

**Form #UMB2013 - Commercial Umbrella**  
(Rev. 6 May 2013)

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. The word 'Insured' means any person or organization qualifying as such under SECTION I – DEFINITIONS.

Other words and phrases that appear in quotation marks have special meaning.

**SECTION I • DEFINITIONS**

Whenever used in this Policy and its endorsements:

- (a) "Action" means a civil proceeding in which damages because of "personal and advertising injury", "property damage" or "bodily injury" to which this insurance applies is alleged. "Action" includes an arbitration proceeding alleging such damages to which the "Insured" or "Key Person" must submit or submits with the consent of the Insurer.
- (b) "Aircraft" means any craft designed to travel through air or space by powered or unpowered flight. "Aircraft" does not include air-cushioned vehicles, hang gliders or para-skis.
- (c) "Automobile" means any self-propelled land motor vehicle, trailer or semi-trailer (including any attached machinery, apparatus or equipment) which is:
  - (i) principally designed and is being used for the transportation of people or property on public roads, and
  - (ii) required by law to be insured under an Automobile liability Policy.
- (d) "Bodily injury" means personal injury, sickness, disease, disability or shock, including death that results at any time from these, mental anguish and mental injury;
- (e) "Completed operations hazard" means "bodily injury" and "property damage"
  - (i) occurring away from premises owned by or rented to the "Insured", and
  - (ii) arising from work or operations performed by or on behalf of the "Insured" that has been completed or abandoned.

Work and operations will be considered completed when

- (1) all work required by a contract has been completed or, if sooner,
- (2) all work to be done at a work site is completed, if a contract requires work at more than one site, or, if sooner,
- (3) that part of work done at a work site has been put to its intended use by any person or organization other than another contractor or sub-contractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be considered completed.

- (f) "Declarations page" means the declarations for the current "policy period" attached to this Policy.
- (g) "Insured" means each of the following:
  - (i) the persons, partnerships, joint ventures or organizations named in the "declarations page", but only for the conduct of the business to which this Policy applies;
  - (ii) the spouse of a person named in the "declarations", but only for the conduct of the business to which this Policy applies;
  - (iii) the members and partners of a partnership or joint venture named in the "declarations" and their spouses, but only for the conduct of the business of the partnership or joint venture;
  - (iv) the corporate officers and members of the board of directors of an organization named in the "declarations" and their spouses, but only for the conduct of the business of the organization;
  - (v) the stockholders of an organization named in the "declarations", but only for their liability as stockholders;
  - (vi) the employees, other than corporate officers, of the entities shown in paragraph (a) of this definition, but only for acts within the scope of such employment;
  - (vii) any person, other than an employee, or any organization while acting as the real estate manager of the entities shown in paragraph (a) of this definition;
  - (viii) any person or organization having proper temporary custody of the property of a person named in the "declarations" after the death of such named person, but only
    - (1) for liability arising from the existence, maintenance or use of that property; and
    - (2) until a legal representative has been appointed;
  - (ix) the legal representative of a person named in the "declarations" after the death of such named person, but only for duties as such;
  - (x) any organization formed or acquired by any of the entities shown in paragraph (a) of this definition during the "Period of Insurance", provided:
    - (1) such organization is not a partnership or joint venture,
    - (2) coverage for such organization is afforded only until the ninetieth (90th) day after its formation or acquisition or the end of the "Period of Insurance", whichever is earlier, and
    - (3) no coverage is afforded for such organization for "occurrences" that happened before its acquisition;
  - (xi) any person or organization, other than those previously described in this definition, that is an insured in a Policy listed in the "Underlying Insurance".
- (h) "Insured's products" means
  - (i) goods or products that were made, sold, handled, distributed or disposed of by
    - (1) an "Insured" named in the "declarations";
    - (2) others trading under the name of an "Insured" named in the "declarations"; or
    - (3) a person or organization whose business or assets are acquired by an "Insured" named in the "declarations";
  - (ii) containers (other than vehicles), materials, parts or equipment supplied in connection with such goods or products;
  - (iii) warranties or representations concerning the fitness, quality, durability or performance of any of the items described in paragraphs (a) and (b) of this definition. "Insured's products" does not include:
    - (1) real property; or
    - (2) vending machines or other property rented to others or located for the use of others but not sold.
- (i) "Key Person" means each of the following:
  - (1) an individual person who is normally resident in Canada, and is one or more of the following in relation to the "Insured" named first in the "declarations":

