



**REIMBURSEMENT SIDE AGREEMENT  
AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:**

**ACE INA INSURANCE**  
(hereinafter called the "Insurer")

**Werner Enterprises Canada Corporation**  
(hereinafter called the "Insured")

In consideration of the premium charged, the Insured agrees to reimburse the Insurer in the sum of USD\$1,000,000 or the actual amount of the loss or damage, whichever is the lesser, in respect of bodily injury to or death of any person arising out of each and every accident with respect to which indemnity is provided under the Liability Section of **Policy No. CAC425902**.

It is understood and agreed that upon the occurrence of an accident involving bodily injury to or death of any person

- (A) Irrespective of the amount of loss, notice thereof shall be given to the Insurer in accordance with the "Requirements Where Loss or Damage to Persons or Property" of the Statutory conditions of the policy;
- (B) The Insurer shall investigate such accidents and negotiate and pay resulting claims or judgments arising therefrom and the Insured shall reimburse the Insurer upon demand for any amount up to the extent herein provided;
- (C) The limit of the Insured's liability for repayment hereunder shall be the amount stated above applying to each accident regardless of the number of claims arising therefrom.

This agreement shall apply to **ALL VEHICLES** of the schedule filed with the Insurer and form part of Policy No. CAC425902.

Any natural person, judicial or corporate entity listed as designated Insured shall be bound by the terms and conditions of the agreement and its consequent collateral obligations.

In the event the Contract of Insurance expires at its natural date or is cancelled, the Insured will continue to abide by the terms of this agreement until all claims are honored.

In witness whereof, the parties declare themselves to be satisfied with the terms and conditions of this agreement, having read and approved it, and have signed.

This endorsement shall be effective from August 01, 2014.

**ACE INA INSURANCE**

**TITLE: AUTOMOBILE UNDERWRITING MANAGER**

**PER:**

*Maxine Cook*

**DATED: August 22, 2014**

**TITLE: \_\_\_\_\_**

**PER: \_\_\_\_\_**

**DATED: \_\_\_\_\_**



**ACE INA Insurance**  
**Assurance ACE INA**  
 1400 - 25 York Street  
 Toronto, Ontario  
 M5J 2V5

## Certificate of Automobile Insurance (Ontario)

This is your Certificate of Automobile Insurance. Contact your Broker/Agent with any questions or if you require clarification regarding your coverage choices.  
 All times are local times at the Named Insured's postal address shown on this Certificate.

Policy Number CAC425902 ✓	Policy Effective Date 12:01 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM 2014 August 01	Policy Expiry Date 12:01 a.m. 2015 August 01
Date Prepared	Broker/Agent BFL CANADA Risk and Insurance Services Inc., Toronto, ON	Telephone Number
Named Insured Werner Enterprises Canada Corporation ✓ 10862 Steeles Avenue Milton, ON L9T 2X8		Lessor (if applicable)

<b>DESCRIBED AUTOMOBILES</b>	Automobile # _____	Automobile # _____
	ALL VEHICLES OWNED, REGISTERED, LICENSED, LEASED TO THE NAMED INSURED	
	Model Year and Make	
	Model and Body Type	
	Serial No./V.I.N.	
	Cylinders/C.C.	
Purchase Price/List Price New		

<b>INSURANCE COVERAGES</b>	Automobile # _____	Automobile # _____
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Liability	Limit	Premium	Premium for Occasional Driver	Limit	Premium	Premium for Occasional Driver
Bodily Injury	USD\$5,000,000 ✓	\$INCL.	\$ _____	\$ _____	\$ _____	\$ _____
Property Damage		\$INCL.	\$ _____	\$ _____	\$ _____	\$ _____
Accident Benefits (Standard Benefits)	As stated in Section 4 of Policy	\$ _____	\$ _____	As stated in Section 4 of Policy	\$ _____	\$ _____

