wife. It also means someone who has been living continuously with you as your husband or wife for a period of at least two years or, if a child was born of your union, a period of at least one year.
9. "underinsured motorist" means
- (a) the known owner or known driver of an off road vehicle where the combined total "limits of motor vehicle liability insurance" for such owner and driver is less than the "Limit of Family Protection Coverage" and
  - (b) the known owner or known driver of an "uninsured off road vehicle"; provided that:
    - (i) where an "eligible claimant" is entitled to recover damages from an "underinsured motorist" and the owner or operator of any other off road vehicle, then for the purpose of 1.9(a) above and for the purpose of determining our maximum liability under clause III of this Endorsement ("Limit of Coverage Under This Endorsement") the "limits of motor vehicle liability insurance" shall be considered to be the total of all "limits of motor vehicle liability insurance" applicable to such "underinsured motorist" and such owner or operator of any other off road vehicle; and
    - (ii) where an "eligible claimant" is entitled to recover damages from a known owner or known driver of an "uninsured off road vehicle", then for the purpose of 1.9(a) and 1.9(b) above and for the purpose of determining our maximum liability under clause III of this Endorsement ("Limit of Coverage Under This Endorsement"), any uninsured motorist coverage or unsatisfied judgment fund available to the "eligible claimant" shall be considered to be motor vehicle liability insurance and the maximum amount payable under such coverage or fund shall be considered to be the "limits of motor vehicle liability insurance,"
- The term "underinsured motorist" does not include an owner or driver of an off road vehicle whose identity cannot be established.
10. "uninsured off road vehicle" means an off road vehicle for which neither the owner nor driver has applicable and collectible bodily injury liability insurance for its ownership use or operation, but does not include an off road vehicle owned by or registered in the name of:
- (a) the person or persons named as Insured on the Coverage Summary page or anyone living with such person or persons; or
  - (b) the governments of Canada or the United States of America or any political subdivision thereof or any agency or corporation owned or controlled by any of them; or
  - (c) any person or company who is an authorized selfinsurer within the meaning of a financial or safety responsibility law; or

- (d) any person or company who has filed a bond, or otherwise given proof of financial responsibility, with respect to his liability for the ownership, use or operation of off road vehicles.

#### INSURING AGREEMENT

If a premium is shown for this Endorsement on the Coverage Summary page and you follow the conditions required by this policy, we agree to indemnify each "eligible claimant" for the amount that he or she is legally entitled to recover from an "underinsured motorist" as compensatory damages for bodily injury or death sustained by an "insured person" by accident arising out of the use or operation of an off road vehicle.

#### III. LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

1. Our maximum liability under this Endorsement for any one occurrence, regardless of the number of "eligible claimants" or the number of "insured persons" injured or killed or the number of off road vehicles insured under this policy or the number of claims which arise from the occurrence, shall be the amount by which the "Limit of Family Protection Coverage" exceeds the total of all "limits of motor vehicle liability insurance" of the "underinsured motorist" and all "limits of motor vehicle liability insurance" of any person jointly liable with the "underinsured motorist". If the total value of the claims of all eligible claimants" exceeds our maximum liability under this Endorsement, the payment to each "eligible claimant" will be reduced so that the total amount we pay does not exceed our maximum liability under this Endorsement.
2. Where the coverage under this Endorsement applies as excess, then our maximum liability will be the amount determined in III I. above, less the amounts available to "eligible claimants" under any first loss insurance referred to in clause VII. (Multiple Coverages).

