

CANADA PROGRAMS COMMERCIAL LIABILITY UMBRELLA POLICY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS** or within any specific policy provision that defines any word or words that appear in quotation marks.

SECTION I – COVERAGES

BODILY INJURY, PROPERTY DAMAGE AND PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages when the “underlying insurance” or any applicable “other insurance” does not provide coverage or the limits of “underlying insurance” and any applicable “other insurance” have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defence of, the insured against any other “suit” seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance does not apply. At our discretion, we may investigate any “occurrence” or offence that may involve this insurance and settle any resultant claim or “suit” for which we have the duty to defend. But:

- (1) The amount we will pay for the “ultimate net loss” is limited as described in **SECTION III – LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments part of this policy.

- b. This insurance applies to “bodily injury” or “property damage” only if:
- (1) The “bodily injury” or “property damage” is caused by an “occurrence” happening anywhere in the world; and
 - (2) The “bodily injury” or “property damage” occurs during the policy period.
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of **Section II – Who Is An Insured** and no “employee” authorized by you to give or receive notice of an “occurrence” or “suit”, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew prior to the

policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of **SECTION II WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. This insurance applies to "personal and advertising injury" only if:
 - (1) The "personal and advertising injury" is caused by an enumerated offence included within the definition of "personal and advertising injury", arising out of your business; and
 - (2) The enumerated offence is committed during the policy period.

2. Exclusions

The exclusions contained herein and any exclusions contained in endorsements to this policy apply regardless of whether any cause, event, material or product contributed concurrently or in any sequence to the injury or damage.

This insurance does not apply to:

a. **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. **Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

c. **Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment or employment compensation law(s) or any similar law(s).

d. **Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - a) Employment by the insured; or
 - b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, common law partner, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) A claim made or "suit" brought by a Canadian resident "employee" on whose behalf contributions are made by or required to be made by you under the provisions of any Canadian provincial or territorial workers' compensation law, if cover or benefits have been denied by any Canadian Workers' Compensation Authority.

e. Aircraft Or Watercraft

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the ownership, maintenance, use or entrustment to others by or on behalf of any insured of:

- (1) Any aircraft, air cushion vehicle or watercraft owned or operated by or rented or loaned to any insured; or
- (2) Any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.

Use includes operation and "loading or unloading"

This exclusion applies even if the "suits" against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, air cushion vehicle or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - a) Less than 8 meters long; and
 - b) Not being used to carry persons or property for a charge;

- (3) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law, if the "bodily injury" results from an "occurrence" involving watercraft.

f. Automobile

"Bodily injury" or "property damage" arising directly or indirectly, in whole or part, out of the ownership, maintenance, use or entrustment to others of any "automobile" owned or operated by or on behalf of or rented or loaned to any insured. Use includes operation and "loading or unloading". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage".

This exclusion applies to any motorized snow vehicle or its trailers and any vehicle while being used in any speed or demolition contest or in any stunting activity or in practise or preparation for any such contest or activity.

This exclusion applies even if the "suit(s)" against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "automobile" that is owned or operated by or on behalf of or rented or loaned to any insured.

This exclusion does not apply to:

- (1) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law if the "bodily injury" results from an "occurrence" involving an "automobile".
- (2) "Bodily injury" or "property damage" arising out of a defective condition in, or improper maintenance of, any "automobile" owned by the Insured while leased to others for a period of 30 days or more provided the lessee is obligated under contract to ensure that the "automobile" is insured.
- (3) "Bodily injury" or "property damage" arising out of the operation of "mobile equipment" while at the site of the use or operation of such equipment, provided that such "mobile equipment" was not required by law at the time of the "occurrence" to be insured under a contract evidenced by a motor vehicle liability policy.

g. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;

- (4) Personal property in care, custody or control of any insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

h. Damage To Your Product

"Property damage" to "your product" arising out of "your product" or any part of "your product".

i. Damage To Your Work

"Property damage" to "your work" arising out of "your work" or any part of "your work" and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

j. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

k. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

l. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

m. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

n. Abuse

"Bodily injury", "property damage", or "personal injury or advertising liability" that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from the:

- (1)** Actual, alleged or threatened physical, verbal or mental abuse, harassment or molestation of any person by any insured, including, but not limited to, any sexual abuse, harassment or molestation;
- (2)** Negligent:
 - (a)** Employment;
 - (b)** Investigation;
 - (c)** Supervision;
 - (d)** Reporting to the proper authorities, or failure to so report; or
 - (e)** Retention;

Of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph (1) above.

