

# ONTARIO GARAGE AUTOMOBILE POLICY (OAP 4)

Approved by the Chief Executive Officer of Financial Services Regulatory Authority of Ontario for use as the standard Garage Automobile Policy on or after January 1, 2022

# ONTARIO GARAGE AUTOMOBILE POLICY (OAP 4)

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For the purposes of the Insurance Companies Act (Canada), this document was issued in the course of the Insurance company's insurance business in Canada.

## ONTARIO GARAGE AUTOMOBILE POLICY (OAP 4)

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy. All references in this policy to the "Certificate of Insurance" means the "Garage Certificate of Insurance – Ontario."

Each Section of the Policy should be read subject to the provisions in Sections 7 and 8.

### WARNING – OFFENCES

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

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

It is an offence under the federal Criminal Code for anyone, by deceit, falsehood, or other dishonest act, to defraud or to attempt to defraud an insurance company. The offence is punishable, on conviction, by a maximum of 14 years imprisonment for cases involving an amount over \$5,000 or otherwise a maximum of 2 years imprisonment.

### INSURING AGREEMENTS

In consideration of payment of the premium specified in the Certificate of Insurance and subject to the limits, terms, conditions, provisions, definitions and exclusions stated herein, and subject to the condition that the Insurer shall be liable only under the Section(s) or subsection(s) for which a premium is stated in Item 5 of the Certificate of Insurance:

### SECTION 1 THIRD PARTY LIABILITY

#### OWNED AUTOMOBILES

- 1.1 The Insurer agrees to pay on behalf of the Insured, and in the same manner and to the same extent as if named in this Policy as the Insured every other person who with the consent of the Insured drives or operates, or is an occupant of any automobile owned by the Insured, all sums which the Insured or other person is legally obligated to pay in respect of loss or damage arising from the ownership, use or operation of any automobile owned by the Insured, and resulting from BODILY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE INSURED.

#### OTHER AUTOMOBILES

- 1.2 The Insurer agrees to pay on behalf of the Insured all sums which the Insured is legally obligated to pay in respect of loss or damage arising from the use or operation of any customer's automobile or non-owned automobile or any part of the automobile, and resulting from BODILY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE INSURED.

#### RENTED OR LEASED AUTOMOBILES

- 1.2A The Insurer agrees to pay on behalf of the Insured all sums which the Insured is legally obligated to pay as a result of liability imposed by law arising from the negligence of the drivers of automobiles rented or leased by the Insured for periods of no more than 30 days and for the purposes of a business conducted by the Insured as stated in Item 3 of the Certificate of Insurance.

#### EXCLUSIONS

- 1.3 **THE INSURER SHALL NOT BE LIABLE under this Section,**
- 1.3.1 for loss or damage arising from the use or operation of an automobile leased by the Insured from another under a lease contract for a period exceeding thirty days and which requires the Insured to effect and maintain insurance;

- 1.3.2 for loss or damage to property carried in or upon an owned automobile, customer's automobile or non-owned automobile;
- 1.3.3 for loss or damage to any property owned or rented by, or in the care, custody or control of any person insured by this Section;
- 1.3.4 for loss or damage to any customer's automobile;
- 1.3.5 for any amount in excess of the limits stated in the Certificate of Automobile Insurance and expenditures provided for in the Additional Agreements of this Section, subject to the provisions of Section 255 of the Insurance Act (Nuclear Energy Hazard); or
- 1.3.6 for any liability arising from contamination of property carried in the automobile.

### ADDITIONAL AGREEMENTS OF INSURER

- 1.4 Where coverage is provided by this Section, the Insurer shall,
- 1.4.1 upon receipt of notice of loss or damage caused to persons or property, make such investigations, negotiations or settlement of any resulting claims on behalf of any person insured by this Policy as may be deemed expedient by the Insurer;
- 1.4.2 defend in the name and on behalf of any person insured by this Policy and at the cost of the Insurer any civil action which may be brought against such person on account of such loss or damage to persons or property;
- 1.4.3 pay all costs assessed against any person insured by this Policy in any civil action defended by the Insurer and any interest accruing after judgment upon that part of the judgment which is within the limits of the Insurer's liability;
- 1.4.4 be liable up to the minimum limit prescribed in a jurisdiction covered by this Policy in which the accident occurred, if that limit is higher than the limit in the Certificate of Automobile Insurance; and
- 1.4.5 not set up any defence to a claim that might not be set up if the Policy were a motor vehicle liability policy issued in a jurisdiction covered by this Policy in which the accident occurred.

### MULTIPLE INSUREDS

- 1.5 Coverage under this Section is available in respect of a claim or action by one named Insured against another named Insured, provided,
- (a) coverage shall apply in the same manner and to the same extent as if a separate Policy were issued to each Insured; and
- (b) the Insurer shall not be liable for any amount in excess of the limit in the Certificate of Automobile Insurance.

### AGREEMENTS OF INSURED

- 1.6 Where coverage is provided by this Section, every person insured by this Policy,
- 1.6.1 by the acceptance of this Policy, irrevocably appoints the Insurer as the insured person's attorney to appear and defend in any jurisdiction covered by this Policy in which action is brought against insured persons arising out of the ownership, use or operation of the automobile; and
- 1.6.2 shall reimburse the Insurer, upon demand, any amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this Policy.

### SECTION 2 ACCIDENT BENEFITS

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.

Each Section of the Policy should be read subject to the provisions in Sections 7 and 8.

#### 2.1 Who is covered

For the purposes of Section 2, insured persons are defined in the Statutory Accident Benefits Schedule and an insured automobile for this purpose includes an owned, a non-owned, and a customer's automobile as defined in this Policy.

In addition, insured persons also include any person who is injured or killed in an automobile accident involving an owned, non-owned or customer's automobile as defined in this Policy, and is not the named Insured, or the spouse or dependant of a named Insured, under any other motor vehicle liability policy, and is not covered under the policy of an automobile in which they were an occupant or which struck them.

## 2.2 Types and Benefits

The details of the Accident Benefits Coverage are set out in the Statutory Accident Benefits Schedule of the Insurance Act. This Section outlines the benefits that an insured person may be entitled to receive if injured or killed in an automobile accident. If there is a difference between the interpretation of the wording in this Section and the interpretation of the wording in the Statutory Accident Benefits Schedule, the Statutory Accident Benefits Schedule prevails.

### The insurance company is obligated to inform insured persons about the benefits available.

The benefits in the Statutory Accident Benefits Schedule are:

#### Income Replacement Benefit

This benefit may compensate an insured person for lost income.

#### Caregiver Benefit

This benefit may provide compensation for some expenses incurred when an insured person has been catastrophically injured and cannot continue as the main caregiver for a member of the household who is in need of care.

#### Non-Earner Benefit

This benefit may provide compensation if an insured person is completely unable to carry on a normal life and does not qualify for an Income Replacement Benefit or Caregiver Benefit.

#### Medical Benefit

This benefit may pay for some medical expenses incurred when an insured person is injured. These are expenses that are not covered by any other medical coverage plan.

#### Rehabilitation Benefit

This benefit may pay for some rehabilitation expenses incurred when an insured person is injured. These are expenses that are not covered by any other plan.

#### Attendant Care Benefit

This benefit may compensate an insured person for some of the expense, including transportation for an aide or attendant to accompany the insured person to and from medical and rehabilitation treatments.

#### Payment of Other Expenses

If you or other insured persons have been injured, this benefit may pay for some other expenses such as the cost of visiting an insured person during treatment or recovery, the repair or replacement of some items lost or damaged in the accident and some lost educational expenses. It may also pay for some housekeeping and home maintenance if the insured person sustains a catastrophic impairment.

#### Death Benefit

This benefit may pay money to some members of the family of an insured person who is killed.