#### IV. AMOUNT PAYABLE PER ELIGIBLE CLAIMANT

1. The amount payable under this Endorsement to any "eligible claimant" shall be arrived at by determining the amount of damages the "eligible claimant" is legally entitled to recover from the "underinsured motorist" and deducting from that amount the aggregate of the amounts referred to in paragraph 2 below, but in no event shall the total of all payments to "eligible claimants" exceed our maximum liability as set out in clause III. (Limit of Coverage Under This Endorsement).
2. The amount payable under this Endorsement to any "eligible claimant" is excess to any amount actually recovered by the "eligible claimant" from any source, other than money payable on death under a Life Insurance policy, and is excess to any amounts the "eligible claimant" is entitled to recover, whether such entitlement is pursued or not, from:
  - (a) the insurers of the "underinsured motorist" and from bonds, cash deposits or other financial guarantees of the "underinsured motorist";
  - (b) the insurers of any person jointly liable with the "underinsured motorist" for damages sustained by an "insured person";
  - (c) the Societe de L'Assurance Automobile du Quebec, the Ontario Motorist Protection Plan, the Personal Injury Protection Plan (Manitoba), the Personal Injury Protection Plan (Manitoba) or any similar plan;
  - (d) any unsatisfied judgment fund or similar plan which would have been payable had this Coverage not been in effect;
  - (e) the uninsured motorist coverage of a motor vehicle liability policy;
  - (f) any off road vehicle accident benefits plan in the province, territory or state where the accident took place;
  - (g) any policy of insurance that provides disability, loss of income, medical expense or rehabilitation benefits;
  - (h) any policy of insurance, other than Life Insurance, that provides death benefits;
  - (i) any Workers' Compensation Act or similar law applicable to the injury or death which occurred;
  - (j) any medical, surgical, dental or hospitalization plan or law;
  - (k) any other "Family Protection Coverage" on a Motor Vehicle liability policy.
3. If there is more than one "eligible claimant" and the total of all the amounts payable to them exceeds our limit of liability as set out in clause III - Limit of Coverage Under This Endorsement, we may pay to each "eligible claimant" a pro rata proportion of the amount that would otherwise be paid to them. If an "eligible claimant" gives actual notice of a claim after payments have been made to other "eligible claimants", our maximum liability will be the amount determined in Clause III- Limit of Coverage Under This Endorsement, less the amounts paid to the prior "eligible claimants."

#### V. DETERMINATION OF THE AMOUNTS AN "ELIGIBLE CLAIMANT" IS LEGALLY ENTITLED TO RECOVER

1. An "eligible claimant" must bring an action to judgment against the alleged responsible parties, In determining the amount an "eligible claimant" is legally entitled to recover from the alleged "underinsured motorist" and all other alleged responsible parties, we will be bound by the court's decision on the question of liability in accordance with the law of the place where the accident occurred; but the question of the amount of the damages (quantum) shall be decided in accordance with the law of Manitoba, regardless of where the accident occurred. No findings of a court with respect to either liability or damages will be binding on us unless we are given a reasonable opportunity to participate in the proceedings as a party.
2. If, before court action or judgment, the "eligible claimant" receives a settlement offer from the alleged "underinsured motorist" or any other alleged responsible parties, the "eligible claimant" must notify us of such settlement offer and may, with our written consent, accept the offer.
3. Once the "eligible claimant" has obtained judgment against or concluded a settlement with the "underinsured motorist" or any other responsible parties, the decision as to whether the "eligible claimant" is entitled to payment under this Endorsement and, if entitled, the amount of such payment, shall be reached by agreement between the "eligible claimant" and us. If we cannot agree whether the "eligible claimant" is entitled to payment under this Endorsement or, if entitled, the amount of payment, these issues, or either one of them, shall be determined by arbitration of some person to be chosen by both the "eligible claimant" and us. If we cannot agree on one person, then the "eligible claimant" and us will each choose an arbitrator and the two arbitrators will choose a third person. The provisions of The Arbitration Act (Manitoba) shall apply to the arbitration, The decision resulting from the arbitration will be binding on the "eligible claimant" and on us.

4. In determining any amounts an "eligible claimant" is legally entitled to recover, no amount shall be included for:
  - (a) any pre-judgment interest accumulating prior to the time the "eligible claimant" gives us notice of the accident as required by this Endorsement; or
  - (b) any punitive, exemplary, aggravated or other non-compensatory damages caused by the conduct of the "underinsured motorist" or any other person jointly liable with the "underinsured motorist", or
  - (c) any costs.

#### VI. PROCEDURES WHEN CLAIMING

1. Before we become liable for any payment, the following must be done:
  - (a) the "eligible claimant" must give us notice, in writing, of any accident involving injury to or the death of an "insured person". This notice must give all available particulars about the accident and about any claim that has been made because of the accident;
  - (b) the "eligible claimant" and the "insured person" must, if we ask, tell us about any insurance, other than life insurance, that may provide coverage for the "eligible claimant";
  - (c) the "eligible claimant" and the "insured person" must submit to an examination under oath and produce for examination at a time and place we may reasonably select, all documents in their possession or control that relate to matters in question, and allow extracts and copies of such documents to be made.
2. Where an "eligible claimant" commences a legal action against any other person owning or operating an off road vehicle involved in the accident, a copy of the Writ of Summons, Statement of Claim or other documents commencing action, must be delivered to us immediately in person or by registered mail.
3. Any suit against us for payment under this Endorsement must be started within 12 months from the date when the "eligible claimant" or his or her legal representative knew or should have known, that the amount (quantum) of the claims with respect to an "insured person" exceeded the statutory minimum limits for motor vehicle liability insurance in the province, territory or state in which the accident occurred. No action against us that is commenced within 2 years of the date of the accident shall be barred because of this provision.