Optional Increased Accident Benefits	Limit	Premium	Premium for Occasional Driver	Limit	Premium	Premium for Occasional Driver
Income Replacement (\$600/\$800/\$1,000)	(up to \$ _____ per week)	\$ _____	\$ _____	(up to \$ _____ per week)	\$ _____	\$ _____
Caregiver, Housekeeping & Home Maintenance	As Stated in Section 4 of Policy	\$ _____	\$ _____	As Stated in Section 4 of Policy	\$ _____	\$ _____
Medical & Rehabilitation (\$100,000)		\$ _____	\$ _____		\$ _____	\$ _____
Attendant Care (\$72,000)		\$ _____	\$ _____		\$ _____	\$ _____
Medical, Rehabilitation (\$1,100,000) & Attendant Care (\$1,072,000)		\$ _____	\$ _____		\$ _____	\$ _____
Death & Funeral		\$ _____	\$ _____		\$ _____	\$ _____
Dependant Care		\$ _____	\$ _____		\$ _____	\$ _____
Indexation Benefit (Consumer Price Index)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Uninsured Automobile	As stated in Section 5 of Policy	\$INCL.	\$ _____	As stated in Section 5 of Policy	\$ _____	\$ _____
Direct Compensation – Property Damage*	Deductible	Premium	Premium for Occasional Driver	Deductible	Premium	Premium for Occasional Driver
	USD\$1,000,000 ✓	\$INCL.	\$ _____	\$ _____	\$ _____	\$ _____
Loss or Damage*	Deductible	Premium	Premium for Occasional Driver	Deductible	Premium	Premium for Occasional Driver
Specified Perils (excluding Collision or Upset)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Comprehensive (excluding Collision or Upset)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Collision or Upset	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
All Perils	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

\*\*\*This policy contains a partial payment of loss clause. A deductible applies for each claim except as stated in your policy.



This is a brief explanation of the insurance outlined in this Certificate.

### Liability

Provides coverage for you or other insured persons if someone else is killed or injured or their property is damaged in an automobile incident. It will pay for legitimate claims against you or other insured persons up to the limit of your coverage, and the cost of settling claims.

### Accident Benefits

Your insurance company is obligated to explain details of Accident Benefits coverage to you.

Provides benefits that you and other insured persons are entitled to receive if injured or killed in an automobile accident. These benefits include: income replacement for persons who have lost income; payments to non-earners who suffer complete inability to carry on a normal life; payment of medical, rehabilitation and attendant care expenses; payment of certain other expenses; payment of funeral expenses and payments to survivors of a person who is killed. You may also purchase optional benefits to increase the standard level of benefits provided in the policy. The optional benefits your insurance company must offer are: increased income replacement; caregiver, housekeeping and home maintenance; increased medical and rehabilitation; increased attendant care; increased medical, rehabilitation and attendant care; increased death and funeral; dependant care; and an indexation benefit.

### Uninsured Automobile

Provides coverage if you or other insured persons are injured or killed by an uninsured motorist or by a hit-and-run driver. It covers damage to your automobile and its contents caused by an identified uninsured motorist, subject to a deductible.

### Direct Compensation – Property Damage

Provides coverage in Ontario, under certain conditions, for damage to your automobile and to property it is carrying, when another motorist is responsible. It is called Direct Compensation because you will collect from us, your insurance company, even though you are not at fault for the accident. There may be a deductible amount, and this amount is either paid by you toward the cost of repairs or is deducted from the loss settlement. Higher deductibles may reduce your premium.

### Loss or Damage

Provides a selection of optional coverage for your own automobile. Payments cover direct and accidental loss of, or damage to, a described automobile and its equipment. There is usually a deductible amount indicated for each coverage and this amount is either paid by you toward the cost of repairs or is deducted from the loss settlement. Higher deductibles may reduce your premium. There are four types of coverages:

- **Specified Perils:** Covers the described automobile against loss or damage caused by certain specific perils. They are: fire; theft or attempted theft; lightning; windstorm; hail or rising water; earthquake; explosion; riot or civil disturbance; falling or forced landing of aircraft or parts of aircraft; or the stranding; sinking; burning; derailment or collision of any kind of transport in; or upon which the described automobile is being transported.
- **Comprehensive:** Covers a described automobile against loss or damage other than those covered by Collision or Upset, including perils listed under Specified Perils, falling or flying objects, missiles and vandalism.
- **Collision or Upset:** Covers damage when a described automobile is involved in a collision with another object or tips over.
- **All Perils:** Combines the Collision or Upset and Comprehensive coverages.

