

**Form # CGL803 (Rev. Aug 29, 2012)**  
**Commercial General Liability – Occurrence Basis**

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

**DEFINITIONS**

**SECTION I – DEFINITIONS**

1. **"Action"** means a civil proceeding in which damages because of Bodily Injury, Property Damage or Personal and Advertising Injury to which this insurance applies are alleged. Action includes an arbitration proceeding alleging such damages to which the Named Insured must submit or submits with the Insurer's consent.
2. **"Advertisement"** means a notice that is broadcast or published to the general public or specific market segments about the Named Insured's goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - (a) Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - (b) Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
3. **"Automobile"** means any self-propelled land motor vehicle, trailer or semi-trailer (including machinery, apparatus, or equipment attached thereto) which is principally designed and is being used for transportation of persons or property on public roads.
4. **"Bodily Injury"** means bodily injury, mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time.
5. **"Claim"** means a written or oral notification received by an Insured seeking a remedy and alleging liability or responsibility on the part of the Insured.
6. **"Coverage Territory":**
  - a. Canada and the United States of America (including its territories and possessions);
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in (a.) above; or
  - c. All parts of the world if:
    - 1) The injury or damage arises out of:
      - a) Goods or products made or sold by you in the territory described in (a.) above; or
      - b) The activities of a person whose home is in the territory described in (a.) above, but is away for a short time on your business; and
    - 2) The insured's responsibility to pay compensatory damages is determined in an Action on the merits, in the territory described in (a.) above or in a settlement we agree to in writing.
7. **"Damages"** means damages due or awarded in payment for Claim(s) but does not include fines, penalties, punitive or exemplary damages, except where required by law.
8. **"Declarations Page(s)"** means the Declarations Page(s) applicable to this Form.
9. **"Employee"** includes a Leased Worker and a Temporary Worker.
10. **"Executive Officer"** means a person holding any of the officer positions created by the Named Insured's charter, constitution, by-laws or any other similar governing document.
11. **"Insured"** shall mean the Named Insured on the Declarations Page(s) and any person or organization qualifying as such under SECTION III – WHO IS AN INSURED.
12. **"Insurer"** shall mean the Underwriters identified on the Declarations Page(s).
13. **"Leased Worker"** means a person leased to the Named Insured by a labour leasing firm under an agreement between the Named Insured and the labour leasing firm, to perform duties related to the conduct of the Named Insured's business. Leased worker does not include a Temporary Worker.
14. **"Impaired Property"** means tangible property, other than The Named Insured's Product or The Named Insured's Work, that cannot be used or is less useful because:
  - (a) It incorporates The Named Insured's Product or The Named Insured's Work that is known or thought to be defective, deficient, inadequate or dangerous; or
  - (b) The Named Insured has failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - (i) The repair, replacement, adjustment or removal of The Named Insured's Product or The Named Insured's Work; or
  - (ii) The Named Insured's fulfilling the terms of the contract or agreement.
15. **"Insured Contract"** means:
  - (a) A lease of premises;
  - (b) A sidetrack agreement;
  - (c) An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
  - (d) Any other easement agreement;
  - (e) An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
  - (f) An elevator maintenance agreement; or
  - (g) That part of any other contract or agreement pertaining to the Named Insured's business under which the Named Insured assumes the tort liability of another to pay damages because of Bodily Injury or Property Damage to a third person or organization, if the contract or agreement is made prior to the Bodily Injury or Property Damage. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
16. **"Occurrence"** means one loss or accident, including continuous or repeated exposure to substantially the same general harmful conditions during the Policy Period.

17. **“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.
18. **“Policy Period”** means the Policy period set out on the Declarations Page(s), or as may be terminated earlier pursuant to the Policy.
19. **“Products-Completed Operations Hazard”** includes all Bodily Injury and Property Damage occurring away from premises the Named Insured owns or rents and arising out of The Named Insured's Product or The Named Insured's Work except:
- (a) Products that are still in the Named Insured's physical possession; or
  - (b) Work that has not yet been completed or abandoned.
- The Named Insured's Work will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in the Named Insured's contract has been completed.
  - (2) When all of the work to be done at the site has been completed if the Named Insured's contract calls for work at more than one site.
  - (3) When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed. This hazard does not include Bodily Injury or Property Damage arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.
20. **“Property Damage”** means:
- (a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it; or
  - (b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it.
- For the purposes of this insurance, Electronic Data is not tangible property. As used in this definition, “Electronic Data” means information, facts or programs stored as or on, created or used on or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
21. **“Temporary Worker”** means a person who is furnished to the Named Insured to substitute for a permanent Employee on leave or to meet seasonal or short-term workload conditions.
22. **“The Named Insured's Product”** means:
- (a) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) The Named Insured;
    - (2) Others trading under the Named Insured's name; or
    - (3) A person or organization whose business or assets the Named Insured has acquired; and
  - (b) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- The Named Insured's Product includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) and (b) above.
- The Named Insured's Product does not include vending machines or other property rented to or located for the use of others but not sold.
23. **“The Named Insured's Work”** means:
- (a) Work or operations performed by the Named Insured or on the Named Insured's behalf; and
  - (b) Materials, parts or equipment furnished in connection with such work or operations.
- The Named Insured's Work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) or (b) above.
24. **“Volunteer Worker”** means a person who is not the Named Insured's Employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by the Named Insured, and is not paid a fee, salary or other compensation by the Named Insured or anyone else for their work performed for the Named Insured.