#### VII. MULTIPLE COVERAGES

Where an "eligible claimant" is entitled to payment under "Family Protection Coverage" of more than one policy and:

1. the "insured person" is an "occupant" of an off road vehicle, the "Family Protection Coverage" on the off road vehicle in which the "insured person" is an "occupant" is first loss insurance and any other such insurance is excess;
2. the "insured person" is not an "occupant" of an off road vehicle, the "Family Protection Coverage" of any one policy in the name of the "insured person" is first loss insurance and any other such insurance is excess.

First loss insurance must be used up before any excess insurance is taken into consideration.

All first loss "Family Protection Coverage" shall be apportioned on a pro rata basis. In no event shall the aggregate payment under all first loss coverages be more than the highest coverage limit of any one of the first loss coverages.

All applicable excess "Family Protection Coverage" shall also be apportioned on a pro rata basis, but in no event shall the aggregate payment under all such insurances be more than the highest limit of coverage (as defined in Clause III 2.) of any one of the excess coverages.

#### VIII. LIMITATION WHERE COVERAGE APPLIES

The insurance under this Endorsement applies only where an "eligible claimant" is not prevented by the law of the province, territory or state where the accident occurs from suing the owner and/or operator of an off road vehicle for bodily injury or death arising from the ownership, use or operation of an off road vehicle,

#### IX. SUBROGATION

When a claim is made under this Endorsement, we assume the rights of the "eligible claimant" who makes the claim and we may take any action in that person's name against the "underinsured motorist" and any of the sources referred to in Clause IV. 2.

#### X. ASSIGNMENT OF RIGHTS OF ACTION

Where a payment is made under this Endorsement, the person receiving the payment assigns all rights of action to us whether judgment is obtained or not, and agrees to co-operate with us, at our expense, in any actions we may take.

#### XI. MISCELLANEOUS PROVISIONS

If more than one off road vehicle is insured under this policy, this Endorsement shall apply only to the off road vehicle(s) for which a premium for this Endorsement is shown on the Coverage Summary page. If this Endorsement applies to more than one off road vehicle, then the coverage provided will apply as if separate policies had been issued for each off road vehicle, subject always to the provision of Clause VII - Multiple Coverages.

### **REPLACEMENT COST COVERAGE ENDORSEMENT**

In the event that loss or damage to the vehicle insured under Section C exceeds the deductible amount shown on the Coverage of Summary page, the Insurer agrees to waive Statutory Condition 4 (5) the subsection which limits the Insurer's liability to the actual cash value of the vehicle, subject to all terms and conditions set out in this endorsement.

- a) If the loss or damage happens within the first twenty-four (24) months from the date the Insured took delivery of the vehicle, the Replacement Cost coverage provided by this endorsement will apply to all losses for which the vehicle is insured under Section C. If the loss or damage happens after the first twenty-four (24) month, all losses are limited to Actual Cash Value.

There are two ways a loss might be settled

1. by repair:

If the Insurer decided to repair the Insured vehicle the Insurer will be responsible only for the damage resulting from the insured loss. This includes any wear and tear (depreciation) charged on original or new parts. New equipment added after the purchase of the vehicle is also covered but it must have been added within one-hundred and twenty (120) days of the Insured took delivery of the vehicle. The Insured is responsible for any unrepaired damage of the vehicle that existed prior to the effective date of this endorsement.

2. by replacement:

If the Insurer decided the vehicle must be replaced because of its loss, the Insured will be so advised and instructed to obtain an estimate for the intended replacement vehicle. The Insurer's settlement will be determined as follows:

- i. The Insurer's cost to replace it with a new vehicle of the same make and model; or
- ii. The Insured's original purchase price plus an inflation factor of three percent (3%)

- b) If the Insured chose a different make or model and the loss or damage happens within the first twenty-four (24) months from the date the Insured took delivery of the vehicle, the Insurer will pay the lesser of:

- i. The Insurer's cost to replace the vehicle with a new vehicle of the same make and model as the insured vehicle; or
- ii. The Insurer's cost to replace the vehicle with a new vehicle of the Insured's choice that is not the same make or model; or
- iii. The original purchase price of the insured vehicle plus an inflation factor as follows:

Months from date the Insured took delivery of the vehicle	Inflation Protection Factor
12 or less	3.0%
13 to 24	6.0%

Conditions:

1. The Insured must obtain this coverage within 30 days after the date the Insured took delivery of the vehicle. Coverage under this Endorsement shall not be in effect for more than twenty-four (24) months after that delivery date. The vehicle must have been:
  - a) Bought new or,
  - b) Owned and used as a demonstrator by a vehicle dealership. The Insured must have bought the vehicle within twelve (12) months of the date the dealer first put it into service as a demonstrator.
2. It is up to the Insurer to decide if the insured vehicle is to be repaired or replaced.
3. Once the Insurer agrees that the Insured has coverage under this endorsement the Insured must supply the Insurer with proof in the form of an estimate that the insured vehicle is being repaired or replaced before the payment can be made. A replacement vehicle may include a more expensive new vehicle or a more expensive used vehicle when the Insurer is paying the original purchase price plus the inflation factor as indicated above.
4. If the Insured decides not to buy a replacing vehicle the Insurer will pay only what the Insurer would have paid had this Replacement Cost Coverage endorsement not been in effect.
5. If the Insured decides not to accept the Insurer's offer to repair the insured vehicle the Insurer will pay only what the Insurer would have paid had this Replacement Cost Coverage endorsement not been in effect.

The Vehicle obtained under this Replacement Cost Coverage endorsement is not automatically eligible for Replacement Cost Coverage when added to an existing policy or when a new policy of insurance is requested from the insurer. Eligibility for this Replacement Cost Coverage endorsement for the newly purchased vehicle will be determined by guidelines in place at the time that coverage is requested from the Insurer.

## Rider Plus Endorsement

### Section C – LOSS OR DAMAGE TO INSURED OFF ROAD VEHICLE, ADDITIONAL AGREEMENTS OF INSURER

Section C, Loss or Damage to Insured Vehicle, **Equipment** Section d shall be amended to \$ 1,000

Section C, Loss or Damage to Insured Vehicle, **Section 3 Deck and Trailer** subsection (a) is amended to read \$ 5,000

**The following is added to Section C, Additional Agreements of Insurer:**

**Search and Rescue:**

The Insurer agrees to provide reimbursement of sums you are obligated to pay by reason of liability imposed upon you by law or statute in the event Search and Rescue is involved in an incident under the guidance of the Provincial Emergency Program or equivalent authority. Coverage is not provided as a result of an aircraft, automobile or marine incident. The limit is \$ 25,000 subject to the deductible clause shown in Section C. This section is subject to a catastrophe limit of \$ 100,000 for any one (1) incident, regardless of the number of policy holders involved in any one (1) incident.

**Lock Rekeying:** The Insurer will provide coverage for the vehicle(s) described in this policy to reimburse the cost to replace the keys or a coded key and tether for an immobilizer system and the cost to re-key or re-code the vehicle(s) described in this policy where they have been stolen.

This coverage is conditional on the following:

- (1) The Insured has, within 48 hours after discovery of the theft referred to, reported the theft to the policy;
- (2) The Insured advises the Insurer including the police case file number
- (3) The limit of liability under this section is limited to the lesser of \$ 1,000 in excess of the deductible amount shown applicable to Section C, Loss or Damage to Insured Vehicle

**Travel Protection:** we will reimburse you up to \$ 1,000 in additional expenses incurred as a result of an insured physical damage loss to the vehicle(s) insured under this policy. This covers additional living expenses including lodging, meals (not to exceed 7 days), telephone calls and transportation expenses for you to return home by the most direct route, as well as expenses incurred to bring the described vehicle back home.

**Liberalization Clause:**

If, after the issuance of this Policy and before its expiration, there be adopted and published for use by the Got Toys? policy any forms, endorsements or rules by which the insurance provided by this Policy could be extended or broadened without additional premium charge, either by endorsement or substitution of form, then, as to loss occurring after the effective date of such adoption and publication, such extended or broadened insurance shall apply to your benefit hereunder as though such endorsement or substitution of form had been made.

### LIMIT OF LIABILITY OR AMOUNT OF INSURANCE:

The insurance contract consists of this Declarations page as well as all coverage wordings, riders, or endorsements that are attached hereto.

### THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

The Insured is requested to read this policy, and if incorrect, return it immediately for alteration.