**Warning:** The Insurance Act provides that where (a) an Applicant for a contract, (i) gives false particulars of the described automobile 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; 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, for other than such statutory accident benefits as are set out in the Statutory Accident Benefits Schedule, is invalid and the right of the Insured to recover indemnity is forfeited.

### Warning – Offences

It is an offence under the Insurance Act to knowingly make a false or misleading statement or representation to an Insurer in connection with the person's entitlement to a benefit under a contract of insurance, or to wilfully fail to inform the Insurer of a material change in circumstances within 14 days, in connection with such entitlement. The offence is punishable on conviction by a maximum fine of \$250,000 for the first offence and a maximum fine of \$500,000 for any subsequent convictions.

It is an offence under the federal Criminal Code for anyone, to knowingly make or use a false document with the intent it be acted on as genuine and the offence is punishable, on conviction, by a maximum of 10 years imprisonment.

It is an offence under the federal Criminal Code for anyone, by deceit, falsehood or other dishonest act, to defraud or to attempt to defraud an insurance company. The offence is punishable, on conviction, by a maximum of 10 years imprisonment for cases involving an amount over \$5,000 or otherwise a maximum of 2 years imprisonment.

This Certificate contains important information about your automobile insurance.



## ENDORSEMENT SCHEDULE

<b>Named Insured</b> Werner Enterprises Canada Corporation			<b>Endorsement Number</b>
<b>Policy Symbol</b>	<b>Policy Number</b> CAC425902	<b>Policy Period</b> August 01, 2014 to August 01, 2015	<b>Effective Date of Endorsement</b> August 01, 2014
<b>Issued By</b> ACE INA Insurance/Assurance ACE INA			
<b>Broker</b> BFL CANADA Risk and Insurance Services Inc., Toronto ON			

The following endorsements are made part of the Policy at its inception:

END'T	FORM#	Name
1 ✓	OPCF 5	Permission To Rent Or Lease Automobiles and Extending Coverage to the Specified Lessee(s)
2 ✓	OPCF 8	Property Damage Reimbursement
3 ✓		US Currency Clause Endorsement

Except as otherwise provided in this change form, all limits, terms, conditions, provisions, definitions and exclusions of the Policy shall have full force and effect.



**OPCF NO. 5**  
**PERMISSION TO RENT OR LEASE AUTOMOBILES AND**  
**EXTENDING COVERAGE TO THE SPECIFIED LESSEE(S)**

<b>Named Insured</b> Werner Enterprises Canada Corporation			<b>Endorsement Number</b> 1
<b>Policy Symbol</b>	<b>Policy Number</b> CAC425902	<b>Policy Period</b> August 01, 2014 to August 01, 2015	<b>Effective Date of Endorsement</b> August 01, 2014
<b>Issued By</b> ACE INA Insurance/Assurance ACE INA			
<b>Broker</b> BFL CANADA Risk and Insurance Services Inc., Toronto ON			

- ☒ This change applies only to automobile(s) number **AS KNOWN TO COMPANY** indicated on your Certificate of Automobile Insurance.
- ☐ See your Certificate of Automobile Insurance for which automobile(s) this change applies to.

**1. Purpose of This Change**

This change is part of your policy.

• **Lessor**

It permits the lessor to rent or lease automobile(s) to the lessee who has completed the Ontario Application for Automobile Insurance – Owner's Form (OAF 1). For the purposes of s. 267.12 (1) (a) of the *Insurance Act* (Ontario), the policy shall be deemed to have been issued only to the lessee of the automobile, and not to the lessor.