## SECTION II – COVERAGES

### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

This insurance applies only when an Each Occurrence Limit is indicated in the Declarations Page.

#### 1. Insuring Agreement.

- (a) The Insurer will pay those sums that the Insured becomes legally obligated to pay as Damages because of Bodily Injury or Property Damage to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS -COVERAGES A, B AND D. This insurance applies only to Bodily Injury and Property Damage which occurs during the Policy Period. The Bodily Injury or Property Damage must be caused by an Occurrence. The Occurrence must take place in the Coverage Territory. The Insurer will have the right and duty to defend any Action seeking those damages but:
  - (1) The amount the Insurer will pay for damages is limited as described in SECTION IV-LIMITS OF INSURANCE.
  - (2) The Insurer may investigate and settle any Claim or Action at its discretion; and
  - (3) The Insurer's right and duty to defend end when the Insurer has used up the applicable limit of insurance in the payment of judgements or settlements under Coverages A, B or D or Medical Expenses under Coverage C.
- (b) Damages because of Bodily Injury include damages claimed by any person or organization for care, loss of services or death resulting at any time from the Bodily Injury.
- (c) Property Damage that is loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the Occurrence that caused it.

#### 2. Exclusions.

This insurance does not apply to:

(a) **Expected or Intended Injury**

Bodily Injury or Property Damage expected or intended from the standpoint of the Insured. This exclusion does not apply to Bodily Injury or Property Damage resulting from the use of reasonable force to protect persons or property.

(b) **Contractual Liability**

Bodily Injury or Property Damage for which the Insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an Insured Contract; or
- (2) That the Insured would have in the absence of the contract or agreement.

(c) **Workers' Compensation and Similar Law**

Any obligation of the Insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

(d) **Employer's Liability**

Bodily Injury to an employee of the Insured arising out of and in the course of employment by the Insured.

This exclusion applies:

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

This exclusion does not apply:

- (i) To liability assumed by the Insured under an Insured Contract; or
- (ii) To employees on whose behalf contributions are made by or required to be made by the Insured under the provisions of any workers compensation law.

(e) **Automobile**

(1) Bodily Injury or Property Damage arising out of the ownership, use, operation or entrustment to others by or on behalf of any Insured of:

- (i) Any Automobile;
- (ii) Any motorized snow vehicle or its trailers;
- (iii) Any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
- (iv) Any vehicle which if it were to be insured would be required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, but this exclusion does not apply to the ownership, use, operation or entrustment to others of machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use or operation of such equipment.

(2) Bodily Injury or Property Damage with respect to which any motor vehicle liability policy is in effect or would be in effect but for its termination upon exhaustion of its limit of liability or is required by law to be in effect.

This exclusion (e) does not apply to Bodily Injury to an employee of the Insured on whose behalf contributions are made by or required to be made by the Insured under the provisions of any workers' compensation law.

(f) **Watercraft**

Bodily Injury or Property Damage arising out of the ownership, maintenance, use, operation, loading or unloading, repair, servicing, or entrustment to others, by or on behalf of any Insured of any watercraft.

This exclusion does not apply to Bodily Injury to an employee of the Insured on whose behalf contributions are made by, or required to be made by, the Insured under the provisions of any workers' compensation law.

(g) **Aircraft**

(1) Bodily Injury or Property Damage arising out of the ownership, maintenance, use, operation, loading or unloading, or the entrustment to others, by or on behalf of any Insured of:

- (i) Any aircraft; or
- (ii) Any air cushion vehicle.

(2) Bodily Injury or Property Damage arising out of the ownership, existence, use, operation or entrustment to others by or on behalf of any Insured of any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.

(h) **Property damage**

Property Damage to:

- (1) Property owned or occupied by or rented to the Insured;
- (2) Premises the Insured sells, gives away or abandons, if the Property Damage arises out of any part of those premises;
- (3) Property loaned to the Insured;
- (4) Personal property in the Insured's care, custody or control;
- (5) That particular part of real property on which the Insured or any contractor or subcontractor working directly or indirectly on the Insured's behalf is performing operations, if the Property Damage arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because The Named Insured's Work was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are The Named Insured's Work and were never occupied, rented or held for rental by the Insured.

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

Paragraph (6) of this exclusion does not apply to Property Damage included in the Products-Completed Operations Hazard

(i) **Property Damage** to The Named Insured's Product arising out of it or any part of it.

(j) **Property Damage** to The Named Insured's Work arising out of it or any part of it and included in the Products-Completed Operations Hazard. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on the Insured's behalf by a subcontractor.

(k) **Damage to Impaired Property or Property Not Physically Injured**

Property Damage to Impaired Property or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in The Named Insured's Product or The Named Insured's Work; or
  - (2) A delay or failure by the Insured or anyone acting on the Insured's behalf to perform a contract or agreement in accordance with its terms.
- This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to The Named Insured's Product or The Named Insured's Work after it has been put to its intended use.