#### Funeral Benefit

This benefit may pay for some funeral expenses.

#### Optional Benefits

One or more optional benefits may be purchased to increase the standard levels of benefits provided in this Section. The optional benefits are:

Income Replacement; Medical, Rehabilitation and Attendant Care; Optional Catastrophic Impairment; Caregiver, Housekeeping and Home

Maintenance; Death and Funeral; and Dependant Care. An optional Indexation Benefit may be purchased, which provides that certain weekly benefit payments and monetary limits will be adjusted on an annual basis to reflect changes in the cost of living.

## 2.3 How to Apply for Benefits

### 2.3.1 Applying for Benefits - Procedures and Time Limits

Anyone applying for Accident Benefits must advise the Insurer within 7 days of the accident. The Insurer will send an application for Accident Benefits to each applicant.

The person applying for the benefits must send to the Insurer the completed application within 30 days of receiving it.

An insured person may still be entitled to benefits if these time limits are not met for good reason, but payment of the benefits may be delayed.

The Insurer must pay the Income Replacement Benefit, Non-Earner Benefit, Caregiver Benefit and Housekeeping and Home Maintenance Benefit within 10 business days of receiving the completed application.

The Insurer must pay the Death Benefit, Funeral Benefit and Payment of Other Expenses within 30 days of receiving the completed application.

The Insurer must pay the Attendant Care Benefit within 10 business days of receiving a completed Assessment of Attendant Care Needs form.

If an insured person is claiming the Medical Benefit or Rehabilitation Benefit, the insured person's doctor or other member of a regulated health profession including a social worker must provide the Insurer with a treatment plan or other related forms.

In some cases, the Insurer can ask an insured person to go for an independent assessment to assess an insured person's needs.

The Insurer may ask an insured person to provide additional information in connection with the claim, such as a statutory declaration as to the circumstances that gave rise to the application, or proof of identity. The Insurer may also ask an insured person to attend an examination under oath in connection with entitlement to benefits, on reasonable advance notice and at a time and place that are convenient to the person. If the person does not participate as requested, benefits may be delayed or suspended. If the injuries fall within certain guidelines issued by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario, an insured person may be entitled to some medical or rehabilitation treatments without the Insurer's prior approval and before a completed application is submitted.

### 2.3.2 Choosing Which Benefit to Receive

If an insured person qualifies for more than one weekly benefit, the Insurer will notify the person, who must choose which benefit he/she will receive. The insured person may choose between the Income Replacement, Non-Earner or Caregiver Benefits. An insured person will have 30 days to make a choice.

## 2.4 Limitations on the Coverage

An insured person is not entitled to the Income Replacement Benefit, Non-Earner Benefit or Payment of Other Expenses if the person:

- a) knew, or should reasonably have known, that he/she was operating an automobile without insurance;
- b) was driving an automobile while not authorized by law to drive;
- c) was driving an automobile which he/she was specifically excluded from driving under this policy;
- d) knowingly operated, or should reasonably have known that the automobile was operated, without the owner's consent;
- e) made or knew about a material misrepresentation that induced the Insurer to issue this policy;
- f) intentionally failed to notify the Insurer of any significant changes as required under Section 8, section 1 - Material Change in Risk; or
- g) was convicted of a criminal offence involving the operation of an automobile.

## SECTION 3 UNINSURED AUTOMOBILE COVERAGE

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.

Each Section of the Policy should be read subject to the provisions in Sections 7 and 8.

### 3.1 The Insurer agrees to pay all sums that,

- 3.1.1 a person insured under the Policy is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
- 3.1.2 any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the Policy resulting from an accident involving an automobile; and
- 3.1.3 a person insured under the Policy is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile.

### Definitions

### 3.2 For the purposes of this Section,

- 3.2.1 "insured automobile" means an owned, non-owned or customer's automobile;
- 3.2.2 "person insured under the Policy" means,
  - (a) in respect of a claim for damage to the insured automobile, the owner of the automobile,
  - (b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents,
  - (c) in respect of a claim for bodily injury or death,
    - (i) any person while an occupant of the insured automobile,
    - (ii) the Insured and his or her spouse and any dependent relative of the Insured, or his or her spouse,
      - 1. while an occupant of an uninsured automobile, or
      - 2. while not the occupant of an automobile or of rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
    - (iii) if the Insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the Insured for whose regular use the insured automobile is furnished, and his or her spouse and any dependent relative of the person or the spouse,
      - 1. while an occupant of an uninsured automobile, or,
      - 2. while not the occupant of an automobile or of rolling stock that runs on rails, who is struck by an uninsured or unidentified automobile,
- 3.2.3 "unidentified automobile" means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;
- 3.2.4 "uninsured automobile" means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the Insured or his or her spouse.

### Qualification of Dependent Relative

- 3.3 Where a dependent relative referred to in paragraph 3.2.2 (c) (ii), is the owner of an automobile insured under a contract or sustains bodily injuries or dies as the result of an accident while the occupant of his or her own uninsured automobile, such dependent relative shall be deemed not to be a dependent relative for the purposes of this Section.

- 3.4 The following terms, conditions, provisions, exclusions and limits prescribed by the regulations made under section 265 of the Insurance Act apply to the coverage under this Section.

### Limits and Exclusions

### 3.5 THE INSURER SHALL NOT BE LIABLE to make any payment,

- (a) for any amount in excess of the minimum limits for automobile liability insurance in the jurisdiction in which the accident occurs regardless of the number of persons injured or killed or the damage to the automobile and contents, and in no event shall the Insurer be liable for any amount in excess of the minimum limits set out in section 251 of the Insurance Act;
- (b) where the person insured under the Policy is entitled to recover money under the third party liability section of a motor vehicle liability policy;
- (c) to any person involved in an accident in a jurisdiction in which a valid claim may be made for such payment against an unsatisfied judgment or similar fund;
- (d) for any loss or damage caused directly or indirectly by radioactive material;
- (e) in respect of damages for accidental damage to the insured automobile and its contents, for the \$300 deductible of any loss in any one occurrence nor any amount in excess of \$25,000; or
- (f) for loss or damage referred to in subsection 3.1 that occurs while the insured automobile is being operated by an excluded driver.

### 3.6 Where by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents,

- (a) claims arising out of bodily injury or death have priority to the extent of 95 percent of the amount payable over claims arising out of damage to the insured automobile and its contents; and
- (b) claims arising out of damage to the insured automobile and its contents have priority to the extent of 5 percent over claims arising out of bodily injury or death.

### Accidents Involving Unidentified Automobiles

### 3.7 Where an unidentified automobile has caused bodily injury or death to a person insured under the Policy,

- (a) the person insured under the Policy, or his or her representative, shall report the accident to a police, peace or judicial officer within twenty-four hours after it occurs or as soon as practicable after that time;
- (b) the person, or his or her representative, shall give the Insurer a written statement within thirty days after the accident occurs or as soon as is practicable after that date setting out the details of the accident;
- (c) the statement shall state whether the accident was caused by a person whose identity cannot be ascertained and whether the person insured under the Policy was injured or killed and property was damaged in the accident; and
- (d) the person, or his or her representative, shall make available for inspection by the Insurer on request the automobile in which the person was an occupant when the accident occurred.

### Determination of Legal Liability and Amount of Damages

### 3.8 The determination as to whether the person insured under the Policy is legally entitled to recover damages, and, if so entitled, the amount thereof shall be determined,

- (a) by agreement between the person insured under the Policy and the Insurer;
- (b) at the request of the person insured under the Policy, and with the consent of the Insurer, by arbitration by some person to be chosen by both parties, or if they cannot agree on one person, then by two persons, one to be chosen by the person insured under the Policy and the other by the Insurer and a third person to be appointed by the persons so chosen; or
- (c) by a court of competent jurisdiction in Ontario in an action brought against the Insurer by the person insured under the Policy, and unless the determination has been previously made in a contested action by a court of competent jurisdiction in Ontario, the Insurer may include in its defence the determination of liability and the amount thereof.