- (i) a corporate officer,
  - (ii) a member of the board of directors,
  - (iii) a partner,
- (2) any person or organization having proper temporary custody of the property of the individual described in Item 1 of this definition after the death of that individual, but only
  - (i) for liability arising from the existence, maintenance or use of that property, and
  - (ii) until a legal representative has been appointed;
- (3) the legal representative of the individual described in Item (1) of this definition after the death of that individual, but only for duties as such.
- (j) "Microbial matter" includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew, whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "microbial matter" or spores or resultant mycotoxins, allergens or pathogens. This includes any reproductive particle or microscopic fragment produced by, emitted from or arising out of any fungi.
- (k) "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- (l) "Period period" means the Period of Insurance shown in the "declarations page".
- (m) "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offences:
  - (a) False arrest, detention or imprisonment;
  - (b) Malicious prosecution;
  - (c) Wrongful entry into, eviction or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies committed by or on behalf of its owner, landlord or lessor;
  - (d) Electronic, oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
  - (e) Electronic, oral or written publication of material that violates a person's right of privacy.
  - (f) The use of another's advertising idea in the "Named Insured's" "advertisement"; or
  - (g) Infringing upon another's copyright, trade dress or slogan in the "Named Insured's" "advertisement".
- (n) "Products hazard" means "bodily injury" and "property damage"
  - (i) occurring away from premises owned by or rented to the "Insured", and
  - (ii) arising from the "Insured's products" which are no longer in the physical possession of the "Insured".
- (o) "Property damage" means
  - (i) physical damage to or destruction of tangible property, including resulting loss of use of that property, and
  - (ii) loss of use of tangible property that is not physically damaged or destroyed.
- (p) "Recreational vehicle" means a land motor vehicle that is not an "automobile" and is designed for recreational use off public roads.
- (q) "Self Insured Retention" means the amount shown as the self insured retention in the "declarations page".
- (r) "Terrorism" means an ideologically motivated unlawful act or acts, 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.
- (s) "Ultimate net loss" means the amount paid or payable by the "Insured" in settlement or satisfaction of a claim or judgment, after making proper deduction for all recoveries, salvage and contribution from other sources.
- (t) "Ultimate personal net loss" means the amount paid or payable by the "Key Person" in settlement or satisfaction of a claim or judgment, after making proper deduction for all recoveries, salvage and contribution from other sources.
- (u) "Underlying Insurance" means the Schedule of Underlying Insurance attached to the "Declarations Page".
- (v) "Underlying limit" means an amount equal to the sum of:
  - (i) the limit of liability of the underlying insurance specified in the "Underlying Insurance"; and
  - (ii) any other underlying insurance collectible by a "Key Person".
- (w) "Watercraft" means any powered or unpowered vessel which is principally designed and is being used for the transportation of people or property on water.
- (x) "Wrongful employment practices" means:
  - (i) the contravention or violation in employment practices of any federal or provincial human rights law or regulation; or
  - (ii) the termination of employment in a manner which is illegal or in breach of an agreement.

## **SECTION II – COVERAGES**

### **UMBRELLA LIABILITY**

This insurance applies only when an Occurrence and Aggregate Limits are indicated in the Declarations Page.

#### **1. Insuring Agreement**

- (a) Subject to all the terms of this Policy, the Insurer agrees to pay on behalf of any "Insured" the "ultimate net loss" which the "Insured" shall become obligated to pay by reason of liability. The liability must be imposed upon the "Insured" by law or be assumed by the "Insured" under contract or agreement. Such liability must arise out of "bodily injury", "property damage" or "personal and advertising injury" caused by an "occurrence" anywhere in the world during the "Policy Period".
- (b) Insurance for liability arising from the ownership, use or operation by or on behalf of the "Insured" of an "automobile" is provided only if a Standard Excess Automobile Policy (S.P.F./Q.P.F. No. 7), is attached to and incorporated in this Policy. The "automobile" must be registered in a province or territory of Canada. Such insurance is subject to all the terms, conditions, limitations and exclusions of the Standard Excess Automobile Policy.
- (c) Subject to all the terms of this Policy, the Insurer agrees to pay on behalf of any "Key Person" the "ultimate personal net loss" which the "Key Person" shall become obligated to pay by reason of personal liability.

The personal liability must be imposed upon the "Key Person" by law or be assumed by the "Key Person" under contract or agreement.