(l) **Recall of Products, Work or Impaired Property**

Any loss, cost or expense incurred by the Insured or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) The Named Insured's Product;
- (2) The Named Insured's Work; or
- (3) Impaired Property;

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

(m) See *Common Exclusions* section

## COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

This insurance applies only when a Personal and Advertising Injury Limit is indicated on the Declarations Page.

### 1. Insuring Agreement.

- (a) The Insurer will pay those sums that the Insured becomes legally obligated to pay as damages because of Personal and Advertising Injury to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS -COVERAGES A, B AND D. The Insurer will have the right and duty to defend any Action seeking those damages but:
  - (1) The amount the Insurer will pay for damages is limited as described in SECTION IV-LIMITS OF INSURANCE;
  - (2) The Insurer may investigate and settle any Claim or Action at its discretion; and
  - (3) The Insurer's right and duty to defend end when the Insurer has used up the applicable limit of insurance in the payment of a judgement or settlement under Coverages A, B or D or medical expenses under Coverage C.
- (b) This insurance applies to Personal and Advertising Injury only if caused by an offence:
  - (1) Committed in the Coverage Territory during the Policy Period; and
  - (2) Arising out of the conduct of the Named Insured's business, excluding advertising, publishing, broadcasting or telecasting done by or for the Named Insured.

### 2. Exclusions.

This insurance does not apply to Personal and Advertising Injury:

- (a) **Material Published with Knowledge of Falsity** arising out of electronic, oral or written publication of material, if done by or at the direction of the Insured with knowledge of its falsity.
- (b) **Material Published Prior to Policy Period**  
Arising out of electronic, oral or written publication of material whose first publication took place before the beginning of the Policy Period.
- (c) **Criminal Acts**  
Arising out of the wilful violation of a penal statute or ordinance committed by or with the consent of the Insured.
- (d) **Contractual Agreement**  
For which the Insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the Insured would have in the absence of the contract or agreement.
- (e) **Offence Related to Employment**  
Sustained by any person as a result of an offence directly or indirectly related to the employment of such person by the Named Insured.
- (f) **Breach of Contract**  
Personal and Advertising Injury arising out of a breach of contract, except an implied contract to use another's advertising idea in the Insured's Advertisement.
- (g) **Quality or Performance of Goods – Failure to Conform to Statements**  
Personal and Advertising Injury arising out of the failure of goods, products or services to conform with any electronic, oral, written or other representation or warranty of durability, fitness or quality of performance made in your Advertisement.
- (h) **Wrong Description of Prices**  
Personal and Advertising Injury arising out of the wrong description of the price of goods, products or services state in the Named Insured's Advertisement.
- (i) **Insureds in Media and Internet Type Businesses**  
Personal and Advertising Injury committed by an Insured whose business is advertising, broadcasting, publishing or telecasting.
- (j) **Electronic Chat Rooms or Bulletin Boards**  
Personal and Advertising Injury arising out of an electronic Chat Room or bulletin board the Insured hosts, owns, or over which the Insured exercises control.
- (k) **Unauthorized Use of Another's Name or Product**  
Personal and Advertising Injury arising out of the unauthorized use of another's name or product in the Named Insured's email address, domain name or metatag, or any other similar tactics to mislead another's potential customers.
- (k) **Electronic Distribution of Information**  
Personal and Advertising Injury arising out of the distribution or display of information, by means of an Internet Web Site, an Intranet, Extranet or similar device or system designed or intended for electronic communication of information.
- (l) See *Common Exclusions* section

## COVERAGE C. MEDICAL PAYMENTS

This insurance applies only when a Medical Expense Limit is indicated in the Declarations Page.

### 1. Insuring Agreement.

- (a) The Insurer will pay medical expenses as described below for Bodily Injury caused by an accident:
  - (1) On premises the Named Insured owns or rents;
  - (2) On ways next to premises the Named Insured owns or rents; or
  - (3) Because of the Named Insured's operations;provided that:
  - (i) The accident takes place in the Coverage Territory and during the Policy Period;
  - (ii) The expenses are incurred and reported to the Insurer within one (1) year of the date of the accident; and
  - (iii) The injured person submits to examination, at the Insurer's expense, by physicians of the Insurer's choice as often as the Insurer reasonably requires.
- (b) The Insurer will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. The Insurer will pay reasonable expenses for:
  - (1) First aid at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions.**

The Insurer will not pay expenses for Bodily Injury:

- (a) To any Insured.
- (b) To a person hired to do work for or on behalf of any Insured or a tenant of any Insured.
- (c) To a person injured on that part of premises the Named Insured owns or rents that the person normally occupies.
- (d) To a person, whether or not an employee of any Insured, who at the time of injury is entitled to benefits under any workers compensation or disability benefits law or a similar law.
- (e) To a person injured while taking part in athletics.
- (f) The payment of which is prohibited by law.
- (g) Included within the Products-Completed Operations Hazard.
- (h) Excluded under Coverage A.
- (i) See *Common Exclusions* section

**COVERAGE D. TENANTS' LEGAL LIABILITY**

This insurance applies only when a Tenants' Legal Liability Limit is indicated in the Declarations Page.

