

Form #SPAPL-CI (Rev. June 11, 2015)
Professional Liability for Spa & Beauty Industry – Defence Costs Inclusive

***PLEASE READ CAREFULLY - THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS WITH ALL DEFENCE COSTS INCLUDED WITHIN THE LIMIT OF LIABILITY. PLEASE REFER TO THE CONDITIONS AND EXCLUSIONS CONTAINED IN THIS WORDING*.**

Key words and phrases which appear in bold type have special meanings. Refer to **SECTION 2 DEFINITIONS**

1. INSURING AGREEMENTS

1.1 Whereas the **Insured**, as stated in the **Declarations Page** (the **Named Insured**), has made to **Underwriters** an **Application** which is hereby agreed to be the basis of this Policy and shall be considered as incorporated herein.

- (ii) In consideration of the payment of the premium stated in the **Declarations Page**, the **Underwriters**, to the extent and in the manner hereinafter provided, and subject to the Terms and Conditions of this Policy hereby agree to Indemnify the **Insured** for **Claims** made against the **Insured** during the **Policy Period** of this Insurance against all sums which the **Insured** shall become legally liable to pay as damages arising out of any bodily injury caused by any **Malpractice** committed by the **Insured** in or about the conduct of the **Insured's Professional Business** as defined in this Policy and pay all **Defence Costs** incurred with the **Underwriters'** consent, such consent not being unreasonably withheld, in connection with any **Claim** which falls within this Policy, provided that the total amount payable in respect of **Damages** and **Defence Costs** shall not exceed the Limit of Liability as stated in the **Declarations Page**.

It is further agreed and understood that **Underwriters** shall not be obligated to pay any **Claim**, judgment, award, **Defence Costs**, or to undertake or continue the defence of any suit or proceeding after the Limit of Liability has been exhausted by payment or agreement to pay any **Claim**, judgment, award, settlement, and **Defence Costs**, or after deposit of the applicable Limit of Liability and that in such a case **Underwriters** shall have the right to withdraw from the further defence thereof by tendering control of said defence to the **Insured** subject however to any reinstatement conditions which may be endorsed to this Policy.

Subject to:

- (a) such **Malpractice** results in a Claim being first made against the **Insured** during the **Policy Period** as stated in the **Declarations Page** and of which notice has been given in accordance with this Policy; and
(b) there shall be no indemnity hereunder for any Claim made against the **Insured** for **Malpractice** committed prior to the **Retroactive Date** specified in the **Declarations Page**.

1.1 EXTENSIONS OF COVERAGE

All extensions of coverage shown below are included within the Limit of Liability as stated on **Declarations Page**.

This policy is extended to cover risks for:

Loss of Documents

In the event that any of the **Insured's Documents** have been destroyed, damaged, lost or mislaid, **Underwriters** will pay on the **Insured's** behalf all expenses incurred by the **Insured** in replacing and /or restoring such **Documents** up to a maximum limit as shown on the Declarations page. For the purposes of this extension of coverage, the limit shown for this extension of coverage on the Declarations page is the most **Underwriters** will pay during any one policy period regardless of the number of claims made.

Privacy Failure Expense Coverage

The **Underwriters** will indemnify the **Insured** for **Privacy Failure Expense**, up to a maximum limit as shown on the Declarations page, resulting from a **Privacy Failure** of the **Insured's** computer network, provided that:

- a. **Underwriters** have provided prior consent of such expenditure;
b. the **Underwriters** shall only be liable for **Privacy Failure Expense** arising out of any one originating cause under this coverage, which exceeds the amount of the Self-Insured Excess stated in the **Declaration Page**; and
c. the **Insured** has provided the **Underwriters** written notice within thirty (30) days of the **Privacy Failure**.

Exclusions

Underwriters shall not be liable to pay any **Privacy Failure Expense** of any claim/claims arising directly or indirectly out of or in respect of:

Infrastructure Malfunction

The malfunction, stoppage, or crash of telephone lines, data transmission lines or other infrastructure comprising or supporting the Internet, unless such lines or infrastructure were under the **Insured's** operational control.

Reasonable Care

Any circumstance which could give rise to a claim under this Policy of which the **Insured** failed to take steps to use, maintain, or upgrade the **Insured's** computer network in a reasonable manner, including circumstances arising out of the use of or performance of, software that is: due to expire, been cancelled, or been withdrawn, is still in testing or *beta* phase, or that has not been proven to perform correctly for daily operations.