- (i) Such personal liability must arise out of "personal and advertising injury", "bodily injury" or "property damage" caused by an "occurrence" in Canada during the "Policy Period".
- (ii) Insurance for the personal liability of an "Key Person" arising from the ownership, use or operation of an "automobile" is provided only if
  - (1) the "Key Person" is covered for such personal liability by a Standard Automobile (Owner's Form) Policy having a limit of, insurance of not less than \$1,000,000 at the time of any "Occurrence"; and
  - (2) a Standard Excess Automobile Policy is attached to and incorporated in this Policy; and
  - (3) the "automobile" is registered in a province or territory of Canada.

Such insurance is subject to all the terms, conditions, limitations and exclusions of the Standard Excess Automobile Policy. For the purposes of this coverage, the Standard Automobile (Owner's Form) Policy required by sub-paragraph (i) of this paragraph (b) is considered to be described in Item of the application (or, in Quebec, the declarations) of the Standard Excess Automobile Policy.

## 2. Underlying Limits and Self Insured Retention

The Insurer shall be liable only for the "ultimate net loss" in excess of the greater of:

- (a) the "underlying limit", or
- (b) the "Self Insured Retention". This amount is to be borne by the "Insured" for each "Occurrence".
- (c) Only with respect to the coverage provided under Item 1c of SECTION II COVERAGE UMBRELLA LIABILITY, the Insurer shall be liable only for the "ultimate personal net loss" in excess of the greater of
  - (1) the "underlying limit"; or
  - (2) \$1,000,000.00 with respect to personal liability arising from the ownership, use or operation of any "recreational vehicle" or "watercraft"
  - (3) the "Self Insured Retention". This amount is to be borne by the "Insured" for each "Occurrence"

## 3. Limits of Liability

- (a) Regardless of the number of:
  - (1) "Insureds"; or
  - (2) claims made or "actions" brought;the total limit of the Insurer's liability for the "ultimate net loss" resulting from anyone "occurrence" shall not exceed the Each Occurrence limit shown in the Declarations Page.
- (b) The Insurer's liability shall be further limited to the Aggregate limit shown in the "declarations page" for all "occurrences" during the "Policy Period" arising from the "products and completed operations hazard".
- (c) This coverage will take the place of the "underlying insurance":
  - (i) if an aggregate limit of liability in the underlying insurance is exhausted; and
  - (ii) if exhaustion of such aggregate limit is due only to "occurrences" happening after the inception date of this Policy; and
  - (iii) for "occurrences" happening during the "Policy Period";
  - (iv) subject to the limits, terms, conditions and exclusions of this Policy.If an aggregate limit in underlying insurance specified in such Schedule is exhausted or reduced due to "occurrences" happening before the inception date of this Policy, the Insurer shall be liable only to the same extent as if the aggregate limit had not been exhausted or reduced.
- (d) For the purpose of determining the limit of the Insurer's liability:
  - (i) all "personal and advertising injury", "bodily injury" and "property damage" arising out of continuous or repeated exposure to substantially the same general condition regardless of the frequency of repetition, or the number of claims and;
  - (ii) "personal and advertising injury" involving the same material or *ad* or the same general condition regardless of the number or type of media used, the frequency of repetition, or the number of claims shall be considered as arising from one "occurrence".
- (e) With respect to the coverage provided under Item 1c of SECTION II COVERAGE UMBRELLA LIABILITY:
  - (i) Regardless of the number of:
    - (1) "Key Persons"; or
    - (2) claims made or "actions" brought against any or all "Key Persons";the total limit of the Insurer's liability for the "ultimate personal net loss" resulting from anyone "occurrence" shall not exceed the Each Occurrence limit shown in the "declarations".
  - (ii) For the purposes of determining the limit of the Insurer's liability, all "bodily injury", "property damage", and "personal and advertising injury" arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising from one "occurrence".