**1. Insuring Agreement.**

The Insurer will pay those sums that the Insured becomes legally obligated to pay as damages because of Property Damage to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND D. This insurance applies only to Property Damage to structures or portions thereof including fixtures permanently attached thereto rented to the Named Insured or occupied by the Named Insured. This insurance applies only to Property Damage which occurs during the Policy Period. The Property Damage must be caused by an Occurrence. The Occurrence must take place in the Coverage Territory and during the Policy Period. The Insurer will have the right and duty to defend any Action seeking those damages but:

- (a) The amount the Insurer will pay for damages is limited as described in SECTION IV-LIMITS OF INSURANCE;
- (b) The Insurer may investigate and settle any Claim or Action at the Insurer's discretion; and
- (c) The Insurer's right and duty to defend end when the Insurer has used up the applicable limit of insurance in the payment of a judgement or settlement under Coverages A, B, D or Medical Expenses under Coverage C.

**2. Exclusions.**

This insurance does not apply to:

- (a) Property Damage expected or intended from the standpoint of the Insured.
- (b) Property Damage for which the Insured is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the Insured would have in the absence of the contract or agreement.
- (c) Property Damage for wear and tear, gradual deterioration, normal upkeep, latent defect, or inherent vice.
- (d) Property Damage for the cost of making good:
  - (i) faulty or improper material;
  - (ii) faulty or improper workmanship;
  - (iii) faulty or improper design;
 provided, however, to the extent otherwise insured and not otherwise excluded under this policy, resultant Property Damage to the property is insured.
- (e) See *Common Exclusions* section

**COMMON EXCLUSIONS – COVERAGES A, C AND D**

This insurance does not apply to:

**1. Nuclear Energy Liability**

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

As used in this policy:

- (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 any one or more of them;
  - (ii) any equipment or device designed or used for
    - (1) separating the isotopes of plutonium, thorium and uranium or any one or more of them,
    - (2) processing or utilizing spent fuel, or
    - (3) 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 any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (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.

## **2. War Risks**

Bodily Injury or Property Damage due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

## **COMMON EXCLUSIONS – COVERAGES A, B, C AND D**

This insurance does not apply to:

### **1. Pollution Liability**

This Policy does not apply to any Claim arising directly or indirectly out of:

- (a) the actual, alleged or threatened discharge, dispersal, seepage, release or escape of Pollutants:
  - (1) At or from any premises, site or location which is, or was at any time, owned, managed, rented to others or occupied by an Insured, or rented to an Insured;
  - (2) At or from any premises, site or location which is, or was at any time, used by or for an Insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for an Insured or any person or organization for whom the Insured may be legally responsible; or
  - (4) At or from any premises, site or location on which an Insured or any contractors or sub-contractors working directly or indirectly on behalf of an Insured are performing operations:
    - (i) if the Pollutants are brought on to the premises, site or location in connection with such operations; or
    - (ii) if the operations are to test for, monitor, Clean-Up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effect of Pollutants.
- (b) Any loss, cost or expense arising out of any governmental direction or request that an Insured test for, monitor, Clean-Up, remove, contain, treat, detoxify or neutralize Pollutants.
- (c) Fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of any Pollutants.
- (d) Sub paragraphs (1) and (4) (i) of paragraph (a) of this exclusion do not apply to any Claim caused by:
  - (1) heat, smoke or fumes from a Hostile Fire.
  - (2) An unexpected or unintentional discharge, dispersal, release or escape of Pollutants, provided such discharge, dispersal, release, or escape of Pollutants:
    - (i) results in the injurious presence of any Pollutants in or upon land, the atmosphere, drainage or sewage system, watercourse or body of water; and
    - (ii) is detected within 120 hours after the commencement of the discharge, dispersal, release or escape; and
    - (iii) is reported to the Insurer within 120 hours of being detected; and
    - (iv) does not occur in a quantity or with a quality that is routine or usual to the business of the Insured.
  - (3) The liability of the Insurer under Item (d)2 of Exclusion 1 of Section II Common Exclusions – COVERAGES A, B, C AND D is limited, notwithstanding the number of Insureds involved, for each loss, to the amount stated in the Declarations as each loss. Subject to the previous paragraph for each loss, the liability of the Insurer is limited to the amount stated in the Declarations as all losses, for the total of all losses during a Policy Period and this notwithstanding the number of Insureds involved. If for one loss there are several "claims", they will all be considered as having been presented during the Policy Period in which the first Claim was presented to the Insurer. The deductible amount stated in the Declarations shall be deducted from the amount of each loss covered under the terms of this Policy, and the Insurer shall be liable for loss only in excess of that amount.

This Policy or any Form or Endorsement hereto is evidence only of the contract of indemnity insurance between the above Named Insured and the Insurer and shall not be construed as evidence of any undertaking, financial or otherwise, on the part of the Insurer to any other party.

In the event that an Insured tenders this Policy/Endorsement as evidence of insurance under any applicable law relating to financial responsibility, including but not limited to the Oil Pollution Act 1990 or any similar Federal or State Laws, or otherwise shows or offers it to any other party as evidence of insurance, such use of the Policy/Endorsement by the Assured is not to be taken as any indication that the Insurer thereby consents to act as guarantor or to be sued directly in any jurisdiction whatsoever. The Insurer does not so consent.