• **Lessee**

It provides coverage to the lessee as if the lessee were the named insured, and to every other person who uses or operates the automobile with the lessee's consent. The coverage will not exceed the limits and amounts shown on the Certificate of Automobile Insurance.

**2. Changes to Your Policy**

2.1 In the following Sections of your policy, the word "you" will include the lessee:

- Section 1, "Introduction", except in 1.4.3 where "you" means the owner, and in 1.6.2 and 1.6.3 and where "you" means the lessee;
- Section 3, "Liability Coverage," except in 3.5.1 where "you" means the lessee;
- Section 6, "Direct Compensation – Property Damage Coverage;" and
- Section 7, "Loss or Damage Coverages (Optional)," except in 7.4.3 and 7.4.4 where "you" means the lessee.

2.2 In the following Sections of your policy, the word "you" means the lessee:

- Section 2, "What Automobiles Are Covered,"
- Section 4, "Accident Benefits Coverage," and
- Section 5, "Uninsured Automobile Coverage."

2.3 In Section 1.8.2 of your policy, "Excluded Drivers and Driving Without Permission," "owner" means the lessee.

2.4 Section 1.8.3 of your policy, "Rented or Leased Auto," is changed to the following:

Except for certain Accident Benefits coverage, there is no coverage under this policy if the automobile is rented or leased to someone other than the lessee named in the policy. However, if an insured person is using the automobile for an employer's business and is paid for using it, we won't consider that renting or leasing.

2.5 Section 1.8.4 of your policy is changed to the following:

1.8.4 Garage Workers Not Covered

No person who sells, repairs, maintains, stores, services, or parks automobiles as part of a business, is covered by this policy while involved in conducting that business, unless the person leases from the lessor the automobile involved in an incident or is the employee or partner of the lessee.

2.6 In section 2.2.1 of your policy, "Newly Acquired Automobiles," the words "that you acquire as owner" will mean leased by the lessee from the lessor.



**3. Changes to the Application**

Item 11 of the Ontario Application for Automobile Insurance – Owner's Form (OAF 1) is changed to the following:

Where

1. the lessee as applicant for a contract,
  - (i) gives false particulars of the described automobile 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; or
2. the lessee contravenes a term of the contract or commits a fraud; or
3. the lessee wilfully makes a false statement in respect of a claim under the contract, a claim by the lessee, for other than such statutory accident benefits as are set out in the Statutory Accident Benefits Schedule, is invalid and the right of the lessee to recover indemnity is forfeited.

Where

1. the lessor contravenes a term of the contract or commits a fraud; or
2. the lessor wilfully makes a false statement in respect of a claim under the contract, a claim by the lessor is invalid and the right of the lessor to recover indemnity is forfeited.

**All other terms and conditions of your policy remain the same.**



**OPCF NO. 8  
PROPERTY DAMAGE REIMBURSEMENT**

Named Insured Werner Enterprises Canada Corporation			Endorsement Number 2
Policy Symbol	Policy Number CAC425902	Policy Period August 01, 2014 to August 01, 2015	Effective Date of Endorsement August 01, 2014
Issued By ACE INA Insurance/Assurance ACE INA			
Broker BFL CANADA Risk and Insurance Services Inc., Toronto ON			

- ☒ This change applies only to automobile(s) number **AS KNOWN TO COMPANY** indicated on your Certificate of Automobile Insurance.
- ☐ See your Certificate of Automobile Insurance for which automobile(s) this change applies to.

**Please sign and return this form. Keep a copy for your records.**

**1. Purpose of This Change**

This change is part of your policy. It makes you responsible for part or all of any loss or damage to other people's property covered under Section 3 of your policy, "Liability Coverage."

**2. What You Agree To**

- 2.1** In return for the premium charged, you agree to reimburse us **USD\$1,000,000** or the actual amount of the loss or damage, whichever is less, for loss or damage to property resulting from each incident covered under Section 3 of your policy, "Liability Coverage."
- 2.2** For each incident involving loss or damage to property of others:
- You agree to notify us as stated in section 3.4 of your policy, "Your and Other Insured Persons' Responsibilities," regardless of the amount of loss or damage;
  - We will investigate any incidents and negotiate and pay resulting claims or judgments; and
  - The amount you have to reimburse us for each incident is limited to the amount in 2.1 above regardless of the number of claims arising from the incident.