This exclusion also applies regardless of any other contributing or aggregating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

o. Liquor Liability

"Bodily injury" or "property damage" arising out of:

- (1)** the intoxication of any person; or
- (2)** the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3)** any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

However, this exclusion only applies to those insured whose business is the distribution, servicing, sale, or manufacturing of alcoholic beverages.

p. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

q. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

r. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

s. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

t. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

u. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract.

v. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

w. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

x. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret, trade dress, service mark, trade name or other intellectual property rights.

y. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;

- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **16. a., b. and c.** of "personal and advertising injury" under Section V – Definitions.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

z. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

aa. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

bb. Asbestos

"Bodily injury", "property damage" or "personal and advertising injury" that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from the "asbestos hazard", including any actual or alleged liability for any legal remedy of any kind whatsoever.

This exclusion includes but is not limited to compliance with any request, demand, order, or statutory or regulatory requirement, or any other action authorized or required by law, or any loss, cost or expense arising out of or relating to the investigation of, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediation or disposing of, or in any way responding to, or assessing the effects of asbestos, as well as any costs, fees, expenses, penalties, judgments, fines or sanctions arising from or relating thereto. This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

As used in this exclusion, "asbestos hazard" means:

- (1) the actual, alleged or threatened exposure to, consumption, ingestion of, inhalation of, absorption of, existence of, or presence of, asbestos in any manner or form whatsoever, either directly or indirectly;
- (2) the actual or alleged failure to warn, advise or instruct related to asbestos in any manner or form whatsoever;
- (3) the actual or alleged failure to prevent exposure to asbestos in any manner or form whatsoever; or
- (4) the actual or alleged presence of asbestos in any manner or form whatsoever, in any place whatsoever, whether or not within a building or structure, including its contents.

As used in this exclusion, "asbestos" means any substance, regardless of its form or state, containing asbestos.

cc. Fungi Or Bacteria

“Bodily injury”, “property damage” or “personal and advertising injury” that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from the “fungi or bacteria hazard”.

This exclusion includes but is not limited to compliance with any request, demand, order, or statutory or regulatory requirement, or any other action authorized or required by law, or any loss, cost or expense arising out of or relating to the investigation of, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediation or disposing of, or in any way responding to, or assessing the effects of “fungi or bacteria”, as well as any costs, fees, expenses, penalties, judgments, fines, or sanctions arising from or relating thereto.

This exclusion does not apply to any “fungi or bacteria” that are on or are contained in food or beverages.

This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “bodily injury”, “property damage” or “personal and advertising injury”.

As used in this exclusion, “fungi or bacteria hazard” means:

- (1) actual, alleged or threatened exposure to, consumption, ingestion of, inhalation of, absorption of, existence of, or presence of “fungi or bacteria” in any manner or form whatsoever, either directly or indirectly;
- (2) the actual or alleged failure to warn, advise or instruct related to “fungi or bacteria” in any manner or form whatsoever;
- (3) the actual or alleged failure to prevent exposure to “fungi or bacteria” in any manner or form whatsoever; or
- (4) the actual or alleged presence of “fungi or bacteria” in any manner or form whatsoever, in any place whatsoever, whether or not within a building or structure, including its contents.

As used in this exclusion, “fungi or bacteria” includes, but is not limited to, any form or type of mold, mildew, yeast, spores, mycotoxins, endotoxins, or other pathogens, as well as any particulates or byproducts of any of the foregoing, either directly or indirectly.

dd. Lead

“Bodily injury”, “property damage”, or “personal and advertising injury” that in any way, in whole or in part, directly or indirectly arises out of, relates to, or results from the “lead hazard”.

This exclusion includes but is not limited to compliance with any request, demand, order, or statutory or regulatory requirement, or any other action authorized or required by law, or any loss, cost or expense arising out of or relating to the investigation of, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediation or disposing of, or in any way responding to, or assessing the effects of, lead, as well as any costs, fees, expenses, penalties, judgments, fines, or sanctions arising from or relating thereto.

This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “bodily injury”, “property damage” or “personal and advertising injury”.