Adequate Notice – Purpose for Data Collection

Any actual or alleged failure to provide adequate notice regarding the purposes for which the sensitive personal information is collected.

Official Confiscation

Any liability based upon, arising from, or in consequence of any seizure, confiscation, nationalization, or destruction of the **Insured's** computer network by order of any governmental or public authority.

For the purposes of this extension of coverage, the limit shown for this extension of coverage on the Declarations page is the most **Underwriters** will pay during any one policy period regardless of the number of claims made.

1.2 DEFENCE COSTS

With respect to the coverage afforded by this policy, the **Underwriters** shall appoint legal counsel or other experts to take up the defence of the **Insured** and pay those **Defence Costs**. **Defence Costs** are included in the **Limit of Liability** for each **Claim**. It is further agreed that **Underwriters** may make such investigation and settlement of any **Claim** as they deem expedient and shall have the exclusive right to contest or settle any of said **Claims**. The **Insured** shall not admit liability for or settle any **Claim** or incur any cost, charge or expense without the written consent of the **Underwriter** as such action may render this coverage null and void. The **Underwriter's** obligation to defend or continue to defend any **Claim** ends once the available **Limit of Liability** is exhausted. The **Limit of Liability** is reduced by every **Claim** payment made under this **Policy** and any payment made with respect to **Defence Costs**. **Defence Costs** are a part of and not in addition to the **Limit of Liability** stated as such in the **Declarations Page**. The payment of **Defence Costs** reduces and may exhaust the **Limit of Liability**.

1.3 LIMIT(S) OF LIABILITY

Each Claim Limit of Liability

Underwriters total liability applicable per each **Claim** under this Policy, is the maximum amount **Underwriters** will pay including **Defence Costs** for any claim arising out of or in connection with, a single wrongful act or series of continuous, repeated interrelated wrongful acts regardless of the number of Insureds, Claims or Claimants, as stated on the **Declarations Page**.

Policy Aggregate Limit of Liability

Underwriters total liability under this **Policy**, including **Defence Costs**, shall not exceed the Policy Aggregate Limit of Liability stated on the **Declarations Page** in respect of all **Claims** indemnified by this **Policy**. It is further agreed that if the **Policy Period** is extended for a period, then the extension period shall be deemed to be part of the preceding **Policy Period** and shall not increase the aggregate Limit of Liability.

1.4 TERRITORY

This **Policy** applies only to any **Medical Malpractice** committed by insured, in or about the conduct of **Insured's Professional Business** committed or alleged to be committed in Canada.

1.5 JURISDICTION

This **Policy** only applies to any **Claims** brought against the **Insured** in a court of any province or territory of Canada, as stated on the **Declarations Page**.

2. DEFINITIONS

(i) **Insured** shall mean:

- a) the **Named Insured** as stated on the **Declarations Page** and any past, present or future employee or officer of, or director of, or any stockholder or any partner of, or any volunteer of the **Named Insured**;
- b) any heir, executors, administrators and legal representatives of each **Insured** or their estate, in the event of death, incapacity or bankruptcy, but only as respects liability arising out of professional services rendered prior to such **Insured's** death, incapacity or bankruptcy;

Named Insured shall mean the person(s) or entity (ies) listed as such in the **Declarations Page**.

(ii) **Claim** shall mean written or oral notice received by the **Insured** for damages, including a civil action or suit or institution of arbitration proceedings, or from any party advising that it is the intention of such party to hold the **Insured** responsible for a **Malpractice**.

A **Claim** does not include criminal or regulatory proceedings or a request or demand seeking non-pecuniary relief including declaratory or injunctive relief or any other provisional remedy. The **Underwriters**, at their sole discretion, may choose to defend any regulatory proceedings brought against the **Insured**.

(iii) **Defence Costs** shall mean all costs, fees and expenses (including representation at Coroner's Inquest) incurred in the defence or settlement of any **Claim**. It shall also mean any pre-judgement interest, assessable costs, and disbursements. It shall not mean: salaries, wages, fees, overhead, or benefit expenses of an **Insured**; and any amounts incurred in the defence of a **Claim** for which any other insurer has a duty to defend.