- 3.9 The Arbitration Act, 1991 applies to every arbitration under subsection 3.8 (b).

### Notice of Legal Action

- 3.10 Where the person insured under the Policy or his or her representative commences a legal action for damages against any other person owning or operating an automobile involved in an accident, a copy of the document(s) initiating a claim for damages shall be delivered or sent by registered mail immediately to the chief agent or head office of the Insurer in Ontario.
- 3.11 Subject to subsections 3.5 and 3.6, where the person insured under the Policy or his or her representative obtains a judgment against the other person referred to in subsection 3.10 but is unable to recover, or to recover fully the amount of that judgment, the Insurer shall on request pay the amount of that judgment or, as the case may be, the difference between what the person has recovered under that judgment and the amount of that judgment.
- 3.12 Before making any such payment, the Insurer may require that the person insured under the Policy or his or her representative assign the judgment, or the balance of the judgment, as the case may be, to the Insurer and the Insurer shall account to the person insured under the Policy for any recovery it makes under that judgment for any amount in excess of what it has paid to that person and its costs.

### Notice and Proof of Claim

- 3.13 **A person entitled to make a claim in respect of the bodily injury or death of a person insured under the Policy shall do so in accordance with the following;**
- (a) the claimant shall give the Insurer written notice of the claim within thirty days after the accident, or as soon as is practicable after that date;
  - (b) the claimant shall give the Insurer, within ninety days after the accident, or as soon as is practicable after that date, such proof as is reasonably possible in the circumstances of the accident, the resulting loss and the claim;
  - (c) the claimant shall provide the Insurer on request with a certificate of the medical or psychological advisor of the person insured under the Policy stating the cause of the injury or death, and, if applicable, the nature of the injury and the expected duration of any disability ; and
  - (d) the claimant shall provide the Insurer with the details of any other insurance policy, other than a life insurance policy, to which the claimant may have recourse.
- 3.14 **Subject to Statutory Condition 7, Statutory Condition 6 applies with necessary modifications with respect to a claim for damages to the insured automobile or its contents.**

### Medical Examinations

- 3.15 On reasonable notice, the Insurer may require the person insured under the Policy to undergo an examination by a qualified medical or psychological advisor as often as the Insurer reasonably requires.
- 3.16 The Insurer will pay for any examination it requires under subsection 3.15.
- 3.17 The Insurer shall provide a copy of the medical report to a person making a claim under the Policy, or to the person's representative, upon request.

### Limitations

- 3.18 No person is entitled to bring an action to recover the amount of a claim provided for under the Policy, as required by section 265 (1) of the Insurance Act, unless the requirements of this Section with respect to the claim have been complied with.
- 3.19 An action or proceeding against the Insurer in respect of loss or damage to the insured automobile or its contents shall be commenced within one year next after the loss or damage occurs.
- 3.20 An action or proceeding against the Insurer in respect of bodily injury or death, or in respect of loss or damage to property other than the insured automobile or its contents, shall be commenced within two years after the cause of action arises.

### Limit on Amount Payable

- 3.21 If a person insured under the Policy is entitled to receive benefits under more than one contract providing insurance of the type set forth in section 265 (1) of the Insurance Act, the person, or any person claiming through or under the person, or any person claiming under Part V of the Family Law Act, is entitled to recover only an amount equal to one benefit.

## SECTION 4

### DIRECT COMPENSATION - PROPERTY DAMAGE

**Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.**

**Each Section of the Policy should be read subject to those provisions in Sections 7 and 8.**

- 4.1 Where section 263 of the Insurance Act (Direct Compensation – Property Damage) applies, the Insurer agrees to pay the cost of damage to an automobile, its equipment and its contents and for loss of use of such automobile or contents arising from an accident for which another person would have been liable in the absence of section 263 of the Insurance Act if such automobile is,
- (a) owned by the Insured, PROVIDED THAT its use is not excluded under subsection 7.14 and that it is not an Excluded Automobile under subsection 7.15, or
  - (b) not owned by the Insured, PROVIDED THAT the automobile,
    - (i) is in the Insured's care, custody or control, and
    - (ii) is not being used for an Excluded Use under subsection 7.14 and is not an Excluded Automobile under subsection 7.15, and
    - (iii) is not insured under another motor vehicle liability policy.
- 4.2 The amount paid will be based on the degree the Insured or driver is not at fault in the accident as determined under the Fault Determination Rules made under the Insurance Act.
- 4.3 The amount paid in respect of loss or damage to the contents of the automobile which are not carried for reward will be paid to the owner of the contents.

### Deductible

- 4.4 The Insurer's liability for each occurrence and for each separate automobile may be subject to a Direct Compensation – Property Damage deductible amount. The deductible, if any, is the amount stated in Item 5, Section 4 of the Certificate of Insurance, multiplied by the percentage to which the Insured or driver is not at fault in the accident as determined by the Fault Determination Rules made under the Insurance Act.
- 4.5 In the event that there is loss or damage to both the automobile and its contents, the deductible will first be applied to the automobile loss. If there is any remaining deductible, then that amount will be applied to the contents loss.
- 4.6 The Insurer will pay that portion of the total damage that is equal to the percentage to which the Insured or driver was not at fault for the accident, less the applicable Direct Compensation - Property Damage deductible.

### Exclusions

- 4.7 The Insurer shall not be liable under this Section for,
- (a) contents of the automobile which are carried for reward, or
  - (b) any liability arising from contamination of property carried in the automobile, and
  - (c) loss or damage caused by Nuclear Energy Hazard, except as provided for by section 255 of the Insurance Act (Nuclear Energy Hazard)

## SECTION 5

### LOSS OF OR DAMAGE TO OWNED AUTOMOBILES

**Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.**

**Each Section of the Policy should be read subject to the provisions in Sections 7 and 8.**

- 5.1 The Insurer agrees to pay for direct and accidental loss of or damage to any owned automobile, including its equipment while attached to and forming part of the automobile, under one or more of the following subsections;
- 5.1.1 COLLISION OR UPSET - caused by collision with another object or by upset of the automobile.
  - 5.1.2 COMPREHENSIVE - caused by any peril other than by collision with another object or another automobile upon which it is being transported, or by upset of either automobile; provided that,

- (a) "another object" includes an automobile to which the automobile is attached or upon which it is being transported, and the surface of the ground and any object in or on the surface; and
  - (b) "peril" includes, but is not limited to those perils listed under subsection 5.1.3 (Specified Perils), falling or flying objects, missiles, and vandalism.
- 5.1.3 SPECIFIED PERILS - caused by fire; theft or attempted theft; lightning, windstorm, hail, or rising water; earthquake; explosion; riot or civil disturbance; falling or forced landing of aircraft or parts of aircraft; or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in, or upon which the automobile is being transported.
- 5.1.4 SPECIFIED PERILS EXCLUDING THEFT - caused by fire, lightning, windstorm, hail, or rising water; earthquake; explosion; riot or civil disturbance; falling or forced landing of aircraft or parts of aircraft; or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in, or upon which the automobile is being transported.

