

NL - S.P.F. NO. 6
STANDARD NON-OWNED AUTOMOBILE POLICY
Province of Newfoundland and Labrador

APPLICATION

WHEREAS AN APPLICATION HAS BEEN MADE BY THE APPLICANT (HEREINAFTER CALLED THE INSURED) TO THE INSURER FOR A CONTRACT OF AUTOMOBILE INSURANCE AND THE SAID APPLICATION FORMS PART OF THIS CONTRACT OF INSURANCE AND IS AS FOLLOWS: -

ITEMS																																																																											
1.	FULL NAME OF THE APPLICANT _____ POSTAL ADDRESS (INCLUDING COUNTY OR DISTRICT) _____ APPLICANT IS _____ <div style="text-align: right; font-size: small;">(STATE WHETHER INDIVIDUAL, PARTNERSHIP, CORPORATION, MUNICIPALITY OR ESTATE)</div>	<i>As shown in the Declarations</i> <i>As shown in the Declarations</i> <i>As shown in the Declarations</i>																																																																									
2.	POLICY PERIOD FROM _____ EFFECTIVE DATE: DD MM YYYY	EXPIRY DATE: DD MM YYYY	12:01 A.M. LOCAL TIME AT THE APPLICANT'S POSTAL ADDRESS STATED HEREIN AS TO EACH OF SAID DATES																																																																								
3.	THE AUTOMOBILES IN RESPECT OF WHICH INSURANCE IS TO BE PROVIDED ARE THOSE NOT OWNED IN WHOLE OR IN PART BY, NOR LICENSED IN THE NAME OF THE APPLICANT, USED IN THE APPLICANT'S BUSINESS OF: <i>As shown in the Declarations</i>																																																																										
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11.	Where, (a) an applicant for a contract gives false particulars of the described automobile to be insured to the prejudice of the insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated herein; or (b) the insured contravenes a term of the contract or commits a fraud; or (c) the insured wilfully makes a false statement in respect of a claim under the contract, a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.																																																																										

DATE:

COUNTERSIGNED

DD MM YYYY

BY AUTHORIZED REPRESENTATIVE

INSURING AGREEMENT

In consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated.

SECTION A – THIRD PARTY LIABILITY

The Insurer agrees to indemnify the Insured against the liability imposed by law upon the Insured for loss or damage arising from the use or operation of any automobile not owned in whole or in part by or licensed in the name of the Insured, and resulting from

BODILY INJURY TO OR THE DEATH OF ANY PERSON OR DAMAGE TO PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE INSURED:

Provided always the Insurer shall not be liable under this

- (a) for any liability which arises from the use or operation of any automobile while personally driven by the Insured if the Insured is an individual; or
- (b) for any liability imposed upon any person insured by this Policy:
 - (1) by any workers' compensation law; or
 - (2) by any law for bodily injury to or the death of the Insured or any partner, officer or employee of the Insured while engaged in the business of the Insured; or
- (c) for any liability assumed by any person insured by this Policy voluntarily under any contract or agreement; or
- (d) for loss or damage to property carried in or upon an automobile personally driven by any person insured by this Policy or to any property owned or rented by, or in the care, custody or control of any such person; or
- (e) for any amount in excess of the limit stated in Item 7 of the Application or Certificate of Automobile Insurance, and expenditures provided for in the Additional Agreements of this Policy, subject always to the provisions of the selection of the *Automobile Insurance Act* relating to the nuclear energy hazard.

ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this Policy, the Insurer further agrees:

- (1) upon receipt of notice of loss or damage caused to persons or property to serve any person insured by this Policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- (2) to 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 at any time be brought against such person on account of such loss or damage to persons or property; and
- (3) to pay all costs taxed against any person insured by this Policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limits of the Insurer's liability; and
- (4) in case the injury be to a person, reimburse any person insured by this Policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- (5) be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit stated in Section A (Third Party Liability) of Item 7 in the application; and
- (6) not set up any defense to a claim that might not be set up if the Policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

AGREEMENTS OF INSURED

Where indemnity is provided by this section, every person insured by this Policy

- (a) by the acceptance of this Policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the Insured arising out of the use or operation of an automobile with respect to which insurance is provided hereunder;
- (b) shall reimburse the Insurer, upon demand, in the 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.