## 4. Conditions of Defense

- (a) The Insurer shall not be called upon to assume charge of the investigation, settlement or defense of any claim made or "action" brought or proceeding instituted against an "Insured". The Insurer shall have the right and be given the opportunity to be associated in the defense and trial of any such claim, "action" or proceeding concerning any "occurrence" which, in the opinion of the Insurer, may create liability for the Insurer under this coverage. If the Insurer avails itself of such right and opportunity, the Insurer shall do so at its own expense. Court costs and interest, if incurred with the consent of the Insurer, shall be borne by the Insurer and other interested parties in the proportion that each party's share of the "ultimate net loss" bears to the total amount of the "ultimate net loss" sustained by all interested parties. The provisions of this paragraph apply in all circumstances except as described in paragraph (b) below.
- (b) This paragraph applies only to an "occurrence" for which no insurance is provided by any "underlying insurance" collectible by the "Insured" and for which insurance is provided by this coverage.
  - (i) The Insurer shall defend any "action" against the "Insured". This obligation applies even if any of the allegations of the "action" are groundless, false or fraudulent. The Insurer may investigate and settle the "action" as it deems expedient. The Insurer shall not be obligated to defend any "action" after the limit of the Insurer's liability is exhausted by payment of claims or judgments.
  - (ii) The Insurer shall pay all expenses it incurs, all costs taxed against the "Insured" in any such "action", and all interest on the entire amount of a resulting judgment which accrues after entry of that judgment and before the Insurer has paid the part of the judgment which is within the limit of the Insurer's liability.
  - (iii) The Insurer shall provide security for costs and pay premiums for any appeal bonds and any bonds to release attachments in such "action" to the extent that the costs or the bond amounts are within the limit of the Insurer's liability. The Insurer has no obligation to apply for or furnish such bonds.
  - (iv) The Insurer shall pay reasonable expenses incurred by the "Insured" at the request of the Insurer to help the Insurer Investigate or defend any claim or "action", including actual loss of earnings not exceeding \$100 each day.
- (c) With respect to the coverage provided under Item 1c of SECTION II COVERAGE UMBRELLA LIABILITY:
  - (i) The Insurer shall not be called upon to assume control of the investigation, settlement or defense of any claim made or "action" brought or proceeding instituted against a "Key Person". The Insurer shall have the right and be given the opportunity to be associated in the defense and trial of any such claim, "action" or proceeding concerning any "occurrence" which, in the opinion of the Insurer, may create liability for the

Insurer under this coverage. If the Insurer avails itself of such right and opportunity, the Insurer shall do so at its own expense. Court costs and interest, if incurred with the consent of the Insurer, shall be borne by the Insurer and other interested parties in the proportion that each party's share of the "ultimate personal net loss" bears to the total amount of the "ultimate personal net loss" sustained by all the interested parties. The provisions of this paragraph apply in all circumstances except as described in paragraph (ii) below.

- (ii) This paragraph applies only to an "occurrence" for where no insurance is provided by any underlying insurance collectible by the "Key Person" and for which insurance is provided by this coverage.
  - (1) The Insurer shall defend any "action" against the "Key Person". This obligation applies even if any of the allegations of the "action" are groundless, false or fraudulent. The Insurer may investigate and settle the "action" as it deems expedient. The Insurer shall not be obligated to defend any "action" after the limit of the Insurer's liability is exhausted by payment of claims or judgments.
  - (2) The Insurer shall pay all expenses it incurs, at costs taxed against the "Key Person" in any such "action", and all interest on the entire amount of a resulting judgment which accrues after entry of that judgment and before the Insurer has paid the part of the judgment which is within the limit of the Insurer's liability.
  - (3) The Insurer shall provide security for costs and pay premiums for any appeal bonds and any bonds to release attachments in such "action" to the extent that the costs or the bond amounts are within the limit of the Insurer's liability. The Insurer has no obligation to apply for or furnish such bonds.
  - (4) The Insurer shall pay reasonable expenses incurred by the "Key Person" at the request of the Insurer to help the Insurer investigate or defend any claim or "action", including actual loss of earnings not exceeding \$100 each day.