In the event of an occurrence likely to result in a claim under this insurance, immediate notice should be given to the Coverholder whose name and address appears above. All inquiries and disputes are also to be addressed to this Coverholder.

## IDENTIFICATION OF INSURER / ACTION AGAINST INSURER

This insurance has been effected in accordance with the authorization granted to the Coverholder by the Underwriting Members of the Syndicates whose definitive numbers and proportions are shown in the Table attached to Agreement No. **B0429BA1801387** (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155 rue Metcalfe, Suite 2220, Montreal, Quebec H3B 2V6.

### NOTICE

Any notice to the Underwriters may be validly given to the Coverholder.

In witness whereof this policy has been signed as authorized by the Underwriters, by **Oasis Outdoor Adventure & Sport Insurance Solutions Inc.**



Per.....

## NOTICE CONCERNING PERSONAL INFORMATION

### How we use your information

By purchasing insurance from certain Underwriters at Lloyd's, London ("Lloyd's"), a customer provides Lloyd's with his or her consent to the collection, use and disclosure of personal information. Consent is subject to the customer's understanding of the nature, purpose and consequences of the collection, use or disclosure of their personal information.

Information is collected and stored for the following purposes:

- the communication with Lloyd's policyholders
- the underwriting of policies
- the evaluation of claims
- the analysis of business results
- purposes required or authorized by law

### What personal information we collect about you

We collect, process and store the following personal information about you:

- Name
- Address including postal code and country
- Policy number
- Claim number
- Credit card details
- Bank account details

We also collect information about you when you visit [www.lloyds.com](http://www.lloyds.com). Further details can be found on our online Privacy & Cookies policy at <http://www.lloyds.com/common/privacy-and-cookies-statement>.

We will not use your personal information for marketing purposes and we will not sell your personal information to other parties.

### Who we disclose your information to



For the purposes identified, personal information may be disclosed to Lloyd's related or affiliated organisations or companies, their agents/mandataires, and to certain non-related or unaffiliated organisations or companies, including service providers. These entities may be located outside Canada therefore a customer's information may be processed in a foreign jurisdiction (the United Kingdom and the European Union) and their information may be accessible to law enforcement and national security authorities of that jurisdiction.

**Disclosure without consent**

The following are reasonable grounds to permit the disclosure of personal information without the knowledge or consent of a customer:

- Detecting or suppressing fraud
- Investigating or preventing financial abuse
- For communication with the next of kin or authorized representative of an injured, ill or deceased individual
- Investigating a breach of an agreement or a contravention of the laws of Canada or a foreign jurisdiction
- Witness statement necessary to assess, process or settle insurance claims
- Information produced in the course of employment and the disclosure is consistent with the purpose it was produced for

**How to access your information and/or contact us**

To access and request correction or deletion of your information, or to obtain written information about Lloyd's policies and practices in respect of service providers located outside Canada, please contact the Ombudsman at [info@lloyds.ca](mailto:info@lloyds.ca). The Ombudsman will also answer customer's questions about the collection, use, disclosure or storage of their personal information by such Lloyd's service providers. Further information about Lloyd's personal information protection policy may be obtained from the customer's broker or by contacting Lloyd's on: 514 861 8361, 1 877 455 6937, or through [info@lloyds.ca](mailto:info@lloyds.ca).

10/15  
LMA1543C

**SERVICE OF SUIT CLAUSE (CANADA)**

**(Action against Insurer)**

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

**LMA5028**

**Sanction Limitation and Exclusion Clause**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100

**CANADIAN AUTOMOBILE INSURANCE SPECIFIC CONDITIONS ENDORSEMENT**

(for use in conjunction with LMA3115 Canadian Binding Authority Agreement and applies to all Canadian Automobile insurance business)

Attaching to and forming part of **Agreement Number: B0429BA1801387**

- a. The Coverholder shall set premiums only in accordance with the rates, terms and conditions that the Regulator(s) have approved for use by the Underwriters and as contained in the respective Lloyd's Automobile Rules and Rate Manuals;
- b. With respect to any insurance or proposed insurance, the Coverholder shall ensure that it complies with any underwriting practices that the Underwriters are required to adhere to by the Regulator(s) in respect of:-

- b.1 Forms of application, policy, endorsement or renewal or continuation certificate;
  - b.2 Grounds for declining to issue an insurance, refusing to renew an insurance, terminating an insurance, or refusing to provide or continue any coverage or endorsement in respect of an insurance;
  - b.3 Notice periods for non-renewal of an insurance or change of its terms;
  - b.4 Payments, or procedures for payment, of any claim or benefit under an insurance;
  - b.5 Procedures for dispute resolution;
- c. The Coverholder shall adhere to any applicable Requirements regarding the transfer of any insurance to any provincial Risk Sharing Plan or Plan de Répartition des Risques.