(iv) **Insured's Professional Business** shall mean any service or operation as stated on the **Declarations Page** under the heading of Insureds Professional Business. This also includes any *Good Samaritan Act* which means the treatment administered at the scene of a medical emergency, accident or disaster by the **Insured** who is present either by chance, or in response to an emergency following a disaster.

(v) **Policy** shall mean this wording and the **Declaration Page** and all endorsements appended hereto.

(vi) **Policy Period** shall mean the period of time between the Effective Date and Expiration Date as specified on the **Declaration Page** or the earlier termination date, if any, but shall specifically exclude any Extended Reporting Period.

(vii) **Application** shall mean a written Application made by or on behalf of the **Insured** to the **Underwriters** for the insurance evidenced by this **Policy**, including any statements, declarations, application forms, warranties or information upon which the **Underwriters** have relied and, where a special form or presentation has been used for the purpose, bearing the date stated on the **Declaration Page**.

(viii) **Retroactive Date** shall mean the date specified on **Declaration page**. Any actual or alleged malpractice, negligent act, error, omission, circumstance or event which occurred or commenced before the **Retroactive Date** stated on the **Declaration Page** shall be excluded.

(ix) **Declarations Page** shall mean the document so-entitled which is appended to this **Policy**.

(x) **Underwriters** shall mean the Insurers as stated in **Declaration Page** and or subscription schedule.

(xi) **Abuse** shall mean any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual, or mental abuse.

- (xii) **Damages** shall mean any compensatory sum which the **Insured** is legally obligated to pay for any **Claim** to which this insurance applies and shall include judgments and settlements, negotiated with the **Underwriters** written consent. **Damages** shall not include any matter, sum or award that is uninsurable under the law pursuant to which this **Policy** shall be construed nor any form of injunctive or declaratory relief.
- (xiii) **Documents** means those used in the rendering of the **Insured's** services that are usual or customary for the **Insured's Professional Business**
- (xiii) **Privacy Failure Expense** shall mean those reasonable and necessary expenses incurred by the **Insured**, or on the **Insured's** behalf;
- i. to provide notice to third party or parties of any actual or alleged compromise of personal information;
 - ii. to recover information which has been accessed without the individual's permission;
 - iii. to provide credit monitoring to minimize any **Damages** otherwise covered under this **Policy** for a period not greater than twelve (12) months from the date of the **Privacy Failure**;
 - iv. to conduct an investigation, also known as cyber investigation, of the **Insured's** computer network from which sensitive personal information has been accessed in order to determine the manner in which and the date and time of such information was accessed;
 - v. to pay a public relations, law, or crisis management firm(s) to perform crisis management services to minimize the potential harm to an individual(s) resulting from unauthorized disclosure or access to sensitive personal information;
 - vi. legal expenses to defend the **Insured** in any Privacy Commission Hearing or Inquest by a government body.

Privacy Failure shall mean:

- 1) unauthorized use, collection, or dissemination of private information that may include social insurance number, healthcare information, drivers' license, passport number and or any other information that is customarily deemed to be private and sensitive.
- 2) any resulting breach of federal, provincial, state or local identity theft and privacy protection laws requiring commercial entities that collect personal information to post privacy policies, adopt specific privacy controls, or notify individuals in the event that personal information has potentially been compromised, which includes the Personal Information and Electronic Documents Act (PIPEDA).
- 3) the actual failure and inability of the **Insured** to prevent by all reasonable means:
 - i. the unauthorized use of or access to the **Insured's** computer network;
 - ii. transmittance or reception of unauthorized corrupting or harmful piece of code, computer virus or similar program; or
 - iii. the physical theft of hardware or firmware controlled by the **Insured** on which data is stored from premises occupied and controlled by the **Insured**.

3. EXCLUSIONS

Underwriters shall not be liable for:

Other Activities

Any **Claims** resulting from or arising out of the operation of any other business enterprise, other than those defined in **Insured's Professional Business**, as stated on **Declaration Page**.

Circumstances at Inception

any **Claim** arising from any circumstance or occurrence which has been notified to any Medical Defence Organisation and/or **Underwriters** prior to inception of this **Policy**; or any circumstance directly or indirectly involving any **Malpractice** or negligent act which could give rise to a claim under this **Policy** of which the **Insureds** were aware or ought reasonably to have been aware at or prior to the inception date of this **Policy** stated on the **Declaration Page**, whether notified under any other insurance or not.