**All other terms and conditions of your policy remain the same.**

Date:

YYYY MM DD

\_\_\_\_\_  
Signature of Insured





## U.S. CURRENCY CLAUSE

<b>Named Insured</b> Werner Enterprises Canada Corporation			<b>Endorsement Number</b> 3
<b>Policy Symbol</b>	<b>Policy Number</b> CAC425902	<b>Policy Period</b> August 01, 2014 to August 01, 2015	<b>Effective Date of Endorsement</b> August 01, 2014
<b>Issued By</b> ACE INA Insurance/Assurance ACE INA			
<b>Broker</b> BFL CANADA Risk and Insurance Services Inc., Toronto ON			

It is agreed that Section 1.2 of the OAP 1, Where You Are Covered, is hereby amended from "All of the dollar limits described in this policy are in Canadian funds" to:

✓ "All Premiums, Commissions, Deductibles, Limits of Liability, claims payments and any other amounts expressed anywhere in this Policy shall be deemed to be in the currency of the United States of America."

**Except as otherwise provided in this change form, all limits, terms, conditions, provisions, definitions and exclusions of the Policy shall have full force and effect.**

## SECTION - A EXCESS THIRD PARTY LIABILITY

IN CONSIDERATION of the payment of the premium specified and of the statements contained in the application and subject to the limits, special provisions and conditions herein stated and subject, insofar as applicable, to the terms, conditions, general provisions, definitions and exclusions set forth in the first loss policy described in Item 4 of the application, which said terms, conditions, general provisions, definitions and exclusions are by reference incorporated herein, the Excess Insurer agrees to indemnify the Insured under the first loss motor vehicle liability insurance against liability imposed by law upon the insured for an amount or amounts in excess of the limit(s) of the first loss insurance and any underlying excess insurance for loss or damage arising from the ownership, use or operation of the automobile(s) covered under such first loss insurance and underlying excess insurance resulting from bodily injury to or death of any person or damage to property.

### SPECIAL PROVISIONS

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

The phrase "ultimate net loss" used in this policy means the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurance excepting the first loss and underlying policy(ies) and shall exclude all expenses and costs.

2. The word "costs" used in this policy means interest accruing after entry of judgment upon that part of the judgment which is within the limit of the Excess Insurer's liability, investigation, adjustment and legal expenses, excluding, however, all office expenses of the Insured, all expenses of salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured.

3. The Excess Insurer agrees to pay costs incurred by or on behalf of the Insured where these costs are not covered by the first loss or underlying excess policy(ies), on the following basis:

- (a) should any claim or claims become adjustable prior to the commencement of trial for not more than the first loss and underlying excess policy limit(s) then no costs shall be payable by the Excess Insurer;
- (b) should, however, the amount for which said claim or claims may be so adjustable exceed the first loss and underlying excess policy(ies) limit(s), then the Excess Insurer shall contribute to the costs incurred on behalf of the Insured in the ratio that the Excess Insurer's proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss;
- (c) in the event that the Insured or the Insurer under the first loss policy elects not to appeal a judgment in excess of the limit(s) of the first loss and underlying excess policy(ies), the Excess Insurer may elect to conduct such appeal and shall be liable for the taxable costs and interest incidental thereto; but in no event shall the total liability of the Excess Insurer exceed the limit of liability stated in Item 4 of the application, plus the expense of such appeal.

4. All recoveries or payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and the Excess Insurer, provided always that nothing in this policy shall be construed to mean that losses under this policy

are not payable until the Insured's ultimate net loss has finally been ascertained.