01/07/13  
LMA5032A

#### **SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW 1001

#### **LLOYD'S PRIVACY POLICY STATEMENT**

##### **UNDERWRITERS AT LLOYD'S, LONDON**

The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

##### **INFORMATION WE COLLECT**

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

##### **INFORMATION WE DISCLOSE**

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

##### **CONFIDENTIALITY AND SECURITY**

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

#### **RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION**

**You have a right to request access to or correction of your personal information that is in our possession.**

##### **CONTACTING US**

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker

who handled this insurance. We can provide a more detailed statement of our privacy practices upon request.

06/03  
LSW1135B



IDENTIFICATION OF INSURER / ACTION AGAINST INSURER  
Lloyd's Approved Coverholder ("the Coverholder"):  
**Oasis Outdoor Adventure & Sport Insurance Solutions Inc**

Where LLOYD'S UNDERWRITERS are subscribing insurers to the Policy, the following applies to them:

#### IDENTIFICATION OF INSURER / ACTION AGAINST INSURER

This insurance has been entered into in accordance with the authorization granted to the Coverholder by the Underwriting Members of the Syndicates whose definitive numbers and proportions are shown in the Table attached to the Agreement shown in the List of Subscribing Companies (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec H3B 2V6.

#### NOTICE

Any notice to the Underwriters may be validly given to the Coverholder.

07/05  
LSW1550

#### LLOYD'S UNDERWRITERS' POLICYHOLDERS' COMPLAINT PROTOCOL

Lloyd's strives to enhance your customer experience with us through superior service and innovative insurance products.

We have developed a formal complaint handling protocol in accordance with the Insurance Companies Act of Canada to ensure your concerns as our valued customer are addressed expeditiously by our representatives. This protocol will assist you in understanding the steps we will undertake to help resolve any dispute which may arise with our product or service. All complaints will be handled in a professional manner. All complaints will be investigated, acted upon, and responded to in writing or by telephone by a Lloyd's representative promptly after the receipt of the complaint. If you are not satisfied with our products or services, you can take the following steps to address the issue:

- Firstly, please contact the broker who arranged the insurance on your behalf about your concerns so that he or she may have the opportunity to help resolve the situation.
- If your broker is unable to help resolve your concerns, we ask that you provide us in writing an outline of your complaint along with the name of your broker and your policy number.

Please forward your complaint to:

**Lloyd's Underwriters**

Attention: Complaints Officer:

1155 rue Metcalfe, Suite 2220, Montréal (Québec) H3B 2V6

Tel: 1-877-455-6937 - Fax: (514) 861-0470

E-mail: [info@lloyds.ca](mailto:info@lloyds.ca)

Your complaint will be directed to the appropriate business contact for handling. They will write to you within two business days to acknowledge receipt of your complaint and to let you know when you can expect a full response. If need be, we will also engage internal staff in Lloyd's Policyholder and Market Assistance Department in London, England, who will respond directly to you, and in the last stages, they will issue a final letter of position on your complaint.

In the event that your concerns are still not addressed to your satisfaction, you have the right to continue your pursuit to have your complaint reviewed by the following organizations:

**General Insurance OmbudService (GIO):** assists in the resolution of conflicts between insurance customers and their insurance companies. The

GIO can be reached at:  
Toll free number: 1-877-225-0446  
[www.giocanada.org](http://www.giocanada.org)

**For Quebec clients:**

**Autorité des marchés financiers (AMF):** The regulation of insurance companies in Quebec is administered by the AMF. If you remain dissatisfied with the manner in which your complaint has been handled, or with the results of the complaint protocol, you may send your complaint to the AMF who will study your file and who may recommend mediation, if it deems this action appropriate and if both parties agree to it. The AMF can be reached at

Toll Free: 1-877-525-0337  
Québec: (418) 525-0337  
Montréal: (514) 395-0311  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

If you have a complaint specifically about Lloyd's Underwriters' complaints handling procedures you may contact the FCAC.