### SECTION III – EXCLUSIONS

- A. This coverage does not apply to:
  - (a) any obligation for which an "Insured" or the insurer of an "Insured" may be held liable under a workers' compensation law, a disability benefits law or other similar laws, but this exclusion does not apply to the liability of others assumed by an "Insured" as an incidental part of a contract or agreement;
  - (b) "property damage" to:
    - (i) property owned by the "Insured";
    - (ii) the "Insured's products" arising out of such products or any part of such products;
    - (i) that part of any work performed by the "Insured" arising out of a defect in such part; or
    - (iv) personal property in your care, custody or control.
  - (c) loss of use of tangible property which has not been physically damaged or destroyed resulting from:
    - (i) a delay in or lack of performance by or on behalf of the "Insured" of any contract or agreement; or
    - (ii) the failure of the "Insured's products" or of work performed by or on behalf of the "Insured" to meet the level of performance, quality, fitness or durability warranted or represented by the "Insured", but this exclusion does not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of the "Insured's products" or work performed by or on behalf of the "Insured" after such products or work has been put to use by any person or organization that is not an "Insured";
  - (d) "bodily injury" and "personal and advertising injury" arising from physical abuse, sexual abuse, sexual harassment, psychological abuse, emotional abuse, or the failure to prevent any of these offences;
  - (e) any aggravated or exemplary or punitive damages, other than such damages for which the "Insured" is liable vicariously and not because of the fault of any "Insured" (including any employee of the "Insured") if allowable by law.
- B. Unless insurance is provided by "underlying insurance" and then for no broader coverage than is afforded by such "underlying insurance", this coverage does not apply to:
  - (a) "personal and advertising injury" resulting from:
    - (i) failure of performance of a contract; or
    - (ii) infringement of a registered trade mark, service mark or trade name by use on or in connection with the "Insured's products", services or advertisements; or
    - (iii) incorrect description of the "Insured's products"; or
    - (iv) a mistake in the advertised price;
  - (b) liability arising from the ownership, maintenance, operation, use, loading or unloading of:
    - (i) any "aircraft" owned by the "Insured" or chartered by or on behalf of the "Insured" without a crew, or
    - (ii) any "watercraft" owned by the "Insured";
  - (c) any act committed by or at the direction of an "Insured" with the intent of causing "bodily injury", "property damage" or "personal and advertising injury", but this exclusion does not apply if the act is committed only for the purpose of preventing or eliminating danger in the operation of a "watercraft" or for the protection of persons or property;
  - (d) any employee with respect to "bodily injury" to another employee of the same employer in the course of employment, but this exclusion does not apply to "personal injury" resulting from the ownership, maintenance, operation, use, loading or unloading of an "automobile";
  - (e) any loss, cost or expense incurred by the "Insured" or by others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the "Insured's products" or of work performed by the "Insured";
  - (f) "personal and advertising injury" arising from "wrongful employment practices".
- C. **Nuclear Energy Liability Exclusion**  
This coverage does not apply to:
  - (a) liability imposed by or arising under the Nuclear liability Act; nor
  - (b) "bodily injury", "personal and advertising injury" or "property damage" with respect to which an "Insured" under this Policy is also insured under a contract of nuclear energy liability insurance (whether the "Insured" is unnamed in such contract and whether or not it is legally enforceable by the "Insured") issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such Policy but for its termination upon exhaustion of its limit of liability; nor
  - (c) "bodily injury", "personal and advertising injury" or "property damage" resulting directly or indirectly from the nuclear energy hazard arising from:
    - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an "Insured";
    - (ii) the furnishing by an "Insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
    - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an "Insured".

As used in this exclusion:

- (a) The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- (b) The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;



- (c) The term "nuclear facility" means:
- (i) 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 anyone or more of them;
  - (ii) any equipment or device designed or used for
    - (a) separating the isotopes of plutonium, thorium and uranium or anyone or more of them,
    - (b) processing or utilizing spent fuel, or
    - (c) handling, processing or packaging waste;
  - (iii) 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 anyone 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 twenty five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two (2) grams of uranium 235;
  - (iv) 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.
- (d) The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- (e) With respect to property, loss of use of such property shall be deemed to be "property damage".

**D. Environmental Liability Exclusion**

Unless insurance is provided by "underlying insurance" and then for no broader coverage than is afforded by such "underlying insurance", this coverage does not apply to:

- (a) "bodily injury" or "property damage" arising out of the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of pollutants:
- (i) at or from any premises, site or location which is or was at any time, owned or occupied by or rented or loaned to the "Insured";
  - (ii) at or from any premises, site or location which is or was at any time, used by or for any "Insured" or others for the handling, storage, disposal, processing or treatment of waste material;
  - (iii) 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 the "Insured" may be legally responsible; or
  - (iv) 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:
    - (1) if any pollutants are brought on or to the premises, site or location in connection with such operations by such "Insured", contractor or subcontractor; or
    - (2) to test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate, neutralize or in any way respond to or assess the effect of pollutants.
- (b) any loss, cost or expense arising out of any request, demand or order that an "Insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate, neutralize or in any way respond to or assess the effect of pollutants unless such loss, cost or expense is consequent upon "bodily injury" or "property damage" insured against by this coverage.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

However, this exclusion does not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any "automobile" owned by, leased, rented or loaned to the "Insured", but only to the extent that coverage is available to the "Insured" for the "automobile" in the underlying insurance specified in the "underlying Insurance".