### Deductible

- 5.2 The Insurer's liability shall be limited to the amount of loss or damage in excess of the deductible amount payable by the Insured as stated in the applicable subsection of Item 5, Section 5 of the Certificate of Insurance.
- For loss or damage under subsection 5.1.1 (Collision or Upset) where section 263 of the Insurance Act (Direct Compensation - Property Damage) applies, the deductible amount is the amount described in Item 5, subsection 5.1.1 of Section 5 of the Certificate of Insurance multiplied by the percentage that the Insured or driver is at fault as determined by the Fault Determination Rules made under the Insurance Act.
- 5.3 Subsection 5.2 applies to loss or damage to each automobile, except with respect to automobiles insured under subsection 5.1.2 (Comprehensive), subsection 5.1.3 (Specified Perils) and subsection 5.1.4 (Specified Perils Excluding Theft), where the deductible applies to each occurrence.
- 5.4 No deductible amount is payable by the Insured under subsections 5.2 and 5.3 where the loss or damage is caused by fire or lightning where these are insured perils.

### Limits of Liability

#### Applicable to subsection 5.1.2 (Comprehensive), subsection 5.1.3 (Specified Perils) and subsection 5.1.4 (Specified Perils Excluding Theft)

- 5.5 Subject to subsections 5.6, 5.7, 5.8 AND 5.9 below, THE INSURER SHALL NOT BE LIABLE in respect of any one occurrence for,
- (a) any amount in excess of the limits of liability stated in subsection 5.1.2 (Comprehensive), subsection 5.1.3 (Specified Perils), and subsection 5.1.4 (Specified Perils Excluding Theft) in Item 5 of the Certificate of Insurance at each specified location;
  - (b) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
  - (c) loss or damage to more than four owned automobiles at any location not used by the Insured in the business specified in Item 3 of the Certificate of Insurance.
- 5.6 Where the premium is computed on a MONTHLY AVERAGE BASIS, if at the time of loss the Insured has failed to file the report referred to in subsection 7.8 of Section 7 (General Provisions, Definitions and Exclusions), the Insurer's liability shall be limited to the amounts included in the last report filed; and if the delinquent report is the first report required to be filed, the Insurer shall be liable for not more than 75% of the applicable limit of liability stated in Item 5, Section 5 of the Certificate of Insurance.
- 5.7 In the event of loss where the premium is computed on a MONTHLY AVERAGE BASIS, the Insurer's liability at each location shall be limited to the proportion of the loss that the amounts reported to the Insurer on the last report filed prior to the loss bears to the actual cash value of all automobiles at the location on the date for which the last report was made.
- 5.8 Where the premium is computed on a CO-INSURANCE BASIS, the Insured shall maintain insurance under this Policy on the automobiles hereby insured at each specific location to the extent of at least 80% of the actual cash value of the automobiles, and that, failing so to do, the Insured shall be a co-Insurer to the extent of an amount sufficient to make the aggregate insurance equal to 80% of the actual cash value of the automobiles at the time of loss or damage, and shall bear his or her proportion of any loss or damage that may occur.
- 5.9 If the total loss or damage under subsection 5.8 is confined to one automobile only, the co-insurance described in subsection 5.8 shall not apply to the loss or damage.

### Exclusions

- 5.10 THE INSURER SHALL NOT BE LIABLE under this Section for loss or damage,
- (a) to tires, or consisting of or caused by mechanical fracture or break down of any part of the automobile, or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, BUT the Insurer will be liable if the loss or damage is coincident with other loss or damage which is covered by the relevant subsection, or is caused by fire, theft or vandalism if covered by such subsection;
  - (b) resulting from conversion, embezzlement, or theft by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement;
  - (c) resulting from a voluntary transfer of title or ownership, whether or not induced to do so by any fraudulent scheme, trick or false pretence;
  - (d) caused directly or indirectly by contamination by radioactive material;
  - (e) to contents of automobiles or trailers, other than their equipment;
  - (f) for more than \$25 for recorded material and equipment for use with a playing or recording unit. The Insurer shall not be liable for recorded material or equipment not contained within or attached to the playing or recording unit. Recorded material includes, but is not limited to, tapes, compact discs, video cassettes and digital video discs; or
  - (g) for more than \$1500 for loss or damage to electronic accessories or equipment other than factory installed equipment. The Insurer shall pay the actual cash value of the equipment up to \$1500 in total.
- "Electronic accessories and equipment" includes, but is not limited to, radios, tape players/decks, stereo players/decks, compact disc players, speakers, telephones, two-way radios including CB radios, ham radios and VHF radios, televisions, facsimile machines, electronic navigation assistance, positioning and location finding devices, computers, and items of a similar nature.
- "Factory installed equipment" means electronic accessories and equipment which was included in the original new purchase price of the automobile.
- 5.11 THE INSURER SHALL NOT BE LIABLE under this Section for any loss or damage suffered where the Insured drives or operates the automobile or permits any other person to drive or operate the automobile,
- (a) while under the influence of intoxicating substances to such an extent as to be incapable of proper control of the automobile; or
  - (b) if the driver is convicted of any of the following offences under the Criminal Code of Canada relating to the operation, care, custody or control of the automobile, or committed by means of an automobile, or of any similar offence under any law in any jurisdiction covered by this Policy:
    - causing death by criminal negligence,
    - causing bodily harm by criminal negligence,
    - dangerous operation of motor vehicles,
    - failure to stop at the scene of an accident,
    - operation of a vehicle while impaired by alcohol or a drug or a combination of alcohol and a drug or while the concentration of alcohol or drug in the operator's blood exceeds the limit permitted by law,
    - refusal to comply with a lawful demand to provide a breath sample, perform physical coordination tests or submit to an evaluation,
    - causing bodily harm during operation of a vehicle while impaired by alcohol or a drug or a combination of alcohol and a drug or while the concentration of alcohol or drug in the operator's blood exceeds the limit permitted by law,
    - operating a motor vehicle while disqualified from doing so; or
  - (c) in a race or speed test, or for illegal activity; or, while not authorized by law.
- 5.12 THE INSURER SHALL NOT BE LIABLE under this Section for loss or damage to any automobile sold by the Insured and in the possession of a purchaser under any partial payment plan.
- 5.13 THE INSURER SHALL NOT BE LIABLE under this Section for loss or damage to any automobile which is being carried in or upon or is being towed by any automobile owned, hired or leased by the Insured and designed for transportation of more than one automobile.
- 5.14 THE INSURER SHALL NOT BE LIABLE under subsection 5.1.1 (Collision or Upset) for loss or damage occurring after the theft of the automobile and before recovery by the Insured, except where the theft

has been committed by a person or persons residing in the same dwelling premises as the Insured; or employed by the Insured in connection with the business described in Item 3 of the Certificate of Insurance.

- 5.15** THE INSURER SHALL NOT BE LIABLE under subsection 5.1.2 (Comprehensive) or 5.1.3 (Specified Perils) for loss or damage caused by theft by a person residing in the same dwelling premises as the Insured, or employed by the Insured in connection with the business described in Item 3 of the Certificate of Insurance.
- 5.16** THE INSURER SHALL NOT BE LIABLE under subsection 5.1.2 (Comprehensive) or 5.1.3 (Specified Perils) for loss or damage caused by theft from any open lot or unroofed space owned, rented or controlled by the Insured in connection with the Insured's business stated in Item 3 of the Certificate of Insurance, except the theft of an entire automobile.
- 5.17** THE INSURER SHALL NOT BE LIABLE under subsection 5.1.4 (Specified Perils Excluding Theft) for loss or damage occurring after the theft of the automobile and before recovery of the automobile by the Insured.

#### **Additional Agreements of Insurer**

- 5.18** Where a premium is specified under Item 5, Section 5 of the Certificate of Insurance and loss or damage arises from an insured peril, the Insurer further agrees,
- 5.18.1 that where the occurrence of the insured peril results in the Insured incurring liability for such expenses, the Insurer will pay general average, salvage and fire department charges and customs duties of any jurisdiction covered by this Policy, and
- 5.18.2 to waive subrogation against every person who, with the Insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person
- (a) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles other than an officer or employee of the Insured; or
- (b) to any person who has
- (i) committed a breach of any condition of this Policy, or
- (ii) driven or operated the automobile in the circumstances referred to in subsection 5.11.