**Financial Consumer Agency of Canada (FCAC)** provides consumers with accurate and objective information about financial products and services, and informs Canadians of their rights and responsibilities when dealing with financial institutions. FCAC also ensures compliance with the federal consumer protection laws that apply to banks and federally incorporated trust, loan and insurance companies. The FCAC does not get involved in individual disputes. The FCAC can be reached at:

427 Laurier Avenue West, 6th Floor, Ottawa ON K1R 1B9  
Services in English: 1-866-461-FCAC (3222)  
Services in French: 1-866-461-ACFC (2232)  
[www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca)

09/14  
LMA1542F

## Code of Consumer Rights and Responsibilities

Insurers (including Lloyd's Underwriters), along with the brokers and agents who sell home, auto and business insurance are committed to safeguarding your rights both when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your insurer and the insurance laws of your province. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to your insurer. Your policy outlines other important responsibilities. Insurers and their distribution networks, and governments also have important roles to play in ensuring that your rights are protected.

### Right to Be Informed

You can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how insurers calculate price based on relevant facts. Under normal circumstances, insurers will advise an insurance customer or the customer's intermediary of changes to, or the cancellation of a policy within a reasonable prescribed period prior to the expiration of the policy, if the customer provides information required for determining renewal terms of the policy within the time prescribed, which could vary by province, but is usually 45 days prior to expiry of the policy.

You have the right to ask who is providing compensation to your broker or agent for the sale of your insurance. Your broker or agent will provide information detailing for you how he or she is paid, by whom, and in what ways.

You have a right to be told about insurers' compensation arrangements with their distribution networks. You have a right to ask the broker or agent with whom you deal for details of how and by whom it is being paid. Brokers and agents are committed to providing information relating to ownership, financing, and other relevant facts.

### Responsibility to Ask Questions and Share Information

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through one-on-one meetings with your broker or agent. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your broker or agent of any change in your circumstances.

### Right to Complaint Resolution

Insurers, their brokers and agents are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access Lloyd's Underwriters' complaint resolution process for Canada. Your agent or broker can provide you with information about how you can ensure that your complaint is heard and promptly handled. Consumers may also contact their respective provincial insurance regulator for information. Lloyd's is a member of an independent complaint resolution office, the General Insurance OmbudService.

**Responsibility to Resolve Disputes**

You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

**Right to Professional Service**

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

**Right to Privacy**

Because it is important for you to disclose any and all information required by an insurer to provide the insurance coverage that best suits you, you have the right to know that your information will be used for the purpose set out in the privacy statement made available to you by your broker, agent or insurance representative. This information will not be disclosed to anyone except as permitted by law. You should know that Lloyd's Underwriters are subject to Canada's privacy laws - with respect to their business in Canada.

10/12  
LMA1565C

**WAR AND CIVIL WAR EXCLUSION CLAUSE**

(Approved by Lloyd's Underwriters' Non-Marine Association)

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

NMA464

**CANCELLATION CLAUSE**

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrendering of this Contract of Insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than 45 days thereafter, the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the customary short rate proportion of any Minimum Premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the pro rata proportion of any Minimum Premium stipulated herein whichever is the greater.

Payment or tender of any Unearned Premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

20/4/61  
NMA1331

## NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)-CANADA

(For use with all Public Liability Policies except Personal, Farmers' and Storekeepers')

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; nor
- (b) to bodily injury or property damage with respect to which an Insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (c) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
  - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
  - (ii) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
  - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this policy:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
2. The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
3. The term "nuclear facility" means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;
  - (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

4. The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

01/4/96  
NMA1978a

## **BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION**

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

06/02/03  
NMA2962

### **STATUTORY CONDITIONS (Manitoba)**

#### **Misrepresentation**

1. If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

#### **Property of others**

2. The insurer is not liable for loss or damage to property owned by a person other than the insured unless
  - (a) otherwise specifically stated in the contract, or
  - (b) the interest of the insured in that property is stated in the contract.

#### **Change of interest**

3. The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

#### **Material change in risk**

4. (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is
  - (a) material to the risk, and
  - (b) within the control and knowledge of the insured.
- (2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.
- (3) If an insurer or its agent is notified of a change under subparagraph (1) of this condition, the insurer may
  - (a) terminate the contract in accordance with Statutory Condition 5,or
  - (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.
- (4) If the insured fails to pay an additional premium when required to do so under subparagraph (3) (b) of this condition, the contract is terminated at that time and Statutory Condition 5 (2) (a) applies in respect of the unearned portion of the premium.