As used in this exclusion, “lead hazard” means:

- (1) the actual, alleged or threatened exposure to, consumption, ingestion of, inhalation of, absorption of, existence of, or presence of, lead in any manner or form whatsoever, either directly or indirectly;
- (2) the actual or alleged failure to warn, advise or instruct related to lead in any manner or form whatsoever;
- (3) The actual or alleged failure to prevent exposure to lead in any manner or form whatsoever; or
- (4) the actual or alleged presence of lead in any manner or form whatsoever, in any place whatsoever, whether or not within a building or structure, including its contents.

ee. Nuclear Energy Liability

- a. To any liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- b. “Bodily injury”, “property damage” or “personal and advertising injury” 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;
- c. “Bodily injury”, “property damage” or “personal and advertising injury” resulting directly or indirectly from the “nuclear energy hazard” arising from:
 - (1) The ownership, maintenance, operation or use of a “nuclear facility” by or on behalf of an insured;
 - (2) 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”; or
 - (3) 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 useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “bodily injury”, “property damage” or “personal and advertising injury”.

As used in this exclusion:

- (1) "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- (2) "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) "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 utilizing 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) "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".

ff. Pollution

- (1) Any "bodily injury", "property damage" or "personal and advertising injury" that in any way, in whole or in part, directly or indirectly arises out of, relates to or results from the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":
 - a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - i. "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;

- ii. "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - iii. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- b) At or from any premises, site or location which is or was at any time used by or for any person or entity for the handling, storage, disposal, processing or treatment of waste;
- c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - i. "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - ii. "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - iii. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- f) To the extent that any "bodily injury" or "property damage" is included in the "products-completed operations hazard".

- (2) Any loss, cost or expense that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from any:
 - a) Request, demand, order, or statutory or regulatory requirement, or any other action authorized or required by law, that any insured or others investigate, test for, monitor, clean up, remove, dispose of, contain, treat, abate, remediate, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - b) Claim or "suit" by or on behalf of a governmental authority for damages because of investigating, testing for, monitoring, cleaning up, removing, disposing of, containing, treating, abating, remediation, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this section 2) does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

gg. Silica

"Bodily injury", "property damage", or "personal and advertising injury" that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from:

- (1) the actual, alleged or threatened exposure to, consumption of, ingestion of, inhalation of or absorption of, "silica", either directly or indirectly;
- (2) the actual, alleged or threatened exposure to, consumption of, ingestion of, inhalation of, absorption of, existence of or presence of, "silica dust" either directly or indirectly;
- (3) the actual or alleged failure to warn, advise or instruct related to "silica" in any manner or form whatsoever; or
- (4) the actual or alleged failure to prevent exposure to "silica".

This exclusion includes but is not limited to compliance with any request, demand, order, or statutory or regulatory requirement, or any other action authorized or required by law, or any other claim, "suit", demand, loss, cost or expense directly or indirectly arising out of, relating to or resulting from the investigation of, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediation or disposing of, or in any way responding to, or assessing the effects of "silica", as well as any costs, fees, expenses, penalties, judgments, fines, or sanctions arising or resulting therefrom or relating thereto.

This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

As used in this exclusion:

- a. "Silica" means any substance containing silicon dioxide (SiO₂), including, but not limited to, crystalline or non-crystalline silica, silica particles, silica compounds, "silica dust" or synthetic silica, including but not limited to precipitated silica, silica gel, fumed silica or silica flour;

- b. "Silica dust" means dust containing "silica" alone or mixed with any other dust or fiber(s).

hh. War

"Bodily injury", "property damage" or "personal and advertising injury" that in any way, in whole or in part, directly or indirectly, arises out of, relates to or results from:

- (1) War, invasion, hostilities or act of foreign enemy, including but not limited to, undeclared or civil war; or
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

This exclusion also applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

ii. Professional Services

"Bodily Injury" (other than "incidental medical malpractice injury"), or "property damage" due to the rendering of or failure to render by you or on your behalf of any "professional services" for others, or any error or omission, malpractice or mistake in providing those services.

jj. Employment Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - a) Refusal to employ;
 - b) Termination of that person's employment;
 - c) Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or "discrimination" directed at that person; or
 - d) Proceedings or actions under Title VII of the 1964 Civil Rights Act of the United States or under any Canadian federal, territorial, or provincial human rights code, including any amendments thereto; and
- (2) The spouse, common law partner, child, parent, brother or sister of that person as a consequence of any injury or damage to the person in respect of whom any of the employment-related practices described in Paragraphs 1), 2), 3) or 4) above are directed.