**E. Data Exclusion**

This coverage shall not apply to:

- (a) Liability for:
- (i) erasure, destruction, corruption, misappropriation, misinterpretation of "data";
  - (ii) erroneously creating, amending, entering, deleting or using "data"; including any loss of use arising therefrom.
- (b) "personal and advertising injury" or Errors and Omissions Liability arising out of the distribution or display of "data", by means of an internet website, the internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "data". For the purposes of this paragraph, the definition of "personal injury" shall not include bodily injury, sickness or disease sustained by any person which occurs during the Policy period, including death at any time resulting there from.

As used in this exclusion, "data" means representations of information or concepts, in any form.

**F. War Risks Exclusion**

This coverage shall not apply to "personal and advertising injury", "property damage" or "bodily injury" due to war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military power.

**G. Fungi and Fungal Derivatives Exclusion**

This coverage shall not apply to:

- (a) "personal and advertising injury", "property damage", "bodily injury" or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "microbial matter" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, clean up, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "microbial matter"; or
- (b) any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with a. above; or
- (c) any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in a. or b. above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the injury, damage, expense or costs, or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.

**H. Terrorism Exclusion**

This Policy shall not apply to liability or expenses 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.

**I. Asbestos Exclusion**

This Policy does not apply to:

- (a) "personal and advertising injury", "property damage", "bodily injury" or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread or discharge of asbestos or material containing asbestos in whatever form or quantity, however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, clean up, contain, remediate, treat, detoxify, "neutralize, assess or otherwise deal with or dispose of asbestos or material containing asbestos in whatever form or quantity;
- (b) any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with a. above;
- (c) any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in a. or b. above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the injury, damage, expense or costs, or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.

**J. Personal Liability**

With respect to Item 1c of SECTION II COVERAGE UMBRELLA LIABILITY, this coverage does not apply to

- (a) any obligation for which a "Key Person" or the insurer of an "Key Person" may be held liable under a workers' compensation law, a disability benefits law or other similar laws, but this exclusion does not apply to the liability of others assumed by a "Key Person" as an incidental part of a contract or agreement for personal services;
- (b) "property damage" to property owned by an "Key Person";
- (c) any act committed by or at the direction of an "Key Person" with the intent of causing "bodily injury" or "property damage", but this exclusion does not apply if the act is committed only for:
  - (i) the purpose of preventing or eliminating danger in the operation of a "recreational vehicle" or a "watercraft", or
  - (ii) the protection of persons or property;
- (d) liability arising from the existence, ownership, maintenance, operation, use, loading or unloading of any "aircraft";
- (e) liability arising from business property or the business or professional activities of an "key person";
- (f) any act or omission of an "Key Person" in the capacity of corporate officer, corporate director or corporate stockholder;
- (g) liability arising from the ownership, maintenance, operation, use, loading or unloading of any "recreational vehicle" or "watercraft" while practicing for or participating in a contest, race or speed trial;
- (h) "personal and advertising injury" and "bodily injury" arising from physical abuse, sexual abuse, sexual harassment, psychological abuse, emotional abuse, or the failure to prevent any of these offences;
- (i) the transmission of a communicable disease;
- (j) any aggravated or exemplary or punitive damages, other than such damages for which the "Key Person" is liable vicariously and not because of the fault of any "Individual Insured".

**K. Professional Liability**

This Policy does not apply to:

"Bodily injury" or "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service or advice.

**L. United States Jurisdiction**

In respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America (or any order made anywhere in the world to enforce such judgment, award, payment or settlement), the following additional terms and exclusions shall apply:

- (a) The Limits of Insurance and Aggregate Limit are inclusive of all defense costs, fees, charges, expenses and supplementary payments;
- (b) This insurance does not apply to awards or damages of a punitive, exemplary or aggravated nature whether in the form of fines, penalties, multiplication of compensatory awards or damages, or in any other form whatsoever;
- (c) This insurance does not apply to any obligation of the insured because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974 (ERISA), as now or hereafter amended, or by any similar federal, state or local laws of the United States of America;
- (d) This insurance does not apply to any
  - (1) "bodily injury" or "property damage" arising out of the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of pollutants:
    - (i) at or from any premises, site or location which is or was at any time, owned or occupied by or rented or loaned to the "Insured";
    - (ii) at or from any premises, site or location which is or was at any time, used by or for any "Insured" or others for the handling, storage, disposal, processing or treatment of waste material;
    - (iii) 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 the "Insured" may be legally responsible; or
    - (iv) 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:
      - (1) if any pollutants are brought on or to the premises, site or location in connection with such operations by such "Insured", contractor or subcontractor; or
      - (2) to test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate, neutralize or in any way respond to or assess the effect of pollutants.
  - (2) any loss, cost or expense arising out of any request, demand or order that an "Insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate, neutralize or in any way respond to or assess the effect of pollutants unless such loss, cost or expense is consequent upon "bodily injury" or "property damage" insured against by this coverage.
  - (3) any loss or obligation of the insured because of liability imposed on by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as now or hereafter amended, or by any similar federal, state or local laws of the United States of America;