#### **Agreement of Insured**

- 5.19** The Insured agrees that in the event of loss or damage for which coverage is provided by this Policy, the Insured shall at the Insurer's request replace the property or make the necessary repairs at actual cost to the Insured.

### **SECTION 6 LIABILITY FOR DAMAGE TO A CUSTOMER'S AUTOMOBILE WHILE IN THE CARE, CUSTODY OR CONTROL OF THE INSURED**

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 7 and Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.

Each Section of the Policy should be read subject to the provisions in Sections 7 and 8.

#### **Collision or Upset**

- 6.1** The Insurer agrees,
- 6.1.1 to pay on behalf of the Insured, all sums which the Insured is legally obligated to pay in respect of loss or damage to a customer's automobile, including its equipment while attached to the automobile, and including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile as a result of COLLISION OR UPSET - caused by collision with another object or by upset; and
- 6.1.2 to pay to the Insurer of a customer's automobile the amount paid by that Insurer because of the operation of section 263 of the Insurance Act and the Fault Determination Rules made under that section, based on the degree that the Insured or driver was at fault in the accident.

#### **Exclusions**

- 6.2** THE INSURER SHALL NOT BE LIABLE under subsection 6.1 (Collision or Upset),
- (a) for any amount in excess of the limit stated in Item 5, subsection 6.1 of Section 6 of the Certificate of Insurance and of the expenditures provided for in the Additional Agreements of this Section; or
- (b) for loss or damage to contents of automobiles or trailers other than their equipment, except as provided under subsection 6.1.2; or
- (c) for loss or damage which occurs after theft of the automobile and before recovery by the Insured; or
- (d) for loss or damage caused directly or indirectly by contamination by radioactive material.

#### **Deductible**

- 6.3** Each occurrence causing loss or damage covered under subsection 6.1 (Collision or Upset) shall give rise to a separate claim.

The Insurer's liability for each claim shall be limited to the amount of loss or damage in excess of the deductible amount payable by the Insured as stated in Item 5, subsection 6.1 of Section 6 of the Certificate of Insurance.

Where section 263 of the Insurance Act (Direct Compensation – Property Damage) applies, the deductible amount is the amount stated in Item 5, subsection 6.1 of Section 6 of the Certificate of Insurance multiplied by the percentage to which the Insured or driver is at fault as determined by the Fault Determination Rules made under the Insurance Act.

#### **Specified Perils**

- 6.4** The Insurer agrees to pay on behalf of the Insured, all sums which the Insured is legally obligated to pay in respect of loss of or damage to a customer's automobile, including its equipment while attached to the automobile, and including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile, for
- SPECIFIED PERILS** - caused by fire; theft or attempted theft; vandalism; lightning, windstorm, hail, or rising water; earthquake; explosion; riot or civil disturbance; falling or forced landing of aircraft or parts of aircraft; or the stranding, sinking, burning, derailment, or collision or upset of any railway car or watercraft in, or upon which the automobile is being transported.

#### **Limits of Liability Under subsection 6.4**

- 6.5** SUBJECT TO SUBSECTION 6.8 (CO-INSURANCE CLAUSE), THE INSURER SHALL NOT BE LIABLE under subsection 6.4 (Specified Perils) in respect of any one occurrence for:
- (a) any amount in excess of the limits of liability stated in Item 5, subsection 6.4 of Section 6 of the Certificate of Insurance at each specified location and of expenditures provided for in the Additional Agreements of this Section;
- (b) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
- (c) loss or damage to more than four automobiles at any location not used by the Insured in the business specified in Item 3 of the Certificate of Insurance.

#### **Exclusions**

- 6.6** THE INSURER SHALL NOT BE LIABLE under subsection 6.4 (Specified Perils) for loss or damage,
- (a) from the explosion of tires or from explosion within the combustion chamber of the engine of the automobile, unless the loss or damage is coincident with other loss or damage covered by subsection 6.4;
- (b) caused directly or indirectly by contamination by radioactive material;
- (c) caused by theft from any open lot or unroofed space owned, rented or controlled by the Insured, except the theft of an entire automobile;
- (d) to the contents of automobiles or trailers, other than their equipment; or
- (e) for more than \$25 for recorded material and equipment for use with a playing or recording unit. The Insurer shall not be liable for recorded material or equipment not contained within or attached to the playing or recording unit. Recorded material includes, but is not limited to, tapes, compact discs, video cassettes and digital video discs.



## Deductible

- 6.7 Each occurrence causing loss or damage covered under subsection 6.4 shall give rise to a separate claim.

The Insurer's liability for each claim shall be limited to the amount of loss or damage in excess of the deductible amount payable by the Insured as stated in Item 5, subsection 6.4 of Section 6 of the Certificate of Insurance.

No deductible amount is payable by the Insured under this subsection where loss or damage is caused by fire or lightning where these are insured perils.

## Co-Insurance Clause

- 6.8 If at the time of a loss covered by subsection 6.4 there are in or on the premises at the location where the loss occurs a greater number of customers' automobiles than the "Maximum Number of Customers' Automobiles" stated for that location in Item 5, subsection 6.4 of Section 6 of the Certificate of Insurance, THE INSURER SHALL NOT BE LIABLE for a greater proportion of the amount for which it otherwise would be liable than the "Maximum Number of Customers' Automobiles" stated for that location bears to the total number of customers' automobiles in or on the premises at the location at the time the loss occurs.

## Additional Agreements of Insurer

- 6.9 Where coverage is provided by this Section the Insurer shall,
- upon receipt of notice of loss or damage, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
  - defend in the name and on behalf of any person insured by this Policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage; and
  - pay all costs assessed against any person insured by this Policy in any civil action defended by the Insurer and any interest accruing after judgment upon that part of the judgment which is within the limits of the Insurer's liability.

## SECTION 7 GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in this Section and in Section 8, except as otherwise stated in those Sections, apply to every Section of the Policy.

Each Section of the Policy should be read subject to the provisions of this Section and of Section 8.

### Territory

- 7.1 This Policy applies to loss or damage to persons or property caused by an incident that arises out of the ownership, operation or use of an automobile that occurs in Canada, the United States of America and any other jurisdiction designated in the Statutory Accident Benefits Schedule, or on a vessel traveling between ports of those countries.

- 7.1.1 All of the dollar limits described in this Policy are in Canadian funds.

### Definitions

- 7.2 In this Policy:
- 7.2.1 "accident benefits" means the benefits set out in the Statutory Accident Benefits Schedule made under the Insurance Act.
- Automobile Defined:**
- 7.2.2 For the purposes of Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage), Section 4 (Direct Compensation - Property Damage), Section 5 (Loss or Damage to Owned Automobiles), and Section 6 (Liability for Damage to a Customer's Automobile):
- "automobile" includes a trailer and a motorized snow vehicle. Regulations may include, or exclude, certain other types or classes of vehicles as "automobiles".
- 7.2.3 For the purposes of Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage), Section 4 (Direct Compensation - Property Damage), and Section 5 (Loss or Damage to Owned Automobiles):
- "owned automobile" means:

- an automobile, including trailers and equipment, owned by the Insured and used for pleasure or in connection with the business stated in Item 3 of the Certificate of Insurance; and
  - an automobile sold in the stated business by the Insured but not yet delivered to the purchase.
- EXCEPT an automobile the ownership, operation or use of which is excluded in Section 7, (General Provisions, Definitions and Exclusions) or Section 8, (Statutory Conditions) of this Policy.