GENERAL PROVISIONS AND DEFINITIONS

1. ADDITIONAL INSURED

The Insurer agrees to indemnify in the same manner and to the same extent as if named herein as the Insured, every partner, officer or employee of the Insured who, with the consent of the owner thereof, personally drives

- (a) in the business of the Insured stated in Item 3 of the Application or Certificate of Automobile Insurance, any automobile not owned in whole or in part by or licensed in the name of
 - (i) the Insured, or
 - (ii) such additional Insured person, or
 - (iii) any person or persons residing in the same dwelling premises as the Insured or such additional insured person, or
- (b) any automobile hired or leased in the name of the Insured except an automobile owned in whole or in part or licensed in the name of such additional insured person.

2. TERRITORY

This policy applies only to the use or operation of automobiles within Canada or the United States of America or upon a vessel plying between ports of those countries.

3. HIRED AUTOMOBILES DEFINED

The term "Hired Automobiles" as used in this Policy means automobiles hired or leased from others with or without drivers, used

under the control of the Insured in the business stated in Item 3 of the application but shall not include any automobile owned in whole or in part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

4. AUTOMOBILES OPERATED UNDER CONTRACT DEFINED

The term "Automobiles Operated under Contract" as used in this Policy shall mean automobiles operated in the business of the Insured stated in Item 3 of the Application or Certificate of Automobile Insurance where the complete supervision, direction and control of such automobiles remain with the owner thereof, but shall not include any automobile owned in whole or in part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

5. TWO OR MORE AUTOMOBILES

When two or more automobiles are insured hereunder, the terms of this Policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under Section A.

6. PREMIUM ADJUSTMENT

The Advance Premium stated in Item 5 of the Application or Certificate of Automobile Insurance is computed on the estimated total "cost of hire" for the Policy Period. The words "cost of hire" as used herein mean the entire amount incurred for "Hired Automobiles" and delivers when such automobiles are hired with drivers or the amount incurred for hired automobiles and the wages paid to drivers when such drivers are employees of the Insured. The Advance

Premium stated in Item 6 of the Application or Certificate of Automobile Insurance is computed on the estimated total "contract cost" for the Policy Period. The words "contract cost" as used herein mean the entire amount paid by the Insured for "Automobiles Operated under Contract" to the owners thereof.

The Advance Premiums are subject to adjustment at the end of the Policy Period when the Insured shall deliver to the Insurer a written statement of the total amounts expended for cost of hire during the Policy Period. If such amounts exceed the estimates stated in the application, the Insured shall immediately pay additional premium at the rates stated therein; if less, the Insurer shall return to the Insured the unearned premium when determined but the Insurer shall, in any

event, receive or retain not less than the Minimum Retained Premium stated therein.

The Insurer shall have the right and opportunity, whenever the Insurer so desires, to examine the books and records of the Insured to the extent they relate to the premium bases or the subject matter of this policy.

STATUTORY CONDITIONS

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 a change in the risk material to the contract and within his or her knowledge.
- (2) The words "change in the risk material to the contract" include:
 - (a) a 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 Act* (Canada);and in respect of insurance against loss of or damage to the automobile,
 - (b) a mortgage, lien or encumbrance affecting the automobile after the application for this contract;
 - (c) other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or a portion of it.

PROHIBITED USE BY INSURED

2. (1) The insured shall not drive or operate the automobile
 - (a) unless he or she is either authorized by law or qualified to drive or operate the automobile; or
 - (b) while his or her licence to drive or operate an automobile is suspended or while his or her right to obtain a licence is suspended or while prohibited under order of a court from driving or operating an automobile; or
 - (c) while he or she is under the age of 16 years or under the age that is prescribed by the law of the province in which he or she lives at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued; or
 - (d) for an illicit or prohibited trade or transportation; or
 - (e) in a race or speed test.