For the purposes of this Exclusion, the following definition is added to the Policy:

**"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**"Clean-Up"** means reasonable and necessary costs, charges, and expenses, including legal expenses with our written consent, incurred in the investigation, removal, neutralization, remediation, or immobilization of Pollutants including associated monitoring or disposal of soil, surface water, groundwater or other contamination to the extent required by environmental law, or that have been incurred by the federal or any provincial, territorial or local government within Canada, or by third parties.

**"Hostile Fire"** means one which becomes uncontrollable or breaks out from where it was intended to be.

## **2. Medical Malpractice Injury**

Bodily Injury (other than Incidental Medical Malpractice Injury) or Property Damage or Personal and Advertising Injury due to the rendering of or failure to render any medical service or treatment by any person, firm or corporation causing the Medical Malpractice Injury who is engaged in the business or occupation of providing any medical services or treatment.

Incidental Medical Malpractice Injury means Bodily Injury arising out of the rendering of or failure to render, during the Policy Period, the following services:

- (1) medical surgical, dental, x-ray or nursing services or treatment or the furnishing of food or beverages in connection therewith; or
  - (2) the furnishing or dispensing of drugs or medical dental or surgical supplies or appliance;
- by any Insured or any Indemnitee causing the Incidental Medical Malpractice Injury who is not engaged in the business or occupation of providing of the services described in (1) and (2) above.

## **3. Asbestos**

Bodily Injury, Property Damage, Personal Injury 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, legal 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.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the Bodily Injury, Property Damage or Personal Injury.

#### 4. **Fungi or Spores**

- (a) Bodily Injury, Property Damage, Personal Injury or Medical Payments 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 Fungi or Spore(s) 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 Fungi or Spore(s); 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.

This exclusion does not apply to any Fungi or Spore(s) that are, are on, or are contained in The Named Insured's Product, if The Named Insured's Product is intended for ingestion by humans or animals and is included in the Products-Completed Operations Hazard.

For the purpose of this exclusion, the following definitions are added:

- (a) **"Fungi"** 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 Fungi or Spore(s) or resultant mycotoxins, allergens, or pathogens.
- (b) **"Spore(s)"** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any Fungi.

#### 5. **Terrorism**

Bodily Injury, Property Damage or Personal Injury arising directly or indirectly, in whole or in part, out of Terrorism or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate Terrorism. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the Bodily Injury, Property Damage or Personal Injury.

"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.

#### 6. **Stacking of Limits**

Any Claim(s) that is recoverable under any other policy issued by the Insurer or issued by the Managing General Agent is excluded under this Policy.

#### 7. **Professional Liability**

Bodily Injury (other than Incidental Medical Malpractice Injury) or Property Damage or Personal Injury due to the rendering of or failure to render any professional service which shall include but not be limited to

- (a) medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
- (b) any service or treatment conducive to health or of a professional nature;
- (c) any service including opinions or counselling;
- (d) the preparation or approval of maps, drawings, plans, opinions, reports, surveys, change orders, designs or specifications;
- (e) supervisory, inspection, architectural or engineering services;
- (f) accountant's, lawyer's, real estate broker's or agent's, insurance broker's or agent's, travel agent's, financial institution's, or consultant's professional advices or activities;
- (g) any computer hardware or software servicing, programming or re-programming, data entry or data processing, consulting, advisory or related services; or
- (h) any services meant to address any Electronic date recognition issues.

#### 8. **Host Liquor**

Bodily Injury or Property Damage arising out of a host liquor license operation.

### **SUPPLEMENTARY PAYMENTS – COVERAGES A, B AND D**

The Insurer will pay, with respect to any Claim or Action the Insurer defends:

- (a) All expenses the Insurer incurs.
- (b) The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. The Insurer does not have to furnish these bonds.
- (c) All reasonable expenses incurred by the Insured at the Insurer's request to assist the Insurer in the investigation or defence of the Claim or Action, including actual loss of earnings up to \$100 a day because of time off from work.
- (d) All costs taxed against the Insured in the Action and any interest accruing after entry of judgement upon that part of the judgement which is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

### **SECTION III – WHO IS AN INSURED**

#### 1. If the Named Insured is designated in the Declarations Page(s) as:

- (a) An individual, the Named Insured and the Named Insured's spouse are Insureds, but only with respect to the conduct of a business of which the Named Insured is the sole owner.
- (b) A partnership, limited liability partnership or joint venture, the Named Insured is an Insured. The Named Insured's members, the Named Insured's partners, and their spouses are also Insureds, but only with respect to the conduct of the Named Insured's business.
- (c) A limited liability company, the Named Insured is an Insured. The named Insured's members are also Insureds, but only with respect to the conduct of the Named Insured's business.
- (d) An organization other than a partnership limited liability partnership, joint venture or limited liability company, the Named Insured is an Insured. The Named Insured's Executive Officers and directors are Insureds, but only with respect to their duties as the Named Insured's officers or directors. The Named Insured's stockholders are also Insureds, but only with respect to their liability as stockholders.
- (e) A trust, the Named Insured is an Insured.