- 7.2.4 For the purposes of Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage) and Section 6 (Liability for Damage to a Customer's Automobile):

"customer's automobile" means an automobile owned by another, while the automobile is being towed or pushed by an automobile driven by the Insured or an employee or partner, or while in the care, custody or control of the Insured in the business stated in Item 3 of the Certificate of Insurance but DOES NOT INCLUDE an automobile,

- owned, rented or leased by any person insured by this Policy or by any person residing in the same dwelling premises as the Insured; or
- sold by the Insured but not yet delivered to the purchaser.

- 7.2.5 For the purposes of Section 1 (Third Party Liability), Section 2 (Accident Benefits) and Section 3 (Uninsured Automobile Coverage):

"non-owned automobile" means an automobile, other than a customer's automobile, or an automobile leased by the Insured from another under a lease contract for a period exceeding thirty days and which requires the Insured to effect and maintain insurance, which is not owned by the Insured and which is used for pleasure by the Insured or partners or employees of the Insured, or in connection with the business stated in Item 3 of the Certificate of Insurance.

### Other Definitions

- 7.2.6 "newly acquired location" means any new location acquired by the Insured in the business specified in Item 3 of the Certificate of Insurance, if notice of the new location is given to the Insurer within fourteen days following the date of acquisition.

- 7.2.7 "occupant" in respect of an automobile, means,

- the driver,
- a passenger, whether being carried in or on the automobile,
- a person getting into or on or getting out of or off the automobile.

- 7.2.8 "spouse" means either of two persons who,

- are married to each other,
- have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Policy, or
- have lived together in a conjugal relationship outside marriage,
  - continuously for a period of not less than three years, or
  - in a relationship of some permanence if they are the natural or adoptive parents of a child.

### Notice to Insurer

- 7.3 The Insured agrees to provide to the Insurer written notice, with all available particulars, of any incident involving the insured automobile which must be reported to the police under the Highway Traffic Act, within seven days of the incident, but if the Insured is unable because of incapacity to give such notice, as soon as possible thereafter.

### Consent

- 7.4 An occupant of an automobile which is being operated without the consent of the owner or by an excluded driver shall not be entitled to indemnity or payment under this Policy except as provided in Section 2 (Accident Benefits).

### Adjustable Premium Computation

- 7.5 The advance premiums are computed according to the terms shown on the Premium Computation Statement for the policy period.
- 7.6 The advance premiums referred to in subsection 7.5 are subject to adjustment at the end of the policy period when the Insured shall deliver to the Insurer a written statement of the current information necessary to adjust the premium shown in the Premium Computation Statement; provided that,
- (a) if the adjusted premium so computed exceeds the applicable advance premium stated in Item 5 of the Certificate of Insurance, the Insured shall pay the difference; and
  - (b) if the premium is less than the applicable advance premium, the Insurer shall return to the Insured the unearned premium subject to the Minimum Retained Premium stated in the Certificate of Insurance.
- 7.7 With respect only to subsections 5.1.2 (Comprehensive), 5.1.3 (Specified Perils) and 5.1.4 (Specified Perils Excluding Theft) of Section 5, if the premium is computed on a MONTHLY AVERAGE BASIS:
- (a) the advance premiums shall be 75% of the annual premium computed on the limits of liability and the rates applying at each location; and
  - (b) the advance premiums referred to in (a) are subject to adjustment at the end of the policy period.
- 7.8 For the purposes of subsection 7.7, the earned premium shall be computed as follows:
- (a) the Insured shall make a report in writing to the Insurer not later than 30 days after the last day of each month giving the actual cash value of all owned automobiles held for sale at each location on the last business day of each month.
  - (b) the value of all owned automobiles not held for sale must be included in the values reported for the principal location in the municipality or district in which the Insured carries on business.
  - (c) an average of the total values reported at each location shall be made, and if the premium on the average values
    - (i) exceeds the applicable advance premiums stated in the Certificate of Insurance, the Insured shall pay an additional premium for such excess; and
    - (ii) is less than the applicable advance premiums, the Insurer shall return to the Insured the unearned premium.
- 7.9 In the event of any report referred to in paragraph 7.8 (a) not being made within the period stated in that subsection, the limit of liability at each location shall be taken as the value at risk for the purpose of adjustment of premium.

### Audit

- 7.10 The Insurer or its authorized representative shall have access to the Insured's records at all reasonable times for the purpose of determining any fact relating to the insurance provided by this Policy.

### Automobiles and Trailers

- 7.11 An automobile and one or more trailers attached to it shall be held to be one automobile with respect to the limit of liability under Section 1 (Third Party Liability), Section 2 (Accident Benefits) and Section 3 (Uninsured Automobile Coverage) of this Policy, and separate automobiles with respect to the Limits of Liability, including any deductible provisions, under Section 4 (Direct Compensation - Property Damage), Section 5 (Loss or Damage to Owned Automobiles) and Section 6 (Liability for Damage to a Customer's Automobile).

### Additional Insureds

- 7.12 The Insurer agrees to pay on behalf of the following persons in the same manner and to the same extent as if named in this Policy as the Insured;

#### Business Use

- (a) with respect to Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage), and Section 6 (Liability for Damage to a Customer's Automobile) of this Policy, every other person who, with the consent of the owner, and in connection with the business described in Item 3 of the Certificate of Insurance, drives or operates any automobile other than
  - (i) an automobile owned by or registered in the name of such additional insured person; or
  - (ii) an automobile whose operation or use is excluded in Section 7 (General Provisions, Definitions and Exclusions) or Section 8 (Statutory Conditions) of this Policy; and

#### Driving Other Automobiles

- (b) with respect to Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage) and Section 4 (Direct Compensation-Property Damage) of this Policy, every active partner or full-time employee of the Insured for whose regular use an automobile is provided by the Insured; every person named on the Additional Insured Endorsement; the spouse, who lives with such active partner, full time employee and person named on the Additional Insured Endorsement; and the spouse of the Insured who lives with the Insured, who, with the consent of the owner drives for pleasure purposes any other automobile having a manufacturer's gross vehicle weight rating (GVWR) not exceeding 4,500 kilograms, PROVIDED THAT,
  - (i) neither such partner, employee, persons named on the Additional Insured Endorsement, if any, or such spouse, is the owner or the lessee for more than 30 days of an automobile having a manufacturer's gross vehicle weight rating not exceeding 4,500 kilograms;
  - (ii) such other automobile is not owned, hired or leased or regularly used by the Insured, partner or employee of the Insured, or person named on the Additional Insured Endorsement, or by any person residing in the same dwelling premises as any of these persons
  - (iii) the operation or use of the other automobile is not excluded in Section 7 (General Provisions, Definitions and Exclusions) or in Section 8 (Statutory Conditions) of this Policy; and
  - (iv) Section 4 (Direct Compensation-Property Damage) coverage applies only when such other automobile is in the care, custody or control of a person referred to in subsection 7.12 (b) and is not insured under another motor vehicle liability policy.

### Direct Compensation - Property Damage

- 7.12.1 The Insurer agrees to provide coverage under Section 4 (Direct Compensation - Property Damage) to a person whose automobile is in the care, custody or control of the Insured, PROVIDED that the automobile is not;
- (i) insured under another motor vehicle liability policy, or
  - (ii) being used for an Excluded Use under subsection 7.14 and is not an Excluded Automobile under subsection 7.15 of Section 7 (General Provisions, Definitions and Exclusions) of this Policy.

### Other Insurance

- 7.13 Insurance under Section 1 (Third Party Liability) and Section 3 (Uninsured Automobile Coverage) of this Policy is first loss insurance with respect to a customer's automobile, and any other valid motor vehicle liability policy is excess insurance only.