Joint Venture

any **Claim** made upon the **Insured** for work carried out by the **Insured** (for and in the name of any other company or association formed of which the **Insured** forms part for the purpose of undertaking any joint venture) unless **Underwriters'** agreement has been obtained and the inclusion of such work endorsed upon this **Policy** with the acceptance of such other Terms and Conditions as may be imposed

Contract

any **Claim** arising out of a specific liability assumed by the **Insured** under contract (which goes beyond the duty to use such skill and care as is usual in the exercise of the **Insured's** activities stated in the Application Form) unless **Underwriters'** prior agreement has been obtained and such specific liability is endorsed upon the **Policy** with the acceptance of such other Terms and Conditions as may be imposed

Directors or Officers

any **Claim** made against any Director or Officer or Employee of the **Insured** arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of authority, or breach of duty committed or attempted by such Director or Officer or Employee where such **Claim** is made solely by reason of his holding the position of Director or Officer or Employee and having acted in that capacity

Employer Liability

any **Claim** by any person for bodily injury, mental injury, disease or death incurred, contracted or occurring while under a contract of service or apprenticeship with the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any employee, or any **Claim** in respect of which compensation is available under any Workers' Compensation Scheme and or similar legislation. However, this Exclusion shall not apply to any **Claim** arising out of any bodily injury, mental injury or death of an employee which is caused by any negligent act, error or omission of an **Insured**, where the employee is a patient of the **Insured**

Breach or Law or Dishonest Acts

any **Claim** directly or indirectly caused by or contributed to by any act in violation of any law or ordinance; and any dishonest, fraudulent or criminal act of the **Insured**

Nuclear

any **Claim** directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

War, Government Order

any **Claim** arising from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by, or under the order of, any government or public or local authority

Pollution

any **Claim** arising from: bodily injury or loss of or damage to, or loss of the use of property directly or indirectly caused by seepage, subsidence, pollution or contamination, or the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances

Fines and Penalties

any fines or penalties, sanctions or any other damages resulting from the multiplication of compensatory damages, nor fees, commissions, expenses or costs for the professional business of the **Insured**, except as may be provided by way of an Extension of Coverage contained in this policy form or attached to by endorsement.

Abuse

Any **Claim** arising from actual or attempted **Abuse** whether under the guise of treatment or not, or in the course of treatment or not. This includes any **Claim** based on practices of employee hiring, acceptance of volunteer workers or supervision or retention of any person(s) alleged to have committed **Abuse**. Also includes any **Claim** alleging knowledge by an **Insured** of, or failure to report, the alleged **Abuse** to the appropriate authorities.

When limits of liability for Abuse Coverage are shown on the **Declarations Page**, this exclusion shall not apply to **Claims** for bodily injury, mental injury, disease or death arising from **Abuse** committed by the **Insured** during the course of treatment. The coverage provided herein does not apply to any abuse claims made by an employee (unless they are a patient at the time), and does not apply to fines, penalties, punitive or exemplary damages and **Defence Costs** or any loss arising from criminal proceedings. The maximum limit of liability under this coverage shall not exceed \$1,000,000 or the amount shown on the **Declarations Page** as **Abuse** Coverage for any one **Claim**, **Defence Costs** or in the aggregate as a combination of **Claims** and **Defence Costs** for the **Policy Period**. This Limit shown on the **Declaration Page** is the most Underwriters will pay during any one policy period regardless of the number of claims made.

Asbestos

any **Claim** related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, **Defence Costs**, or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

Mould

any **Claim**, injury, damage, loss or Defence Costs arising out of, alleging or attributable to the existence of mould, fungus/fungi, spore(s), mildew(s), mushroom(s), yeast(s), or biocontaminant(s) or any by-product there from.

Terrorism

any **Claim**, injury, cost or expense caused by or 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 loss, **damage, claim**, injury, cost or expense.

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

Insolvency

The administration, receivership, insolvency or bankruptcy of the **Insured**.

Hepatitis, HIV, AIDS

any **Claim** arising from any Hepatitis Non A or any condition directly or indirectly caused by, or associated with, the human immunodeficiency syndrome (HIV) initially named as either HTLV III or LAV or the mutants, derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome (AIDS) or AIDS related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.