#### 2. Each of the following is also an Insured:

- (a) The Named Insured's Volunteer Workers only while performing duties related to the conduct of the Named Insured's business or the Named Insured's Employees, other than the Named Insured's Executive Officers (if the Named Insured is an organization other than a partnership, limited liability partnership, joint venture or limited liability company) or the named Insured's manager (if the Named Insured is a limited liability company), but only for acts within the scope of their employment by the Named Insured or while performing duties related to the conduct of the Named Insured's business but this insurance shall not apply to the liability of a Volunteer Worker or an Employee of the Named Insured for:
- (1) (a) Bodily Injury or Personal and Advertising Injury to the Named Insured, to the Named Insured's members (if the Named Insured is a limited liability company) or to a co-Employee while in the course of his or her employment or performing duties related to the conduct of the Named Insured's business, or to the Named Insured's other Volunteer Workers while performing duties related to the conduct of the Named Insured's business; or
  - (b) To the spouse, child, parent, brother or sister of the co-Employee or Volunteer Worker as a consequence of Paragraph (1) (a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above;
  - (d) Arising out of the Named Insured's providing or failing to provide professional health care services; or
  - (e) To any person who at the time of injury is entitled to benefits under any workers' compensation or disability benefits law or a similar law.
  - (2) Bodily Injury or Personal and Advertising Injury to any person who at the time of injury is entitled to benefits under any workers' compensation or disability benefits law or a similar law; or
  - (3) Bodily Injury or Personal and Advertising Injury arising out of his or her providing or failing to provide professional health care services; or
  - (4) Property Damage to property owned, occupied or used by or rented or loaned to, in the care, custody or control of or over which physical control is being exercised for any purpose by that Employee, any of the Named Insured's other Employees, the Named Insured or Volunteer Worker or any of the Named Insured's partners or members (if the Named Insured is a partnership, limited liability partnership or joint venture) or any member (if the named Insured is a limited liability company).
- (b) Any person (other than the Named Insured's Employee or Volunteer Worker), or any organization while acting as the named Insured's real estate manager.
- (c) Any person or organization having proper temporary custody of the Named Insured's property if the Named Insured dies, but only:
- (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until the Named Insured's legal representative has been appointed.
- (d) The Named Insured's legal representative if the Named Insured dies, but only with respect to duties as such. That representative will have all the Named Insured's rights and duties under this policy.
3. Any organization the Named Insured newly acquires or forms, other than a partnership limited liability partnership or joint venture or limited liability company, and over which the Named Insured maintains ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
- (a) Coverage under this provision is afforded only until the 90th day after the Named Insured acquires or forms the organization or the end of the Policy Period, whichever is earlier;
  - (b) Coverages A and D do not apply to Bodily Injury or Property Damage that occurred before the Named Insured acquired or formed the organization; and
  - (c) Coverage B does not apply to Personal and Advertising Injury arising out of an offence committed before the Named Insured acquired or formed the organization.
- No person or organization is an Insured with respect to the conduct of any current or past partnership or joint venture, limited liability partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations Page or added by endorsement hereon.

#### SECTION IV – LIMITS OF INSURANCE

1. The Limits of Insurance stated in the Declarations Page(s) and the rules below fix the most the Insurer will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or Actions brought; or
  - (c) Persons or organizations making Claims or bringing Actions.
2. The General Aggregate Limit is the most the Insurer will pay for the sum of:
  - (a) Damages under Coverage A, except damages because of Body Injury or Property Damage included in the Products-Completed Operations Hazard;
  - (b) Damages under Coverage B;
  - (c) Medical expenses under Coverage C; and
  - (d) Any other extension of coverage in any Form or Endorsement attached hereto.
3. Subject to 2 above, the Products and Completed Operations Aggregate Limit is the most the Insurer will pay under Coverage A for the sum of all damages arising out of the Products-Completed Operations Hazard in any one period of twelve months terminating on an anniversary of the inception date of the policy.
4. Subject to 3 above, the Each Occurrence Limit is the most the Insurer will pay for the sum of:
  - (a) Damages under Coverage A; and
  - (b) Medical expenses under Coverage C;because of all Bodily Injury and Property Damage arising out of any one Occurrence.
5.
  - (a) If a deductible amount is shown in the Declarations Page, then subject to 4 above, the Insurer's obligation under Coverage A to pay as damages because of Bodily Injury or Property Damage applies only to the amount of damages in excess of the deductible amount stated in the Declarations Page. The limits of insurance applicable to each Occurrence for Bodily Injury and Property Damage liability will be reduced by the amount of such deductible. The Aggregate Limit for such coverages shall not be reduced by the application of such deductible amounts.
  - (b) The deductible amount applies to all damages because of Property Damage sustained by any one person or organization as the result of any one Occurrence.
  - (c) The deductible amount in the Declarations Page specifies a deductible on a Per Claim or Per Occurrence basis. In the event of a Per Claim deductible, if more than one Claim arises out of the same Occurrence, then the deductible amount shall be applied to each Claim separately. In the event of a Per Occurrence deductible, then the deductible amount shall be applied once to each Occurrence regardless of the number of claimants involved.
  - (d) If a reimbursement amount is shown in the Declarations Page, then subject to 3 above, the Insurer's obligation under Coverage A to pay as damages because of Bodily Injury or Property Damage and as supplementary payments applies only to the amount of damages and supplementary payments in excess of the reimbursement amount stated in the Declarations Page. The limits of insurance applicable to each Occurrence for Bodily Injury and Property Damage liability will be reduced by the amount of such deductible. The Aggregate Limit for such coverages shall not be reduced by the application of such deductible amounts.
  - (e) The Insured shall reimburse the Insurer up to the reimbursement amount shown in the Declarations Page with respect to all Claims, legal fees and adjusting expenses combined in any one Occurrence, and the Insurer shall be liable only for loss, damage or expense in excess of that amount.