5. Liability to pay under this policy shall not attach unless and until the first loss and underlying excess insurer(s) shall have admitted liability for the first loss and underlying excess limit(s) or unless and until the Insured has by final judgment been adjudged to pay an amount which exceeds such first loss and underlying excess limit(s) and then only after the first loss and underlying excess insurer(s) has/have paid or has/have been held liable to pay the full amount of the first loss and underlying excess limit(s).
6. Neither the inclusion of more than one entity in the name of the Insured nor the addition of any additional Insureds under this policy shall in any way operate to increase the limit of liability set forth in Item 4 of the application.
7. Notwithstanding Statutory Condition 3(1) or any similar condition in a first loss automobile policy issued to the Insured by the Insurance Corporation of British Columbia, the Insured is only required to give the Excess Insurer notice of any accident if the claim or claims possibly arising therefrom appear likely to exceed the limit of the first loss policy, in which case immediate written notice thereof must be given to the person or firm mentioned in Item 5 of the application.
8. Nothing in Statutory Condition 8 shall in any way affect the operation of the statutory provision in the Insurance Act providing that where the contract or contracts designated in the excess contract terminates or is terminated, the excess contract is automatically terminated. In the event that this policy is automatically terminated, the Excess Insurer agrees to refund the excess of premium actually paid over the proportionate premium for the expired term (subject to any minimum retained premium specified) as soon as practicable, but if there is any proportionate premium unpaid the Insured agrees to pay this.

### SEE ALSO STATUTORY CONDITIONS OF THIS POLICY

## SECTION B - ACCIDENT BENEFITS

Deleted.

## SECTION C - LOSS OF OR DAMAGE TO INSURED AUTOMOBILE

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 Item 4 of the application and no other,

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

- Subsection 1 - ALL PERILS - from all perils;  
Subsection 2 - COLLISION OR UPSET - caused by collision with another object or by upset;  
Subsection 3 - COMPREHENSIVE - from any peril other than by collision with another object or by upset;

The words "another object" as used in this subsection 3 shall be deemed to include (a) a vehicle to which the automobile 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 4 - SPECIFIED PERILS - caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water.

#### DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection of this section C, except loss or damage caused by fire or lightning or theft of the entire automobile covered by such subsection, shall give rise to a separate claim in respect of which the insurer's liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of Item 4 of the application.

#### EXCLUSIONS

The Insurer shall not be liable,

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

- (a) to fires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection; or
- (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement; 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 pretense; 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 therefrom; or
- (g) where the Insured drives or operates the automobile
  - (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 automobile; 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) (breathalyzer 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 automobile by any person contrary to the provisions of (g); or

(2) under subsections 3 (Comprehensive) and 4 (Specified Perils) only, for loss or damage caused by theft by any person or persons residing in the same dwelling premises as the Insured, or by any employee of the Insured engaged in the operation, maintenance or repair of the automobile whether the theft occurs during the hours of such service or employment or not.

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

#### ADDITIONAL AGREEMENTS OF INSURER

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

- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
- (b) to waive subrogation against every person who, with the Insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person (i) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or (2) who has (i) committed a breach of any condition of this policy or (ii) driven or operated the automobile in the circumstances referred to in 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 automobile as defined in the General Provisions of this policy against the liability imposed by law or assumed by the Insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:

- (i) such indemnity is subject to the deductible clause and exclusions of each such subsection;
- (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this policy;
- (iii) where indemnity is provided under this paragraph (c), the Insurer shall:

- (A) upon receipt of notice of loss or damage caused to a temporary substitute automobile, 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;
- (B) 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 a temporary substitute automobile; and
- (C) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability.

- (2) **Loss of Use by Theft** - Where indemnity is provided under subsections 1, 3 or 4 of this section C, the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the insured for expenses not exceeding \$25.00 for any one day nor totalling more than \$750.00, incurred for the rental of a substitute automobile or the use of taxicabs and public means of transportation.