### Excluded Uses

- 7.14 THE INSURER SHALL NOT BE LIABLE while,
- (a) the automobile is rented or leased by the Insured to another, provided that the following shall not be deemed to be renting or leasing to another,
    - (i) the use by an employee of the employee's automobile on the business of the employer and for which the employee is being paid;
    - (ii) the use of an owned automobile by a customer pending return of the customer's automobile which has been left with the Insured for repairs or servicing; and
    - (iii) the use of an owned automobile by a customer for a period not exceeding 30 days, pending delivery of an automobile for which a purchase order or a lease agreement has been placed with the Insured by the customer;but this exclusion shall not apply while an owned automobile, rented or leased to another, is in the care, custody or control of the Insured for the purpose of maintenance or repair, and in this case this Policy shall be first loss insurance;
  - (b) the automobile is used to carry explosives, or radioactive material for research, education, development or industrial purposes, or for purposes incidental to these purposes;
  - (c) the automobile is used as a taxicab, bus, sightseeing conveyance, or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be carrying passengers for compensation or hire,
    - (i) carrying another person, where the other person reciprocates;
    - (ii) carrying another person occasionally and infrequently, who shares the cost of the trip;

- (iii) carrying a domestic servant of the Insured or of his or her spouse;
  - (iv) carrying clients or customers or prospective clients or customers;
  - (v) transporting children occasionally and infrequently to or from school, or school activities conducted within the educational program; or
  - (vi) reimbursing volunteer drivers for their reasonable driving expenses, including gas, vehicle wear and tear and meals; and
- (d) the automobile is being used,
- (i) for the carrying of goods or materials for compensation;
  - (ii) for public road construction, repair or maintenance; or
  - (iii) as farm or contractor's equipment on behalf of others for compensation.

#### Excluded Automobiles

- 7.15** THE INSURER SHALL NOT BE LIABLE under this Policy for loss, damage, injury or death arising from the ownership, use or operation of any automobile,
- (a) owned by the Insured in connection with or used for the purpose of any business conducted by or any employment or occupation for wages or profit engaged in by the Insured other than as stated in Item 3 of the Certificate of Insurance;
  - (b) owned by the Insured which is designed or modified for racing purposes;
  - (c) provided by the Insured to any person for regular or frequent use, except an active partner or a full time employee of the business stated in Item 3 of the Certificate of Insurance PROVIDED that this exclusion does not apply while the person is using the automobile in the business stated in Item 3 of the Certificate of Insurance; and
  - (d) owned or hired by the Insured and;
    - (i) designed for the bulk transportation of petroleum products or other materials while being used for those purposes; or
    - (ii) designed for the transportation of more than one automobile.
  - (e) leased by the Insured from another under a lease contract for a period exceeding thirty days and which requires the Insured to effect and maintain insurance.

#### Personnel of other Garages Excluded

- 7.16** No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this Policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon or occupying the automobile as defined in this Policy in the course of the business, unless the person is the Insured or an employee or partner.

#### War Risks Excluded

- 7.17** THE INSURER SHALL NOT BE LIABLE under Section 2 (Accident Benefits), Section 3 (Uninsured Automobile Coverage), Section 4 (Direct Compensation – Property Damage), Section 5 (Loss or Damage to Owned Automobiles), and Section 6 (Loss or Damage to a Customer's Automobile), of this Policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, coup, or actions of armed forces while engaged in a war, whether declared or not.

## SECTION 8 STATUTORY CONDITIONS

**Note: The Insurance Act requires that these conditions be printed as part of every automobile insurance policy in Ontario. If there is a discrepancy between these conditions and the wording in the policy, these conditions prevail.**

In these statutory conditions, unless the context otherwise requires, the word, "Insured" means a person insured by this contract, whether named or not.

#### Material Change in Risk

1. (1) The Insured named in this contract shall promptly notify the Insurer or its local agent in writing of any change in the risk material to the contract and within the Insured's knowledge.
- (2) Without restricting the generality of the foregoing, the words,

"change in the risk material to the contract" include:

- (a) any change in the insurable interest of the Insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada);
- and, in respect of insurance against loss of or damage to the automobile,
- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
  - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

#### Incorrect Classification

2. (1) Where the Insured has been incorrectly classified under the risk classification system used by the Insurer or under the risk classification system that the Insurer is required by law to use, the Insurer shall make the necessary correction.

#### Refund of Premium Overpayment

- (2) Where a correction is made under subcondition (1) of this condition, the Insurer shall refund to the Insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made, rounded to the next highest whole number if the bank rate includes a fraction.

#### Definition

- (3) In subcondition (2) of this condition, "bank rate" means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

#### Additional Premium

- (4) Where a correction is made under subcondition (1) of this condition within sixty days after this contract takes effect, the Insurer may require the Insured to pay any additional premium resulting from the correction, without interest.

#### Monthly Payments

3. Unless otherwise provided by the regulations under the *Insurance Act*, the Insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The Insurer may charge interest not exceeding the rate set out in the regulations.

#### Authority to Drive

4. (1) The Insured shall not drive or operate or permit any other person to drive or operate the automobile unless the Insured or other person is authorized by law to drive or operate it.

#### Prohibited Use

- (2) The Insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

#### Requirements Where Loss or Damage to Persons or Property

5. (1) The Insured shall,
  - (a) give to the Insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the incident;
  - (b) verify by statutory declaration, if required by the Insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the Insurer every letter, document, advice or statement of claim received by the Insured from or on behalf of the claimant.
- (2) The Insured shall not,
  - (a) voluntarily assume any liability or settle any claim except at the Insured's own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The Insured shall, whenever requested by the Insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the Insurer, except in a pecuniary

way, in the defence of any action or proceeding or in the prosecution of any appeal.

#### Requirements Where Loss or Damage to Automobile

6. (1) Where loss of or damage to the automobile occurs, the Insured shall, if the loss or damage is covered by this contract,
  - (a) give notice thereof in writing to the Insurer with the fullest information obtainable at the time;
  - (b) at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
  - (c) deliver to the Insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of the Insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the Insured and of all others there in, the encumbrances there in, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur directly or indirectly through any wilful act or neglect of the Insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
  - (a) without the written consent of the Insurer; or
  - (b) until the Insurer has had a reasonable time to make the examination for which provision is made in statutory condition 8.

#### Examination of Insured

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

#### Insurer Liable for Cash Value of Automobile

- (5) The Insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

#### Repairing, rebuilding or replacing property damaged or lost

- (6) The Insurer may repair, rebuild or replace the property that is damaged or lost, instead of making the payment referred to in statutory condition 9, if the Insurer gives written notice of its intention to do so within seven days after receipt of the proof of loss.

#### Time for repairs

- (6.1) The Insurer shall carry out the repair, rebuilding or replacement referred to in subcondition (6),
  - (a) within a reasonable period of time after giving the notice required under subcondition (6), if an appraisal referred to in subcondition (2.1) of statutory condition 9 is not carried out in respect of the claim; or
  - (b) within a reasonable period of time after the Insurer receives the appraisers' determination of the matters in disagreement, if an appraisal referred to in subcondition (2.1) of statutory condition 9 is carried out in respect of the claim.

#### New or aftermarket parts

- (6.2) For the purposes of subcondition (6), the Insurer may repair, rebuild or replace the property with new parts provided by the original equipment manufacturer or with non-original or rebuilt parts of like kind and quality to the property that was damaged or lost.

#### No Abandonment; Salvage

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

#### Time Limit

7. The notice required by subcondition (1) of statutory condition 5 and subcondition (1) of statutory condition 6 shall be given to the Insurer within seven days of the incident but if the Insured is unable because of incapacity to give the notice within seven days of the incident, the Insured shall comply as soon as possible thereafter.