This exclusion applies:

- (1) Whether the insured may be held liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

kk. Terrorism

“Bodily injury”, “property damage” or “personal and advertising injury” arising directly or indirectly, in whole or in part, out of “terrorism” or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate “terrorism”. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “bodily injury”, “property damage” or “personal and advertising injury”.

ll. Medical Expenses

Medical expenses as described below for “bodily injury” caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations.

Medical expenses include:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

mm. Tenants Legal Liability

“Property damage” arising out of Tenants’ Legal Liability.

nn. Employee Benefits

Any loss for damages arising directly or indirectly, in whole or in part, due to any negligent act, error or omission by the insured, or of any person for whom the insured is legally liable, in the “administration” of the insureds “employee benefit program”.

“Administration” means:

- (1) Providing information to “employees”, including their dependents and beneficiaries, with respect to eligibility for or scope of “employee benefit programs”;
- (2) Handling records in connection with the “employee benefit program”; or
- (3) Effecting, continuing or terminating any “employee’s” participation in any benefit included in the “employee benefit program”.

“Employee benefit program” means a program providing some or all of the following benefits to “employees”, whether provided through a “cafeteria plan” or otherwise:

- (1) Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
- (2) Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
- (3) Unemployment insurance, social security benefits, workers' compensation and disability benefits;
- (4) Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
- (5) Any other similar benefits designated by specific Endorsement to this policy.

SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists:
 - a. All expenses we incur.
 - b. Up to \$750 for cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defence of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the insured in the "suit".
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. Any interest accruing after the entry of judgment upon that part of the judgment which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limits of Insurance of this policy.

These payments will not reduce the limits of insurance. However, if the defence expenses or payments as described above reduce the applicable limits of the "underlying insurance", then such defence expenses or payments we incur or make shall reduce the applicable Limits of Insurance of this policy.

2. When we have the right but not the duty to defend the insured and elect to participate in the defence, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".

SECTION II – WHO IS AN INSURED

1. Except for liability arising out of the ownership, maintenance, or use including “loading or unloading” of any “automobile” covered under any policy of “underlying insurance”:
 - a. If you are designated in the Declarations as:
 - (1) An individual, you and your spouse or common law partner are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - (2) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses or common law partners are also insureds, but only with respect to the conduct of your business.
 - (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - (4) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your shareholders are also insureds, but only with respect to their liability as shareholders.
 - (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
 - b. Each of the following is also an insured:
 - (1) Your “volunteer workers” only while performing duties related to the conduct of your business, your “employees”, other than either your “executive officers” (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these “employees” or “volunteer workers” are insureds for:
 - (a) “Bodily injury” or “personal and advertising injury”:
 - (i) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-“employee” in the course of his or her employment or performing duties related to the conduct of your business or to your other “volunteer workers” while performing duties related to the conduct of your business;
 - (ii) To the spouse, common law partner, child, parent, brother or sister of that co-“employee” or “volunteer worker” as a consequence of Paragraph (a)(i) above;
 - (iii) Arising out of his or her providing or failing to provide professional health care services;
 - (iv) To any person who at the time of injury is entitled to benefits under any workers’ compensation or disability benefits law or similar law; or

(v) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (a)(i), (ii), (iii) or (iv) above.

(b) "Property damage" to property:

(i) Owned, occupied or used by,

(ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

(2) Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

(3) Any person or organization having proper temporary custody of your property if you die, but only:

(a) With respect to liability arising out of the maintenance or use of that property; and

(b) Until your legal representative has been appointed.

(4) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and in which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

(1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

(2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

(3) Does not apply to "personal and advertising injury" arising out of an offence committed before you acquired or formed the organization.

2. Only with respect to liability arising out of the ownership, maintenance, or use of "automobiles" covered under any policy of "underlying insurance":

a. You are an insured.

b. Anyone else while using with your permission an "automobile" covered under any policy of "underlying insurance" you own, hire, or borrow is also an insured except:

(1) The owner or anyone else from whom you hire or borrow an "automobile" covered under any policy of "underlying insurance". This exception does not apply if the "automobile" covered under any policy of "underlying insurance" is a trailer or semi-trailer connected to a "automobile" covered under any policy of "underlying insurance" you own.