6. The Personal and Advertising Injury Limit is the most the Insurer will pay under Coverage B for the sum of all damages because of all Personal and Advertising Injury sustained by any one person or organization.
7. Subject to 4 above, the Medical Expense Limit is the most the Insurer will pay under Coverage C for all medical expenses because of Bodily Injury sustained by any one person.
8. The Tenants' Legal Liability Limit is the most the Insurer will pay under Coverage D for damages because of Property Damage to any one premises.
  - (a) The Insurer's obligation under Coverage D, to pay as damages because of Property Damage applies only to the amount of damages in excess of the deductible amount stated in the Declarations Page. The limit of insurance applicable to any one premises for Tenants' Legal Liability will be reduced by the amount of such deductible.
  - (b) The deductible amount applies to all damages because of Property Damage as the result of any one Occurrence.
9. The terms of this Insurance, including those with respect to:
  - (a) the Insurer's right and duty to defend any Action seeking those damages; and
  - (b) the duties of an Insured in the event of an Occurrence, Claim or Action apply irrespective of the application of the deductible amount.
10. The Insurer may pay any part or all of the deductible amount to effect settlement of any Claim or Action and, upon notification of the action taken, the Named Insured shall promptly reimburse the Insurer for such part of the deductible amount as has been paid by the Insurer.
11. All damages arising out of one lot of goods or products prepared or acquired by the Named Insured, or by another trading under his name, shall be considered as arising out of one Occurrence as regards Bodily Injury and Property Damage.

The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the Policy Period shown in the Declarations Page(s), unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION V – COMMERCIAL GENERAL LIABILITY CONDITIONS**

1. **Bankruptcy.**  
Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Insurer of the Insurer's obligations under this policy.
2. **Canadian Currency Clause.**  
All Limits of insurance, premiums and other amounts as expressed in this policy are in Canadian currency.
3. **Cancellation.**
  - (a) The first Named Insured shown 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 first Named Insured written notice of cancellation at least:
    - (1) Fifteen (15) days before the effective date of cancellation if the Insurer cancels for non-payment of premium; or
    - (2) Thirty (30) days before the effective date of cancellation if the Insurer cancels for any other reason.Except in Quebec, if notice is mailed, cancellation takes effect fifteen (15) or thirty (30) days after receipt of the letter by the post office to which it is addressed, depending upon the reason for cancellation.  
In Quebec, the Insurer's notice of cancellation takes effect either fifteen (15) or thirty (30) days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for cancellation.
  - (c) The Insurer will mail or deliver the Insurer's notice to the first Named Insured's last mailing address known to the Insurer.
  - (d) The Policy Period will end on the effective date of cancellation.
  - (e) If this policy is cancelled, the Insurer will send the first Named Insured any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Insurer has not made or offered a refund.
  - (f) If notice is mailed, proof of mailing will be sufficient proof of notice.
4. **Changes.**  
This Policy contains all the agreements between the Named Insured and the Insurer concerning the insurance afforded. The first Named Insured shown in the Declarations Page(s) is authorized to make changes in the terms of this policy with the Insurer's consent. The terms of this Policy may be amended or waived only by endorsement issued by the Insurer and made a part of this Policy.
5. **Deductible**  
Subject to Section IV, above, the Insurer is liable for the amount by which the loss or damage caused by any of the perils insured against exceeds the amount of the deductible specified on the Declarations Page(s) in any one Occurrence up to the Limit of insurance specified on the Declarations Page(s).
6. **Due Diligence**  
It is the duty of the Insured and his agents at all times to take such measures as may be reasonable for the purpose of averting or minimizing a loss.
7. **Duties in the Event of Occurrence, Claim or Action.**
  - (a) The Named Insured must ensure that the Insurer is notified promptly of an Occurrence which may result in a Claim. Notice should include:
    - (1) How, when and where the Occurrence took place; and
    - (2) The names and addresses of any injured persons and of witnesses.
  - (b) If a Claim is made or Action is brought against any Insured, the Named Insured must ensure that the Insurer receives prompt written notice of the Claim or Action.
  - (c) The Named Insured and any other involved Insured must:
    - (1) Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the Claim or Action;
    - (2) Authorize the Insurer to obtain records and other information;
    - (3) Cooperate with the Insurer in the investigation, settlement or defence of the Claim or Action; and
    - (4) Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply.
  - (d) No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the Insurer's consent.
8. **Examination of the Named Insured's Books and Records.**

The Insurer may examine and audit the Named Insured's books and records as they relate to this policy at any time during the Policy Period and up to three years afterward.

**9. Inspections and Surveys.**

The Insurer has the right but is not obligated to:

- (a) Make inspections and surveys at any time;
- (b) Give the Named Insured reports on the conditions the Insurer finds; and
- (c) Recommend any changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Insurer does not make safety inspections. The Insurer does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And the Insurer does not warrant that conditions:

- (1) Are safe or healthful; or
- (2) Comply with laws, regulations, codes or standards.