PROHIBITED USE BY OTHERS

- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,
 - (a) by a person,
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
 - (ii) while that person is under the age of 16 years or under the age that is prescribed by the law of the province in which he or she lives at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued; or
 - (b) by a person who is a member of the household of the insured while his or her licence to drive or operate an automobile is suspended or while his or her right to obtain a licence is suspended or while prohibited under order of a court from driving or operating an automobile; or
 - (c) for an illicit or prohibited trade or transportation; or
 - (d) in a race or speed test.

REQUIREMENTS ON DAMAGE TO PERSONS OR PROPERTY

3. (1) The insured shall,

- (a) promptly give to the insurer written notice, with all available particulars, of an accident involving loss or damage to persons or property and of a claim made on account of the accident;
 - (b) verify by statutory declaration, where 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 letters, documents, advice or writs received by him or her from or on behalf of the claimant.
- (2) The insured shall not,
 - (a) voluntarily assume liability or settle a claim except at the his or her own cost; or
 - (b) interfere in a negotiation for settlement or in a legal proceeding.
 - (3) The insured shall, where requested by the insurer, help in securing information and evidence and the attendance of a witness and shall cooperate with the insurer, except in a monetary way, in the defence of an action or proceeding or in the prosecution of an appeal.

REQUIREMENTS WHERE LOSS OR DAMAGE TO AUTOMOBILE

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
 - (a) promptly give written notice of it 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 90 days after the date of the loss or damage a statutory declaration stating, to the best of his or her knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others in it, the encumbrances on it, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through a wilful act or neglect, procurement, means or connivance of the insured.
- (2) A further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) is not recoverable under this contract.
- (3) Repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall not 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 5.

EXAMINATION OF INSURED

- (4) The insured shall submit to examination under oath or affirmation, and shall produce for examination at a reasonable place and time designated by the insurer or its representative all documents in his or her possession or control that relate to

the matter in question, and he or she shall permit extracts and copies 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 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 a part of it, with material of the same kind and quality, but, if a part of the automobile is obsolete and out of stock, the liability of the insurer in respect of it is limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

REPAIR OR REPLACEMENT

- (6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of the same kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

NO ABANDONMENT; SALVAGE

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

IN CASE OF DISAGREEMENT

- (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of a loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Contracts Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand is made in writing and until after proof of loss has been delivered.

INSPECTION OF AUTOMOBILE

5. The insured shall permit the insurer at reasonable times to inspect the automobile and its equipment.

TIME AND MANNER OF PAYMENT OF INSURANCE MONEY

6. (1) The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it or, where an appraisal is made under subcondition 4(8), within 15 days after the award is made by the appraisers.

WHEN ACTION MAY BE BROUGHT

- (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided or by a judgement against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

WHEN ACTION MAY BE BROUGHT

- (3) An action or proceeding under this contract against the insurer in respect of a claim for indemnification for liability to the insured for loss or damage to property of another person or for personal injury to or death of another person shall be started within 2 years after the liability of the insured is established by a court and not afterwards. All other actions or proceedings against the insurer, under this contract, in respect of loss or damage to the automobile shall be started within 2 years from the time the loss or damage was sustained and not afterwards.

WHO MAY GIVE NOTICE AND PROOFS OF CLAIM

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract 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 a part of the insurance money is payable.

TERMINATION

8. (1) This contract may be terminated,

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered;

- (b) by the insured on request.

- (2) Where this contract is terminated by the insurer,

- (a) the insurer shall refund the excess of premium actually paid by the insured over the proportional premium of the expired time, but in no event shall the premium for the expired time be considered to be less than a minimum retained premium specified; and

- (b) 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.

- (3) 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 considered to be less than a minimum retained premium specified.

- (4) The refund may be made by money, postal or express company money order or cheque payable at par.

- (5) The 15 days mentioned in paragraph 1(a) starts to run on the day following the receipt of the registered letter at the post office to which it is addressed.

NOTICE

9. (1) A written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice may be given to the insured named in this contract by letter personally delivered to him or her or by registered mail addressed to him or her at the latest post office address as notified to the insurer.
- (3) In this condition, the expression "registered" means registered in or outside Canada.