- (2) Your “employee” if the “automobile” covered under any policy of “underlying insurance” is owned by that “employee” or a member of his or her household.
 - (3) Someone using an “automobile” covered under any policy of “underlying insurance” while he or she is working in a business of selling, servicing, repairing, parking or storing “automobiles” unless that business is yours.
 - (4) Anyone other than your “employees”, partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their “employees”, while moving property to or from an “automobile” covered under any policy of “underlying insurance”.
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for an “automobile” covered under any policy of “underlying insurance” owned by him or her or a member of his or her household.
 - (6) “Employees” with respect to “bodily injury” to any fellow “employee” of the insured arising out of and in the course of the fellow “employee’s” employment or while performing duties related to the conduct of your business.
 - c. Anyone liable for the conduct of an insured described above is also an insured, but only to the extent of that liability.
 3. Any additional insured under any policy of “underlying insurance” will automatically be an insured under this insurance.

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any “underlying insurance”.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the “underlying insurance”.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or “suits” brought; or
 - c. Persons or organizations making claims or bringing “suits”.
2. The General Aggregate Limit is the most we will pay for all “ultimate net loss”, except for:
 - a. Damages covered under the “products-completed operations hazard”; and,
 - b. Damages covered in “underlying insurance” to which no underlying aggregate limit applies.

3. The Products-Completed Operations Aggregate Limit is the most we will pay for all “ultimate net loss” as a result of “bodily injury” or “property damage” included in the “products-completed operations hazard”.
4. Subject to Paragraphs 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for all “ultimate net loss” for “bodily injury”, “property damage” and “personal and advertising injury” arising out of any one “occurrence” or offence.

Any amount paid for “ultimate net loss” arising out of an “occurrence” or offence will reduce the amount of the applicable aggregate limit of insurance available for payment of damages arising out of any other “occurrence” or offence.

If the applicable aggregate limit of insurance has been reduced by payment of “ultimate net loss” to an amount that is less than the limit for Each Occurrence stated in Item 3.a. of the Declarations, the remaining aggregate limit of insurance is the most that will be available for payment of damages arising out of any other “occurrence” or offence.

5. The Limits of Insurance of this policy apply only in excess of the “retained limit”. If, however, the “underlying insurance” has a limit of insurance that is:
 - a. Greater than the amount shown in the Schedule A - Schedule of Underlying Insurance, this policy will apply in excess of the greater amount and any applicable “other insurance” ; or
 - b. Less than the amount shown in the schedule of “underlying insurance”, this policy will apply in excess of the amount shown in the Schedule A - Schedule of Underlying Insurance and any applicable “other insurance”.
6. If the total applicable limits of insurance of the “underlying insurance” are reduced or exhausted by payment of “ultimate net loss” to which this policy applies, this policy will:
 - a. In the event of such reduction, subject to the terms and conditions of this policy, pay excess of the remaining total applicable limits of insurance of the “underlying insurance” and any applicable “other insurance”.
 - b. In the event of exhaustion of the total applicable limits of insurance of the “underlying insurance” and any applicable “other insurance”, continue in force as underlying insurance, subject to the terms and conditions of this policy.

However, if the limits of insurance of the “underlying insurance” are not collectible for any reason, other than reduction or exhaustion by the payment of “ultimate net loss”, our obligations under this policy will not be increased and we will only pay those amounts in excess of the limits of insurance of the “underlying insurance” shown in the Schedule A - Schedule of Underlying Insurance.

The Aggregate Limit, as described in Paragraph 2. and 3. above, applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

1. Appeals

If the “underlying insurer” or insured elects not to appeal a judgment in excess of the “retained limit”, we may do so at our own expense. Our liability shall not exceed our Limits of Insurance

shown in the Declarations plus taxable costs, pre-judgment and post judgment interest and disbursements.

2. Bankruptcy

a. Bankruptcy Of Insured

Bankruptcy, insolvency or other financial impairment of the insured or of the insured's estate will not relieve us of our obligations under this policy.

b. Bankruptcy Of Underlying Insurer

Bankruptcy, insolvency or other financial impairment of the "underlying insurer" will not relieve us of our obligations under this policy.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy, insolvency or other financial impairment of the "underlying insurer". This insurance will not replace any "underlying insurance" which is comprised in whole or in part of self-insurance in the event of bankruptcy, insolvency or other financial impairment of the insured. This insurance will apply as if the "underlying insurance" or self-insurance were in full effect.