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

#### GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS - SECTION C

##### 1. TERRITORY

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

##### 2. GARAGE PERSONNEL EXCLUDED

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

##### 3. AUTOMOBILE DEFINED

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

- (a) **The Described Automobile** - an automobile, trailer or semi-trailer specifically described in the policy or within the description of insured automobiles set forth therein;

- (b) **A Newly Acquired Automobile** - an automobile, ownership of which is acquired by the Insured and, within ten 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 (other than third party liability insurance provided to the owner of the automobile by the Insurance Corporation of British Columbia), if either it replaces an automobile 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 automobiles owned by the Insured at such delivery date and in respect of which the Insured pays any additional premium required; provided however, that insurance hereunder shall not apply if the Insured is engaged in the business of selling automobiles;

- (c) **A Temporary Substitute Automobile** - an automobile not owned by the Insured, nor by any person or persons residing in the same dwelling premises as the Insured, while temporarily used as the substitute for the described automobile which is not in use by any person insured by this policy, because of its breakdown, repair, servicing, loss, destruction or sale.

##### 4. TWO OR MORE AUTOMOBILES

- (a) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be deemed to be separate automobiles with respect to the limit(s) of liability, including any deductible provisions, under section C.

##### 5. WAR RISKS EXCLUDED

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

##### 6. EXCLUDED USES

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

- (a) the automobile is rented or leased to another; provided that the use by an employee of his or her automobile on the business of his or her employer and for which he or she is paid shall not be deemed the renting or leasing of the automobile to another;

- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;

- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be the carrying of passengers for compensation or hire:

- (i) the use by the Insured of his or her automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
- (ii) the occasional and infrequent use by the Insured of his or her automobile for the carriage of another person who shares the cost of the trip;
- (iii) the use by the Insured of his or her automobile for the carriage of a temporary or permanent domestic servant of the Insured or his or her spouse, as this term is defined in Section 1 of the Insurance Act;
- (iv) the use by the Insured of his or her automobile for the carriage of clients or customers or prospective clients or customers;
- (v) the occasional and infrequent use by the Insured of his or her automobile for the transportation of children to or from school or school activities conducted within the educational program.

#### SEE ALSO STATUTORY CONDITIONS OF THIS POLICY

##### SECTION D - EXCESS UNDERINSURED MOTORIST PROTECTION

IN CONSIDERATION of the payment of the premium specified and of the statements contained in the application and subject to the limits, special provisions and conditions herein stated and subject insofar as applicable, to the terms, conditions, general provisions, definitions and exclusions of the first loss underinsured motorist protection insurance, as described in Division 2 of Part 10 of the Revised Regulation (1984) under the Insurance (Motor Vehicle) Act of British Columbia, which insurance is provided to the Insured by the Insurance Corporation of British Columbia, and the terms, conditions, general provisions, definitions and exclusions of which

are by reference incorporated herein, the Excess Insurer agrees to compensate the Insured, or a person who has a claim in respect of the death of the Insured, where death or injury of an Insured is caused by an accident that arises out of the use or operation of a vehicle by an underinsured motorist and occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.

#### SPECIAL PROVISIONS

1. The Excess Insurer's liability shall not exceed the limit per insured person stated in Item 4 of the application and is in excess of the limit per insured person of the first loss underinsured motorist protection insurance that is provided by the first loss underinsured motorist protection insurer, the Insurance Corporation of British Columbia.

Where, in the event of a claim, an Insured has access to Excess Underinsured Motorist Protection under two or more policies, the limit of the Excess Insurer under this section shall not exceed the proportion that the highest limit applicable to one 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 policy.

2. The Excess Insurer's liability to compensate an Insured under this policy shall not attach unless and until the first loss underinsured motorist protection insurer shall have paid to the Insured the limit of the first loss underinsured motorist protection insurer's liability to that Insured under the first loss policy.
3. Notwithstanding Statutory Condition 3(1), or any similar condition in an automobile policy issued by the Insurance Corporation of British Columbia, an Insured is only required to give the Excess Insurer notice of any accident if the underinsured motorist protection claim(s) possibly arising therefrom appear (s) likely to exceed the per insured person limit of the first loss underinsured motorist protection insurance policy, in which case immediate written notice of the accident must be given to the Excess insurer.