4. CONDITIONS**Laser/IPL/EPL/LHE Equipment Condition**

It is a condition precedent of this Policy for all activities and/or treatments involving the use of **Laser/IPL/EPL/LHE** equipment to treat hair, skin and or epidermis, that the **Insured** and or any person who may be entitled to coverage under this policy must comply with the following:

- (a) The **Insured** and/or any person providing services to individuals with Fitzpatrick skin type 1, 2, and 3 is required to complete a skin patch test. Where the treatment area is facial, the skin patch test must be completed at least 12 hours prior to commencing treatment. Where the treatment area is the body (not facial area), the skin patch test must be completed at least 4 hours prior to commencing treatment;
- (b) The **Insured** and/or any person providing services to individuals with Fitzpatrick skin type 4 is required to complete a skin patch test. Where the treatment area is facial, the skin patch test must be completed at least 24 hours prior to commencing treatment. Where the treatment area is the body (not facial area), the skin patch test must be completed at least 12 hours prior to commencing treatment;
- (c) The **Insured** and/or any person providing services to individuals with Fitzpatrick skin type 5 and 6 is required to complete a skin patch test. Where the treatment area is facial, the skin patch test must be completed at least 72 hours prior to commencing treatment. Where the treatment area is the body (not facial area), the skin patch test must be completed at least 48 hours prior to commencing treatment.
- (d) The **Insured** and or any person who may be entitled to coverage under this policy must have completed formal training by the manufacturer and/or the supplier of the **Laser/IPL/EPL/LHE** equipment, and further obtained written approval from the manufacturer and or supplier that they can adequately use the equipment.
- (e) Any tool or implement used or intended for use in the performance of the **Insured's Professional Business** services and duties shall be used and stored in accordance with the manufacturers' instructions.

All of the above conditions (a), (b), (c), (d) and (e), must be met for any coverage to be afforded under this policy.

For the purposes of this condition:
IPL is Intense Pulse Light
EPL is Energy Pulse Light
LHE is Light Heat Energy

Professional Tool/Equipment/Instrument Condition

It is a condition precedent of this Policy for all activities and/or treatments involving the use or intended use of any tool, equipment and or instrument in the performance of the **Insured's Professional Business**, that the Insured and or any person who may be entitled to coverage under this policy must comply with the following:

Any tool, equipment and or instrument used or intended for use in the performance of the **Insured's Professional Business** services and duties which are intended to be in contact with bodily fluid (whether human or animal) or penetrate tissue (whether human or animal) shall be:

- (a) Handled, used and stored in accordance with the manufacturers' instructions, and
- (b) Where approved by the manufacturers and by the Department of Health or equivalent to be used more than once, sterilized prior to such use:
 - (i) using only sterilized apparatus specifically approved by the manufacturer and in accordance with instructions, recommendations or guidelines of such manufacturer
 - (ii) in accordance with the applicable Provincial Ministry of Health guidelines or equivalent

Any surface which such device is likely to come into contact with or which has been in contact with bodily fluid (whether human or animal) or tissue (whether human or animal) shall be disinfected in accordance with the manufacturer's instructions and in accordance with the applicable Provincial Ministry of Health guidelines or equivalent.

All of the above must be met for any coverage to be afforded under this policy.

General Conditions

It is understood and agreed that:

- (i)
 - (a) all statements, particulars and documents referred to or contained in the **Application** attached are true, and
 - (b) during the Period of Insurance the **Insured** shall give as soon as practicable notice in writing of any alteration which materially affects the risk.
- (ii) During the **Policy Period** the **Insured** shall give as soon as practicable notice in writing to **Underwriters** via the Broker or Agent named herein of:
 - (a) any **Claim** for Malpractice or alleged Malpractice made against the **Insured**; or
 - (b) the receipt of notice from any person of an intention to hold the **Insured** responsible for any **Malpractice**; or
 - (c) any conduct or circumstance which is likely to give rise to a **Claim** for Malpractice being made against the **Insured**.
- (iii) The **Insured** shall at all times:
 - (a) maintain accurate descriptive records of all professional services and equipment used in procedures which shall be available for inspection and use by **Underwriters** or their duly appointed representatives insofar as they pertain to any **Claim** hereunder, and
 - (b) retain the records referred to in 3.(a) above for a period of at least seven (7) years from the date of treatment and, in the case of a minor, for a period of at least seven (7) years after that minor attains majority, and
 - (c) give to the **Underwriters** or their duly appointed representatives such information, assistance, signed statements or depositions as **Underwriters** may require, and
 - (d) assist in the defence of any **Claim** without charge to the **Underwriters**.
- (iv) The **Insured** shall not disclose to any person the terms of this **Policy**, no liability shall be admitted, no arrangement, offer, promise, or payment, shall be made or cost or expense incurred by the **Insured** without the written consent of the **Underwriters**. **Underwriters** shall be entitled to take control of the defence of any **Claim** or to prosecute in the name of the **Insured** for their own benefit any **Claim** for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any **Claim**. The **Underwriters** will not settle any **Claim** without the consent of the **Insured**. However, if the **Insured** refuses to consent to any settlement recommended by the **Underwriters** or their legal representatives and elects to contest or continue any legal proceedings then the liability of the **Underwriters** shall not exceed the amount for which the **Claim** could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal, which in any event will not exceed the Limits of Indemnity as specified in the Declarations Page and the **Insured** agrees to indemnify **Underwriters** for the amount of any judgment, award, settlement and **Defence Costs** which **Underwriters** are found obligated to pay after the date of such refusal.