**M. United States Domiciled**

This Policy does not apply to:

any judgment, award, payment, "Action", loss or settlement arising out of any "Insured" domiciled in the United States of America and its territories

**SECTION IV - POLICY CONDITIONS**

**1. Appeals**

If the "Insured", the "key person" or the underlying insurer of either decides not to appeal a judgment exceeding the "underlying limit", the Insurer may make such appeal. If the Insurer does so, the Insurer will bear the expense of such appeal, including resulting taxable costs, disbursements and interest.

**2. Bankruptcy**

The bankruptcy or insolvency of an "Insured", an "individual Insured" or the estate of either shall not relieve the Insurer of its obligations under this Policy.

3. Cancellation
  - (a) The "Insured" named first in the "declarations page" may cancel this Policy by mailing or delivering to the Insurer advance written notice of cancellation.
  - (b) The Insurer may cancel this Policy by mailing or delivering to the "Insured" named first in the "declarations page" written notice of cancellation not less than fifteen (15) days before the effective date of cancellation. Except in Quebec, if notice is mailed, the cancellation takes effect fifteen (15) days after receipt of the notice by the post office to which it is addressed. In Quebec, the cancellation takes effect fifteen (15) days after receipt of the notice at the last known address of the "Insured" named first in the "declarations page". Proof of mailing shall be sufficient proof of notice.
  - (c) The Insurer will mail or deliver its notice to the last known mailing address of the "Insured" named first in the "declarations page".
  - (d) The "Period of Insurance" shall end on the date cancellation takes effect.
  - (e) If the Policy is cancelled, the Insurer will send any premium refund due to the "Insured" named first in the "declarations page". If the Insurer cancels, the refund will be pro rata. If the "Insured" named first in the "declarations page" cancels, the refund may be less than pro rata. The cancellation shall be effective even if the Insurer has not made or offered a refund.
4. Changes

This Policy contains all the agreements between every "Insured" and "Key Person" and the Insurer about the insurance provided. The "Insured" named first in the "declarations page" is authorized to request changes in the terms of this Policy. The terms of this Policy can be changed only by written endorsement issued by the Insurer and made a part of the Policy.
5. Currency

All limits of insurance, premiums and other amounts as expressed in this Policy are in Canadian currency.
6. Duties Following An Occurrence Claim or Action
  - (a) The "Insured" named first in the "declarations page" shall promptly notify the Insurer of any "occurrence" which may result in a claim against this Policy, including but not limited to any of the following which result from an "occurrence":
    - (i) a fatality;
    - (ii) the amputation of a limb or part of a limb;
    - (iii) a serious head injury, including skull fracture;
    - (iv) a spinal cord injury;
    - (v) a disability which appears likely to last longer than twelve (12) months;
    - (vi) second-degree or third-degree burns of 25% or more of the body;
    - (vii) any writ, claim, summons or demand specifying damages of \$500 000 or more.
  - (b) The "Insured" named first in the "declarations page" and any other involved "Insured" or "Key Person" shall
    - (i) immediately send the Insurer copies of any documents received in connection with such an "occurrence", and
    - (ii) authorize the Insurer to obtain records and other information, and
    - (iii) co-operate with the Insurer in the investigation, settlement or defence of the claim or "action", and
    - (iv) at the request of the Insurer, help in the enforcement of any right against any person or organization which may be liable to an "Insured" or an "Key Person" because of injury or damage to which this insurance may also apply.
  - (c) An "Insured" or "Key Person" shall not voluntarily make a payment, assume any obligation or incur any expense without the Written consent of the Insurer.
7. Examination of Books and Records