SEE ALSO STATUTORY CONDITIONS OF THIS POLICY

#### 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.

NOTE: With respect to Section A - Excess Third-Party Liability coverage and Section D - Excess Underinsured Motorist Protection only, if your policy provides Section A and/or Section D coverage, the applicable terms, conditions, provisions, definitions and exclusions specified in the regulations made under the *Insurance (Motor Vehicle) Act* as from time to time amended shall prevail over the statutory conditions set out below, if and when there is any conflict between such regulations and the following statutory conditions.

#### Material change in risk

1. (1) The insured named in this contract must promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within the insured's knowledge.
- (2) Without restricting the generality of 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 of it.

#### Prohibited use by insured

2. (1) The insured must not drive or operate the automobile
  - (a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile,
  - (b) unless he or she is for the time being either authorized by law or qualified to drive or operate the automobile,
  - (c) while he or she is under the age of 16 years or under such other age as is prescribed by the law of the province in which he or she 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 her,
  - (d) for any illicit or prohibited trade or transportation, or
  - (e) in any race or speed test.

#### Prohibited use by others

- (2) The insured must not permit, suffer, allow, or connive at the use of the automobile
  - (a) by any person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile,
  - (b) by any person,
    - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
    - (ii) while that person is under the age of 16 years or under such other age as is prescribed by the law of the province in which he or she 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 her,
  - (c) for any illicit or prohibited trade or transportation, or
  - (d) in any race or speed test.

#### Requirements if loss or damage to persons or property

3. (1) The insured must
  - (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss

or damage to persons or property and of any claim made on account of the accident,

- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract, and
- (c) forward immediately to the insurer every letter, document, advice, or writ received by the insured from or on behalf of the claimant.

(2) The insured must not

- (a) voluntarily assume any liability or settle any claim except at the insured's own cost, or
- (b) interfere in any negotiations for settlement or in any legal proceeding.

- (3) The insured must, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and must co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

NOTE: Statutory condition 3 is inapplicable if the policy issued to the insured by the insurer provides coverage that is restricted to Section C - Loss of or Damage to Insured Automobile.

Requirements if loss or damage to automobile

- 4. (1) If loss of or damage to the automobile occurs, the insured must, if the loss or damage is covered by this contract,
  - (a) promptly give notice of it 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 90 days after the date of the loss or damage a statutory declaration stating, to the best of the insured's knowledge and belief, the place, time, cause, and amount of the loss or damage; the interest of the insured and of all others in it, the encumbrances on it, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any willful 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) Repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, must not be undertaken and physical evidence of the loss or damage must not 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.

Examination of insured

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

Insurer liable for cash value of automobile

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

Repair or replacement

- (6) Unless 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 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No abandonment; salvage

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

In case of disagreement

- (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 must 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 questions. There is no right to an appraisal until a specific demand for it is made in writing and until after proof of loss has been delivered.

NOTE: Statutory condition 4 is applicable only if the Insured has purchased from the Insurer coverage under one or more subsections of Section C - Loss of or Damage to Insured Automobile.

Inspection of automobile

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

Time and manner of payment of insurance money

- 6. (1) The insurer must pay the insurance for which it is liable under this contract within 60 days after the proof of loss has been received by it or, if an appraisal is made under subcondition (8) of statutory condition 4, within 15 days after the award is rendered by the appraisers.

#### When action may be brought

- (2) The insured must 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 provided under those conditions 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 against the insurer under this contract in respect of loss or damage to the automobile must be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property must be commenced within one year next after the cause of action arose 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 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 this contract is terminated by the insurer,

- (a) the insurer must refund the excess of premium actually paid by the insured over the proportionate premium for the expired time, but in no event must the proportionate premium for the expired time be deemed to be less than any minimum retained premium specified, and

- (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund must be made as soon as practicable.

- (3) If this contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event must the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

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

- (5) The 15 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 British Columbia. Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

In Witness Whereof, the Insurer has executed and attested these presents, but this Policy shall not be valid until countersigned by a duly Authorized Representative of the Insurer.

S.P.F. No.1 - 09/2000