3. Currency Clause

All limits of insurance, premiums and other amounts as expressed in this policy are in Canadian currency.

4. Cancellation

- a.** The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b.** We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (1)** 15 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2)** 30 days before the effective date of cancellation if we cancel for any other reason.
- c.** We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d.** Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e.** If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f.** If notice is mailed, proof of mailing will be sufficient proof of notice.

5. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

6. Duties In The Event Of Occurrence, Offence, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offence, regardless of the amount, which is likely to involve a claim under this policy. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offence took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offence.

b. If a claim is made or "suit" is brought against any insured and is likely to involve this policy, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defence against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

7. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

8. Inspections And Surveys

a. We have the right to:

- (1) Make inspections and surveys at any time;
- (2) Give you reports on the conditions we find; and
- (3) Recommend changes.

b. We shall be permitted but not obligated to inspect, sample and monitor on a continuing basis any insured's property or operations, at any time. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the insured or others, or determining or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any laws, rules, regulations, codes or standards.

9. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

10. Other Insurance

- a. This insurance is excess over, and shall not contribute with any of the "other insurance", whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this policy.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
 - (1) The total amount that all such "other insurance" would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under all that "other insurance".

11. Premiums

- a. The First Named Insured shown in the Declarations is authorized to act on behalf of all persons or organizations insured under this policy with respect to all matters pertaining to the insurance afforded by the policy.
- b. Each Named Insured is joint and severally liable for:

- (1) All premiums due under this policy; and
- (2) All obligations that arise due to any deductible or self-insured retention amount (as may be applicable) including claim expenses; and
- (3) Any other financial obligations of any Named Insured to us arising out of any agreements contained in this policy.

12. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

13. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete; and
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

14. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

15. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

16. Loss Payable

Liability under this policy shall not apply unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit". Such obligation by the insured to pay part of the "ultimate net loss" shall have been previously determined by a final settlement or judgment after an actual trial or written agreement between the insured, claimant, and us.

17. Transfer Of Defence

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

18. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

19. Maintenance Of Underlying Insurance

We have issued this insurance in reliance upon the representations made by you or your representatives about "underlying insurance" and your "retained limit". During the policy period, you agree that:

- a. "Underlying insurance" is and remains valid and in full force and effect;
- b. The terms and conditions of "underlying insurance" will not materially change such as to increase the coverage afforded by this policy;
- c. The terms and conditions of renewals or replacements of "underlying insurance", shown in the Schedule A - Schedule of Underlying Insurance, will be materially the same as prior coverage and afford limits of insurance equal to or greater than the policy being replaced; and
- d. The limits of insurance of the "underlying insurance" shown in the Schedule A - Schedule of Underlying Insurance will not be reduced or exhausted, except for the reduction or exhaustion by payments of judgments, settlements, or related costs or expenses (if such costs or expenses reduce such limits).

Failure to comply with this condition will not invalidate this insurance. But in the case of any such failure, our obligation or liability will not exceed that which would have applied absent any failure to comply with this condition.

20. Coverage Territory

- a. A "suit" must be brought forth in Canada, the United States of America (including its territories and possessions) or Puerto Rico.
- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in Canadian currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under **Supplementary Payments** will be made in Canadian currency at the prevailing exchange rate at the time the expenses were incurred.

- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of Canada, the United States of America (including its territories and possessions) or Puerto Rico.
- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

21. Governing Law And Service Of Suit

This policy shall be construed according to the laws of the province or territory in Canada in which the first Named Insured has its office in Canada as listed in the Declarations.

In the event of the failure by us to pay any amount claimed to be due under this policy or any dispute whatsoever between any insured and us relating to, arising from or in any way involving this policy (including but not limited to, the interpretation or meaning of any defined or undefined terms or any other issue(s) of interpretation impacting either the nature or scope of coverage provided by this policy), it is hereby agreed and understood that both we and all insureds irrevocably submit and attorn to the jurisdiction of the provincial or territorial superior court in Canada where either the first Named Insured has its head office as listed in the Declarations or where we have our head office in Canada as listed in the Declarations.

Nothing in this condition constitutes or should be understood to constitute a waiver of our right to commence a proceeding in any provincial or territorial superior court in Canada or to seek the stay or dismissal of any proceeding against us to have the issues in that proceeding determined in a different provincial or territorial superior court in Canada.