The Insurer may examine and audit the books and records of any "Insured" or "Key Person" as they relate to this Policy at any time during the "Period of Insurance" and up to three (3) years afterward.
8. Legal Action Against the Insurer
  - (a) No "Insured" or "Key Person" has a right under this Policy:
    - (i) to join the Insurer as a party or otherwise involve the Insurer in an "action" for damages against an "Insured" or an "Individual Insured"; or
    - (ii) to sue the Insurer on this Policy unless all of its terms have been fully complied with.
  - (b) A person or organization may sue the Insurer to recover an agreed settlement or a final judgment against an "Insured" or "Individual Insured" obtained after an actual trial. An agreed settlement means a settlement and release of liability signed by the Insurer, the "Insured" or "Key Person" and the claimant or the claimant's legal representative,
9. Maintenance of Underlying Insurance
  - (a) The "Insured" shall, throughout the "policy period", maintain in force as collectible insurance:
    - (i) the policies listed in the "Underlying Insurance"; or
    - (ii) renewals or replacements for such policies that are not more restricted in coverage.
  - (b) Every "Key Person" shall, throughout the "policy period", maintain in force as collectible insurance:
    - (i) all underlying insurance which is in force at the beginning of such "policy period"; or
    - (ii) renewals or replacements for such insurance that are not more restricted in coverage.
10. Other Insurance

If other collectible insurance with any other insurer is available to an "Insured" or "Key Person" covering liability that is also covered by this Policy, the insurance under this Policy shall be excess of such other insurance and shall not contribute with it. This condition does not apply to insurance that is specifically designated to be excess of this Policy.
11. Premium
  - (a) Unless otherwise stated, the premium for this Policy is not subject to adjustment.
  - (b) The "Insured" named first in the "declarations page" is responsible for the payment of all premiums and shall be the payee for any refund of premium.

12. Repayment of Deductible  
The "Insured" named first in the "declarations page" shall promptly reimburse the Insurer for any amount within the "self insured retention" paid by the Insurer on behalf of an "Insured" or "Key Person" in settlement or satisfaction of any claim or "action".
13. Representations  
By accepting this Policy, the "Insured" named first in the "declarations page" agrees that:  
(a) the statements in the "declarations" are accurate and complete;  
(b) those statements are based upon representations made to the Insurer by such first named "Insured"; and  
(c) the Insurer has issued this Policy in reliance upon those representations.
14. Separation of Insured and Key Person  
(a) This insurance applies:  
(i) as if each "Insured" named in the "declarations" and each "Key Person" is the only "Insured" and "Key Person"; and  
(ii) separately to each "Insured" and "Key Person" against whom claim is made or "action" is brought.  
(b) This condition does not apply to:  
(i) the Limits of Insurance; and  
(ii) any rights or duties specifically assigned to the "Insured" named first in the "declarations".
15. Transfer of Rights of Recovery Against Others  
If an "Insured" or "Key Person" has rights to recover from others all or part of any payment made by the Insurer under this Policy, those rights are transferred to the Insurer. The "Insured" or "Key Person" shall do nothing after the happening of an "occurrence" to affect those rights. At the request of the Insurer, the "Insured" or "Key Person" shall help enforce those rights.
16. Transfer of Rights and Duties of Named Insured  
(a) Except as described in paragraph (b) of this condition, no "Insured" named in the "declarations page" or "Key Person" shall transfer rights and duties under this Policy to another person or organization without the written consent of the Insurer.  
(b) If a "Key Person" dies, that person's rights and duties will be transferred to the person's legal representative, but only when acting in the capacity as the legal representative of the estate of the "Key Person". Until the legal representative is appointed, anyone having proper temporary custody of the property of the "Key Person" shall have the rights and duties of that "Key Person", but only with respect to sum property.
17. When Loss is Payable  
The Insurer shall promptly pay on behalf of the "Insured" or "Key Person" the amount of the "ultimate net loss" or "ultimate personal net loss", as applicable. Payment under this Policy shall not be due unless and until the "Insured" or "Key Person" or either's underlying insurer shall be obligated to pay the "underlying limit" or "self insured retention" because of an "occurrence" to which this Policy applies.
18. Premier Canada Assurance Managers Ltd.  
Premier Canada Assurance Managers Ltd. is the insurance manager whose name and address appear on the "declarations page" and who is authorized to be the agent of the Insurer for the purpose of issuing this policy, receiving notices and managing "claims" on behalf of the Insurer. Premier Canada Assurance Managers Ltd. is not a party to this contract of insurance.