#### **Termination of contract**

5. (1) The contract may be terminated
  - (a) by the insurer giving to the insured 15 days' notice of termination by registered 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 in the contract, and
  - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to 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 specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.
- (4) The 15-day period referred to in subparagraph (1) (a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

#### **Requirements after loss**

6. (1) On the happening of any loss or damage to insured property, the insured must, if the loss or damage is covered by the contract, in addition to observing the requirements of Statutory Condition 9,
  - (a) immediately give notice in writing to the insurer,
  - (b) deliver as soon as practicable to the insurer a proof of loss in respect of the loss or damage to the insured property verified by statutory declaration
    - (i) giving a complete inventory of that property and showing in detail quantities and costs of that property and particulars of the amount of loss claimed,
    - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
    - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
    - (iv) stating the amount of other insurances and the names of other insurers,
    - (v) stating the interest of the insured and of all others in that property with particulars of all liens, encumbrances and other charges on that property,
    - (vi) stating any changes in title, use, occupation, location, possession or exposure of the property since the contract was issued, and
    - (vii) stating the place where the insured property was at the time of loss,
  - (c) if required by the insurer, give a complete inventory of undamaged property showing in detail quantities and cost of that property, and
  - (d) if required by the insurer and if practicable,
    - (i) produce books of account and inventory lists,
    - (ii) furnish invoices and other vouchers verified by statutory declaration, and
    - (iii) furnish a copy of the written portion of any other relevant contract.
- (2) The evidence given, produced or furnished under subparagraph (1) (c) and (d) of this condition must not be considered proofs of loss within the meaning of Statutory Conditions 12 and 13.

#### **Fraud**

7. Any fraud or wilfully false statement in a statutory declaration in relation to the particulars required under Statutory Condition 6 invalidates the claim of the person who made the declaration.



### **Who may give notice and proof**

8. Notice of loss under Statutory Condition 6 (1) (a) may be given and the proof of loss under of Statutory Condition 6 (1) (b) may be made
- (a) by the agent of the insured if
    - (i) the insured is absent or unable to give the notice or make the proof, and
    - (ii) the absence or inability is satisfactorily accounted for, or
  - (b) by a person to whom any part of the insurance money is payable, if the insured refuses to do so, or in the circumstances described in clause (a) of this condition.

### **Salvage**

9. (1) In the event of loss or damage to insured property, the insured must take all reasonable steps to prevent further loss or damage to that property and to prevent loss or damage to other property insured under the contract, including, if necessary, removing the property to prevent loss or damage or further loss or damage to the property.
- (2) The insurer must contribute on a prorated basis towards any reasonable and proper expenses in connection with steps taken by the insured under subparagraph (1) of this condition.

### **Entry, control, abandonment**

10. After loss or damage to insured property, the insurer has
- (a) an immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and
  - (b) after the insured has secured the property, a further right of access and entry by accredited representatives sufficient to enable them to appraise or estimate the loss or damage, but
    - (i) without the insured's consent, the insurer is not entitled to the control or possession of the insured property, and
    - (ii) without the insurer's consent, there can be no abandonment to it of the insured property.

### **In case of disagreement**

11. (1) In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process set out in the *Insurance Act* whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.
- (2) There is no right to a dispute resolution process under this condition until
- (a) a specific demand is made for it in writing, and
  - (b) the proof of loss has been delivered to the insurer.

### **When loss payable**

12. Unless the contract provides for a shorter period, the loss is payable within 60 days after the proof of loss is completed in accordance with Statutory Condition 6 and delivered to the insurer.

### **Replacement**

13. (1) Unless a dispute resolution process has been initiated, the insurer, instead of making payment, may repair, rebuild or replace the insured property lost or damaged, on giving written notice of its intention to do so within 30 days after receiving the proof of loss.
- (2) If the insurer gives notice under subparagraph (1) of this condition, the insurer must begin to repair, rebuild or replace the property within 45 days after receiving the proof of loss and must proceed with all due diligence to complete the work within a reasonable time.

### **Notice**

14. (1) Written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to the insured's last known address as provided to the insurer by the insured.

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For the purpose of the *Insurance Companies Act* (Canada), this Canadian Policy was issued in the course of Lloyd's Underwriters' insurance business in Canada.

The business insured/reinsured herein meets the necessary conditions to qualify as, and is being transacted as, "insuring in Canada a risk" in accordance with Part XIII of the *Insurance Companies Act* (Canada).

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