Statutory and Additional Conditions

The Statutory Conditions and Additional Conditions apply with respect to insurance provided by the **Policy** except where these conditions may be modified or supplemented by riders or endorsements attached.

1. Misrepresentation

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

2. Property Of Others

Unless otherwise specifically stated in the contract, the Insurer is not liable for loss or damage to property owned by any person other than the Insured, unless the interest of the insured therein is stated in the contract.

3. Change Of Interest

The Insurer is liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act or change of title by succession by operation of law, or by death.

4. Material Change

Any material change to the risk and within the control and knowledge of the Insured voids the contract as to the part affected thereby, unless the change is promptly notified in writing to the Insurer or its local agent, and the Insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the Insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the Insurer an additional premium, and in default of such payment the contract is no longer in force and the Insurer shall return the unearned portion, if any, of the premium paid.

5. Termination

- (1) This contract may be terminated,
 - (a) by the Insurer giving to the Insured fifteen days' notice of termination by registered mail or five days written notice of termination personally delivered;
 - (b) by the Insured at any time on request.
- (2) Where this contract is terminated by the Insurer,
 - (a) the Insurer shall refund the excess of premium actually paid by the Insured over the pro rata premium for the expired time, but, in no event, shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the Insured, the Insurer shall refund as soon as practicable the excess of the premium actually paid by the Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

6. Requirements After The Loss

- (1) Upon the occurrence of any loss of or damage to the insured property, the Insured shall, if the loss or damage is covered by the contract,
 - (a) forthwith give notice thereof in writing to the **Underwriters**;
 - (b) deliver as soon as possible notice of any **Claim** must be given in writing to **Premier Canada**, the **Underwriters** representative, directly at the following address:

Premier Canada Assurance Managers Ltd.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8
Attention: Claims Department

 - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, cost, actual cash value and particulars of amount of loss claimed,
 - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the Insured knows or believes,
 - (iii) stating that the loss did not occur through any willful act or neglect or the procurement, means or connivance of the Insured,
 - (iv) showing the amount of other insurances and the names of other insurers,
 - (v) showing the interest of the Insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
 - (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,
 - (vii) showing the place where the property insured was at the time of loss;
 - (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;
 - (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.
- (2) The evidence furnished under clauses (c) and (d) of subparagraph (1) of this condition shall not be considered proofs of loss

7. Fraud

Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

8. Who May Give Notice And Proof

Notice of loss may be given and proof of loss may be made by the agent of the **Insured** named in the contract in case of absence or inability of the Insured to give the notice or make the proof, and 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.

9. Self-Insured Excess / Deductible

Underwriters shall only be liable for that part of each **Claim** or series of such **Claims** arising out of any one originating cause under this **Policy**, excluding **Defence Costs**, which exceeds the amount of the Self-Insured Excess stated in **Declaration Page**. The **Insured** shall retain the Self-Insured Excess for their own account and shall not insure it elsewhere.

10. Claims Notification

The **Insured** shall give to **Underwriters** prompt notice in writing during the **Period of Insurance** of:

- 10.1 any claim made against any **Insured** which may fall within the scope of this **Policy**;
- 10.2 the receipt of notice, whether written or oral, from any person or entity of their intention to make such a claim against the **Insured** for any **Wrongful Act**, negligent act, negligent error or negligent omission;
- 10.3 any circumstances of which the **Insured** shall become aware which might reasonably be expected to give rise to such a **Claim** being made against the **Insured**, giving reasons for the anticipation of such **Claim**.