Further, no objection as to applicable law, forum or jurisdiction shall be raised by any insured regardless of where an "occurrence" takes place, where the resulting "bodily injury", "property damage" or "personal and advertising injury" is sustained or where the "suit" is commenced against any insured.

Service of process in any suit may be made upon our CEO & President in Canada at our address specified in the Declarations of this policy.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".
2. "Automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads or required by law to be insured under a contract evidenced by a motor vehicle liability policy or any vehicle insured under such a contract, including any attached machinery or equipment.

“Automobile” shall also include any self-propelled vehicle with the following types of permanently attached equipment:

- a. Equipment designed primarily for:
 - (i) Snow removal;
 - (ii) Road maintenance, but not construction or resurfacing; or
 - (iii) Street cleaning;
- b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, “automobile” does not include “mobile equipment”.

3. “Bodily injury” means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. “Bodily injury” includes mental anguish or other mental injury resulting from “bodily injury”.
4. “Electronic data” means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software or otherwise communicated in digital or other intangible or tangible form including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
5. “Employee” means any natural person whose labour or service was, is or shall be engaged and directed by any Named Insured. “Employee” includes a “leased worker” and a “temporary worker”.
6. “Executive officer” means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. “Hostile fire” means one which becomes uncontrollable or breaks out from where it was intended to be.
8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:
 - a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by the repair, replacement, adjustment or removal of “your product” or “your work”, or your fulfilling the terms of the contract or agreement.
9. “Incidental medical malpractice injury” means “bodily injury” arising out of the rendering of or failure to render, during the policy period, the following services:
 - a. medical, surgical, dental, x-ray or nursing services or treatment or the furnishing of food or beverages in connection therewith; or

- b.** the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;

by any insured or any indemnitee causing the “incidental medical malpractice injury” who is not engaged in the business or occupation of providing any of the services described in **a.** and **b.** above.

10. “Insured contract” means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
- b.** A sidetrack agreement;
- c.** Any easement or license agreement, except in connection with vehicle or pedestrian private railway crossings at grade;
- d.** Any other easement agreement;
- e.** An obligation, as required by ordinance or by-law, to indemnify a municipality, except in connection with work for a municipality;
- f.** An elevator maintenance agreement;
- g.** That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “automobile”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your “employees” to pay for “property damage” to any “automobile” rented or leased by you or any of your “employees”; or
- h.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs **g.** and **h.** do not include that part of any contract or agreement:

- (1)** That pertains to the loan, lease or rental of an “automobile” to you or any of your “employees”, if the “automobile” is loaned, leased or rented with a driver; or
- (2)** That holds a person or organization engaged in the business of transporting property by “automobile” for hire harmless for your use of an “automobile” covered under any policy of “underlying insurance” over a route or territory that person or organization is authorized to serve by public authority.

Paragraph **h.** does not include that part of any contract or agreement:

- (1)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render "professional services", including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.

11. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

12. "Loading or unloading" means the handling of property:

- a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "automobile";
- b.** While it is in or on an aircraft, watercraft or "automobile"; or
- c.** While it is being moved from an aircraft, watercraft or "automobile" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "automobile".

13. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1)** Power cranes, shovels, loaders, diggers or drills; or
 - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e.** Vehicles not described in **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2)** Cherry pickers and similar devices used to raise or lower workers;
- f.** Vehicles not described in **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment (but not the attached equipment itself while it is in use at a site and the self propelled vehicle is not in operation) are not “mobile equipment” but will be considered “automobiles”:

- (1)** Equipment designed primarily for:
 - (a)** Snow removal;
 - (b)** Road maintenance, but not construction or resurfacing; or
 - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, “mobile equipment” does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the province, territory or state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered “automobiles”.

- 14.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 15.** “Other Insurance” means a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy. Other insurance also means any type of self-insurance or other mechanism by which the insured arranges for funding of legal liabilities or any retention in a policy other than this policy whereby a party other than insurer is responsible for all or a part of any sums payable.

“Other insurance” does not mean “underlying insurance”, “self-insured retention”, or any policy specifically purchased to be excess of this policy affording coverage that this policy also affords.
- 16.** “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following enumerated offences (referred to throughout this policy as offence):
 - a.** False arrest, detention or imprisonment;
 - b.** Malicious prosecution;
 - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
 - e.** Oral or written publication, in any manner, of material that violates a person’s right of privacy;
 - f.** The use of another’s advertising idea in your “advertisement”; or
 - g.** Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

All “personal and advertising injury” arising out of the same or similar material, regardless of the mode in which such material is communicated, including but not limited to publication by means of Internet, extra-net, email or website, will be considered as arising solely out of one offence.