#### Inspection of Automobile

8. The Insured shall permit the Insurer at all reasonable times to inspect the automobile and its equipment.

#### Time and manner of payment of insurance money

9. (1) If the Insurer has not chosen to repair, rebuild or replace the property that is damaged or lost, the Insurer shall pay the insurance money for which it is liable under the contract,
  - (a) within 60 days after the Insurer receives the proof of loss, if no appraisal referred to in subcondition (2.1) is carried out in respect of the claim; or
  - (b) within 15 days after the Insurer receives the appraisers' determination of the matters in disagreement, if an appraisal referred to in subcondition (2.1) is carried out in respect of the claim.

#### Reasons for Refusal

- (2) If the Insurer refuses to pay a claim, it shall promptly inform the Insured in writing of the reasons the Insurer claims it is not liable to pay.

#### Resolution of disagreement by appraisal under s. 128 of the Act

- (2.1) Section 128 of the Act applies to this contract if,
  - (a) the Insurer has received a proof of loss from the Insured in respect of property that is lost or damaged;
  - (b) the Insured and the Insurer disagree on,
    - (i) the nature and extent of repairs, rebuilding and replacements required or their adequacy, or
    - (ii) the amount payable in respect of the loss or damage; and
  - (c) a request in writing that an appraisal be carried out in accordance with section 128 of the Act,
    - (i) is made by the insured, or
    - (ii) is made by the insurer and the insured agrees.

#### When Action may be Brought

- (3) The Insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 5 and 6 are complied with.

#### Limitation of Actions

- (4) Every action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

#### Who May Give Notice and Proofs of Claim

10. Notice of claim may be given and proofs of claim may be made by the agent of the Insured in case of absence or inability of the Insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the Insured refuses to do so, by a person to whom any part of the insurance money is payable.

#### Deductible amounts

- 10.1 (1) Despite anything in this contract,
  - (a) the Insurer shall be liable only for amounts in excess of the applicable deductible amount, if any, mentioned in this contract; and
  - (b) any provision in this contract relating to an obligation of the Insurer to pay an amount or to repair, rebuild or replace property that is damaged or lost shall be satisfied by paying the amount determined by deducting any applicable deductible amount from,
    - (i) the amount the Insured would otherwise be entitled to recover, or
    - (ii) the cost of repairing, rebuilding or replacing the property.

### Deemed deductible amount

- (2) For the purposes of subcondition (1), an amount that an Insurer is not liable to pay by reason of subsection 261 (1) or (1.1) or 263 (5.1) or (5.2.1) of the *Insurance Act* shall be deemed to be a deductible amount under this contract.

### Termination

11. (1) Subject to section 12 of the *Compulsory Automobile Insurance Act* and sections 237 and 238 of the *Insurance Act*, the insurer may give to the insured a notice of termination of the contract by,
- registered mail
  - personal delivery
  - prepaid courier if there is a record by the person who has delivered it that the notice has been sent; or
  - electronic means if the insured consents to delivery by electronic means.
- (1.1) If the Insurer gives a notice of termination under subcondition (1) for a reason other than non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract or if the Insurer gives a notice of termination in accordance with subcondition (1.7), the notice of termination shall terminate the contract no earlier than,
- the 15th day after the Insurer gives the notice, if the Insurer gives the notice by registered mail; or
  - the fifth day after the Insurer gives the notice, if the Insurer gives the notice by personal delivery, prepaid courier or electronic means.
- (1.2) Subject to subcondition (1.7), if the Insurer gives a notice of termination under subcondition (1) for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the notice of termination shall comply with subcondition (1.3) and shall specify a day for the termination of the contract that is no earlier than,
- the 30th day after the Insurer gives the notice, if the Insurer gives the notice by registered mail; or
  - the 10th day after the Insurer gives the notice, if the Insurer gives the notice by personal delivery prepaid courier or electronic means.
- (1.3) A notice of termination mentioned in subcondition (1.2) shall,
- state the amount due under the contract as at the date of the notice; and
  - state that the contract will terminate at 12:01 a.m. of the day specified for termination unless the full amount mentioned in clause(a), together with an administration fee not exceeding the amount approved under Part XV of the Act, payable in cash or by money order or certified cheque payable to the order of the Insurer or as the notice otherwise directs, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for termination.
- (1.4) For the purposes of clause (a) of subcondition (1.3), if the Insured and the Insurer have previously agreed, in accordance with the regulations, that the Insured is permitted to pay the premium under the contract in instalments, the amount due under the contract as at the date of the notice shall not exceed the amount of the instalments due but unpaid as at the date of the notice.
- (1.5) If the full amount payable under clause (b) of subcondition (1.3) is not paid by the time and in the manner that the notice specifies, the contract shall be deemed to be terminated, without any further action being required on the part of the Insurer, as of 12:01 a.m. of the day specified for termination.
- (1.6) If the full amount payable under clause (b) of subcondition (1.3) is paid by the time and in the manner that the notice specifies, the contract shall not terminate on the day specified for termination and the notice shall have no further force or effect.
- (1.7) If, on two previous occasions in respect of the contract, the Insurer has given a notice of termination mentioned in subcondition (1.2) and the full amount payable under clause (b) of subcondition (1.3) has been paid by the time and in the manner that the notice specifies and if a non-payment again occurs of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the Insurer may, by registered mail personal delivery, prepaid courier if there is a record by the person who has delivered it that the notice has been sent, or electronic means if the insured consents to delivery by electronic means,, give to the Insured a notice of termination of the contract

and subcondition (1.1) applies to the notice, instead of subcondition (1.2).

- (2) This contract may be terminated by the Insured at any time on request.
- (3) Where this contract is terminated by the Insurer,
- the Insurer shall refund the excess of premium actually paid by the Insured over the proportionate premium for the expired time, but in no event shall the proportionate premium for the expired time be deemed to be less than any minimum retained premium specified;
  - if the termination is for a reason other than non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract or if the Insurer gives a notice of termination in accordance with subcondition (1.7), the refund shall accompany the notice, unless the premium is subject to adjustment or determination as to the amount, in which case, the refund shall be made as soon as practicable; and
  - if the termination is for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract and if subcondition (1.7) does not apply to the termination, the refund shall be made as soon as practicable after the effective date of the termination.
- (4) Where this contract is terminated by the Insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (5) For the purpose of clause (a) of subconditions (1.1) and (1.2), the day on which the Insurer gives the notice by registered mail shall be deemed to be the day after the day of mailing.
- (5.1) For the purpose of clause (b) of subconditions (1.1) and (1.2),
- the day on which the insurer gives the notice by prepaid courier shall be deemed to be the day after the day there is a record by the person who delivered it that the notice has been sent; and
  - the day on which the insurer gives the notice by electronic means shall be deemed to be the day after the day the notice is sent.
- (6) All references in this condition to times of day shall be interpreted to mean the time of day in the local time of the place of residence of the Insured.

### Notice

12. (1) Written notice may be given to the insurer in the following ways:
- It may be personally delivered at the chief agency or head office of the insurer in the Province.
  - It may be sent by registered mail to the chief agency or head office of the insurer in the Province.
  - It may be delivered by electronic means.
- (2) Written notice may be given to the insured named in this contract in the following ways:
- It may be personally delivered.
  - It may be delivered by prepaid courier to the latest address of the insured on the records of the insurer if there is a record by the person who has delivered it that the notice has been sent.
  - It may be sent by registered mail to the latest address of the insured on the records of the insurer.
  - It may be delivered by electronic means if the insured consents to delivery by electronic means.
- (3) In this condition, the expression "registered" means registered in or outside Canada.

### Statutory Accident Benefits Protected

13. Despite a failure to comply with these statutory conditions, a person is entitled to such benefits as are set out in the *Statutory Accident Benefits Schedule*.