If the **Insured** gives notice as required by 10.2 or 10.3 above, any **Claim** subsequently made against the **Insured** shall be deemed to have been made during the **Period of Insurance**.

Notice of any **Claim** must be given in writing to the **Underwriters** representative directly at the following address:

Premier Canada Assurance Managers Ltd.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8

Attention: Claims Department

11. Claims Handling

No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured**, nor shall any costs be incurred by the **Insured** without the written consent of the **Underwriters**; and the **Underwriters** shall be entitled to take over and conduct, in the name of the **Insured**, the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any **Claim**.

The **Insured** shall at all times give **Underwriters** such information and co-operation as **Underwriters** may reasonably require.

12. Subrogation

Underwriters shall become subrogated to all rights of recourse and remedies of the **Insured**, before as well as after any payment by **Underwriters** to the extent of any such payment and the **Insured** shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this **Policy** and **Underwriters** are thereupon subrogated to the **Insured's** rights of recovery in relation thereto, **Underwriters** agree not to exercise any such rights against any director or employee of the **Insured** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or employee.

The **Insured** shall give all such assistance in the exercise of rights of recovery as **Underwriters** may reasonably require.

13. Settlement

The **Underwriters** shall not settle any **Claim** without the consent of the Named Insured. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Underwriters** and shall elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the **Underwriters** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal.

14. Other Insurance

The insurance shall be excess to any other insurance that applies to a loss or claim, or would have applied if this policy did not exist, including insurance available to the **Insured** or any contract workers and or contract technician, whether such other insurance is stated to be primary, pro-rata, contributory, excess, contingent or otherwise, unless such insurance is written only as a specific excess insurance policy over the Limit of Liability of this policy. We will not pay any loss or claim under this policy until the limits of such insurance are exhausted.

The Insurer will have no duty under this policy to defend any claim or action that any other Insurer has a duty to defend. If no other Insurer defends, the Insurer may undertake to do so, but the Insurer will be entitled to the **Insured's** rights against all other Insurer's.

15. Changes

Notice to any authorized representative of the **Underwriters** or knowledge possessed by an authorized representative of the **Underwriters** or by any other person shall not effect a waiver or a change in any part of this **Policy** or stop the **Underwriters** from asserting any right under the terms of this **Policy**, nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form part of this **Policy**, signed by the authorized representative of the **Underwriters**.

16. Material Information

In the event of **Underwriters** being at any time entitled to void this **Policy** by reason of any inaccurate or misleading information given by the **Insured** in the **Application**, the **Underwriters** may at their election, instead of voiding this **Policy**, give notice in writing to the **Insured** that they regard this **Policy** as of full force and effect, save there shall be excluded from the indemnity afforded hereunder any claim which has arisen or which may arise which is related to such information.

The **Insured** shall throughout the **Period of Insurance** give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the **Application** bearing the date stated on the **Declaration Page**. In the event of **Underwriters** being at any time entitled to void this **Policy** by reason of the **Insured** failing to give notice in accordance with this Condition, the **Underwriters** may at their election, instead of voiding this **Policy**, give notice in writing to the **Insured** that there shall be excluded from the indemnity afforded hereunder any **Claim** which has arisen or may arise which is related to such facts, activities or circumstances.

17. Dispute

This **Policy** shall be governed by Canadian Law unless stated to the contrary. If any dispute arises in connection with the formulation, validity or interpretation of this **Policy**, it is understood and agreed by both the **Insured** and **Underwriters** that the dispute will be referred to non-binding Mediation at a convenient venue for both parties (failing agreement on this, the Mediation shall be held in Vancouver or Toronto). Mediation shall be initiated by the delivery of a written notice of request for Mediation by one party to the other. Each party shall bear the expenses of its own presentation and shall jointly and equally bear with the other party the expenses of the Mediation. Failing mutual agreement on a suitable Mediator, a Mediator shall be appointed by application to the President of the provincial Law Society where the **Insured** is situated.