- 17.** “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 18.** “Pollution cost or expense” means any claim, “suit”, demand, loss, cost or expense that, in any way, in whole or in part, arises out of, relates to, or results from any:
- a.** Request, demand, order or statutory or regulatory requirement, or any other action authorized or required by law, that any insured or others investigate, abate, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate or dispose of, or in any way respond to, or assess the effects of “pollutants” as well as any loss, costs, fees, expenses, penalties, judgments, fines, or sanctions arising out of, relating thereto or resulting therefrom; or
 - b.** Claim or “suit” by or on behalf of a governmental authority for damages arising out of, relating to or resulting from the investigation of, abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of “pollutants”.
- 19.** “Products-completed operations hazard”:
- a.** Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:
 - (1)** Products that are still in your physical possession; or
 - (2)** Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
 - (a)** When all of the work called for in your contract has been completed.
 - (b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
 - b.** Does not include “bodily injury” or “property damage” arising out of:
 - (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured; or
 - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** “Professional services” shall include but not be limited to:

- a. Medical, surgical, dental, and x-ray services or treatments,
 - b. Professional services of a pharmacist;
 - c. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
 - d. The handling or treatment of deceased human bodies including autopsies, organ donations or other procedures;
 - e. Any cosmetic, body piercing, tonsorial, massage, physiotherapy, chiropody, hearing aid, optical or optometric services or treatments;
 - f. The preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications;
 - g. Supervisory, inspection, architectural, design or engineering services;
 - h. Accountant's, advertiser's, notary's (Quebec), public notary's, paralegal's, lawyer's, real estate broker's or agent's, insurance broker's or agent's, travel agent's, financial institution's, or consultant's professional advices or activities;
 - i. Any computer programming or re-programming, consulting, advisory or related services; or
 - j. Claim, investigation, adjustment, appraisal, survey or audit services.
- 21.** "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- With respect to "automobiles" covered under any policy of "underlying insurance", property damage also includes "pollution cost or expense", but only to the extent that coverage exists under the "underlying insurance" or would have existed but for the exhaustion of the underlying limits.
- For the purposes of this insurance, "electronic data" is not tangible property.
- 22.** "Retained limit" means the total available limits of "underlying insurance" shown in the Schedule A - Schedule of Underlying Insurance and any applicable "other insurance" providing coverage to the insured or the "self-insured retention", whichever applies.
- 23.** "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offences not covered by the "underlying insurance" or applicable "other insurance". The "self-insured retention" does not apply to "occurrences" or offences which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.
- 24.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the “underlying insurer’s” consent.
- 25.** “Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.
- 26.** “Terrorism” means activities against persons, organizations or property of any nature that involve the use or threat of force of violence, ideologically motivated commission or threat of a dangerous act or the commission or threat of any act that interferes with or disrupts any electronic communication, information or mechanical system and shall include, without limiting the generality of the foregoing, (i) any such activities involving preparation in respect of any of the foregoing activities and any act which is verified or recognized by the Government of Canada as an act of terrorism or the governing body of the country where the act occurred; (ii) any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002, including any amendments thereto; or (iii) any “terrorist activity” as defined in the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, as amended.
- 27.** “Ultimate net loss” means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the “underlying insurer’s” consent. “Ultimate net loss” shall also mean defence expenses and payments incurred by us with respect to any claim we investigate or settle, or any “suit” against an insured we defend, when such expenses or payments reduce the applicable limits of the “underlying insurance”.
- 28.** “Underlying insurance” means any policies of insurance listed in the Schedule A - Schedule of Underlying Insurance.
- 29.** “Underlying insurer” means any insurer who provides any policy of insurance listed in the Schedule A - Schedule of Underlying Insurance.
- 30.** “Volunteer worker” means a person who is not your “employee”, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 31.** “Your product”:
- a.** Means:
- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
- (a)** You;
- (b)** Others trading under your name; or
- (c)** A person or organization whose business or assets you have acquired; and
- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b.** Includes:
- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and

- (2) “Your product” includes the providing of or failure to provide warnings or instructions.
 - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
- 32. “Your work”:
 - a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
 - (2) The providing of or failure to provide warnings or instructions.