This condition applies not only to the Insurer, but also to any rating, advisory, rate service or similar organization which makes insurance inspections surveys, reports or recommendations.

**10. Legal Action Against the Insurer.**

No person or organization has a right under this policy:

- (a) To join the Insurer as a party or otherwise bring the Insurer into an Action asking for damages from an Insured; or
- (b) To sue the Insurer on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgement against an Insured obtained after an actual trial; but the Insurer will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance.

An agreed settlement means a settlement and release of liability signed by the Insurer, the Insured and the claimant or the claimant's legal representative. Every Action or proceeding against the Insurer shall be commenced within one year next after the date of such judgement or agreed settlement and not afterwards. If this policy is governed by the law of Quebec every Action or proceeding against the Insurer shall be commenced within three years from the time the right of action arises.

**11. Other Insurance.**

If other valid and collectible insurance is available to the Insured for a loss the Insurer covers under Coverages A, B or D of this Policy the Insurer's obligations are limited as follows:

(a) Primary Insurance

This insurance is primary except when (b) below applies. If this insurance is primary, the Insurer's obligations are not affected unless any of the other insurance is also primary. Then, the Insurer will share with all that other insurance by the method described in (c) below.

(b) Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Property Insurance such as, but not limited to, Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for The Named Insured's Work or for premises rented to the Named Insured; or
- (2) If the loss arises out of the maintenance or use of watercraft to the extent not subject to Exclusion (f) of Coverage A (Section II).

When this insurance is excess, the Insurer will have no duty under Coverage A, B or D to defend any Claim or Action that any other Insurer has a duty to defend. If no other Insurer defends, the Insurer will undertake to do so, but the Insurer will be entitled to all the Insured's rights against all those other Insurers.

When this insurance is excess over other insurance, the Insurer will pay only the Insurer's share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance. The Insurer will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations Page of this policy.

(c) Method of Sharing

If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach each Insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all Insurers.

**12. Premium Audit.**

This clause is applicable only when Premium Audit Adjustment terms are shown in the Declarations Page.

- (a) The Insurer will compute all premiums for this policy in accordance with the Insurer's rules and rates.
- (b) Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period the Insurer will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, the Insurer will return the excess to the first Named Insured subject to the retention of the minimum premium shown in the Declarations Page of this policy.
- (c) The first Named Insured must keep records of the information the Insurer needs for premium computation, and send the Insurer copies at such times as the Insurer may request.

**13. Premiums.**

The first Named Insured shown in the Declarations Page:

- (a) Is responsible for the payment of all premiums; and
- (b) Will be the payee for any return premiums the Insurer pays.

**14. Representations.**

By accepting this policy, the Named Insured agrees:

- (a) The statements in the Declarations Page are accurate and complete;
- (b) Those statements are based upon representations the Named Insured made to the Insurer; and
- (c) The Insurer has issued this policy in reliance upon the Named Insured's representations.

**15. Separation of Insureds, Cross Liability.**

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

- (a) As if each Named Insured were the only Named Insured; and

(b) Separately to each Insured against whom a Claim is made or Action is brought.

**16. Transfer of Rights of Recovery Against Others to The Insurer (Subrogation).**

If the Insured has rights or remedies to recover all or part of any payment the Insurer has made under this Policy, those rights are transferred to the Insurer. The Insured must do nothing after loss to impair them. The Insured shall not admit liability nor give any waiver of subrogation without the express permission of the Insurer. At the Insurer's request, the Insured will bring Action or transfer those rights to the Insurer and help the Insurer enforce them.

**17. Transfer of The Named Insured's Rights and Duties Under this Policy.**

The Named Insured's rights and duties under this policy may not be transferred without the Insurer's written consent except in the case of death of an individual Named Insured. If the Named Insured dies, the Named Insured's rights and duties will be transferred to the Named Insured's legal representative but only while acting within the scope of duties as the Named Insured's legal representative. Until the Named Insured's legal representative is appointed, anyone having proper temporary custody of the Named Insured's property will have the Named Insured's rights and duties but only with respect to that property.

**SECTION VI – DESCRIPTION OF TERMS USED FOR PREMIUM BASES**

1. **"Area"** means the square footage of the buildings to be insured excluding that portion of the basement used exclusively for storage or that portion of the premises used for heating or air conditioning plant purposes.
2. **"Cost"** means the total cost to any Indemnitee, with respect to any contract which is insured, of all work let or sublet in connection with each specific project, including the cost of all labour, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or the sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due.
3. **"Cost of work"** means the total cost of all operations performed for the Named Insured during the Policy Period by independent contractors, including materials used or delivered for use by whomsoever supplied, except maintenance or ordinary alterations and repairs on premises owned or rented by the Named Insured.
4. **"Receipts"** means the gross amount of money charged by the Named Insured for such operations as are rated on a receipts basis during the Policy Period.
5. **"Remuneration"** means the total earnings during the Policy Period for each owner, partner, executive officer or employee.
6. **"Sales"** means the gross amount of money charged for all goods and products sold and distributed by the Named Insured or by others trading under his name during the policy period.