If Mediation cannot resolve the dispute then such dispute shall be submitted to the exclusive jurisdiction of the provincial courts where the **Insured** is situated. Both parties agree to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

18. Relinquishment

The **Underwriters** may at any time pay to the **Insured** in connection with any **Claim** or series of **Claims** under this **Policy** the amount of the **Limit of Liability** remaining under this **Policy** or any lesser amount for which such claim or claims can be settled less any sums already paid and, where **Defence Costs** are inclusive within the Limit of Liability, less any associated **Defence Costs** already paid. Upon such payment being made, the **Underwriters** shall relinquish the conduct and control of and be under no further liability in connection with such **Claims** or associated **Defence Costs** incurred after the date of such relinquishment.

19. Fraudulent Claims

If any **Claim** under this **Policy** is in any respect fraudulent this **Policy** shall become void ab initio. However, for greater certainty, this clause shall not apply to any other **Insured** who is neither the author of such act nor an accomplice thereto.

20. Cancellation

This **Policy** may only be cancelled by the **Underwriters** if the **Insured** does not pay the premium when due. In the event of non-payment of premium by the **Insured**, the **Underwriters** may cancel this **Policy** by delivering to the **Insured** or by mailing to the **Insured** by registered, certified or other first class mail, at the **Insured's** address as shown on the **Declaration Page**, written notice stating when, not less than fifteen (15) thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Period of Insurance** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Underwriters** shall have the right to the premium amount for the period of the **Period of Insurance** during which the **Policy** was in effect.

- 21. Assignment**
Assignment or transfer of any interest under this **Policy** shall not bind the **Underwriters** without their prior written consent.
- 22. Action Against the Underwriter**
Except as otherwise permitted by statute, no action shall be asserted against the **Underwriters** unless, as a condition precedent thereto, there have been full compliance with all terms of this **Policy**.
- 23. Stacking of Limits**
Any **claim(s)** that is recoverable under any other Liability Policy issued by the **Underwriter** or issued by the Underwriters Managing General Agent is excluded under this policy.
- 24. Audit of Records**
The **Underwriters** may, at any time, inspect the premises of the **Insured**. In relation to this policy, the **Underwriters** may also examine the financial records and files of the **Insured** during the policy period and during the two (2) years which follow its expiry or cancellation provided that prior notice of forty-eight (48) hours is given to the **Insured**.
- 25. Conformity with Statute**
All terms which are in conflict with the legal, statutory or regulatory requirements of a Canadian Province or Territory are hereby amended to conform to such statutes.
- 26. Canadian Currency Clause**
All limits of insurance, premiums and other amounts shown in this form and on **Declaration Page** are in Canadian Currency.
- 27. Assistance and Cooperation of the Insured**
The **Insured** shall co-operate with the **Underwriter** and, upon the **Underwriter's** request, shall attend hearings and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. Except at his/her own cost, the **Insured** shall not voluntarily make any payment, assume any liability or obligation or incur any expense, unless incurred with the written consent of the **Insurer**.
- 28. Suspension of Licensing, Permit, or Provisional Administration**
If the Named **Insured** has its permit or license practice suspended by virtue of the laws governing its practice, or if a provisional administration is imposed by governmental authority, notice must be given to the to the **Underwriters'** representative directly at the following address:

Premier Canada Assurance Managers Ltd.
1700 - 601 W. Hastings Street
Vancouver, BC V6B 1M8
Attention: Claims Department

within, and not exceeding, thirty (30) days from such suspension or provisional administration.
- 29. Severability of Interests**
In the event that a **claim** is made against more than one **Insured**, it is agreed that the obligation of the **Underwriters** under this policy is the same as if separate policies had been issued to each. The maximum amount payable hereunder on behalf of all **Insureds** and notwithstanding the number of **Insureds** involved, shall not exceed the limit of liability stated in the **Declaration Page** regardless of the number of **Insureds**.
- 30. Authorization**
By acceptance of this policy, it is agreed that the **Named Insured** as stated on Declaration Page shall act on behalf of all **Insured's** with respect to the giving of notice of a **claim**, the giving or receiving of notice of the termination or non-renewal, the payment or receipt of any return premiums that may become due under this policy, agreement to and acceptance of changes to the policy, consenting to any settlement, exercising the right to an extended reporting period, and the giving or receiving of any other notice provided for in this policy.
- 31. Action**
Every action or proceeding against the Insurer for the recovery of any claim under or by virtue of this contract is absolutely barred unless commenced within two years after the loss or damage occurs.