

# ONTARIO DRIVER'S POLICY (O.P.F. 2)

Approved by the Superintendent of Financial Services for use as the Driver's Automobile Policy on or after September 1, 2010.

# ONTARIO DRIVER'S POLICY (O.P.F. 2)

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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 DRIVER'S POLICY (O.P.F. 2)

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 5 and Section 6, 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 5 and 6.

### INSURING AGREEMENTS

In consideration of payment of the premium specified in the Certificate of Automobile 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 the Certificate of Automobile Insurance.

#### SECTION 1 THIRD PARTY LIABILITY

- 1.1 The Insurer agrees to indemnify the insured against the liability imposed by law upon the insured for loss or damage arising directly or indirectly from the use or operation of a non-owned automobile, and resulting from BODILY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO PROPERTY.

against the insured on account of such loss or damage to persons or property;

- 1.3.3 pay all costs assessed against the insured in any civil action defended by the insurer and any interest accruing after judgment upon that part of the judgment that is within the limits of the Insurer's liability,

- 1.3.4 if the injury is to a person, reimburse the insured for amounts paid for such medical aid as is immediately necessary at the time of such injury;

- 1.3.5 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 stated in the Certificate of Automobile Insurance; and

- 1.3.6 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.

#### EXCLUSIONS

- 1.2 THE INSURER SHALL NOT BE LIABLE under this Section,

- 1.2.1 for loss or damage to property carried in or upon a non-owned automobile, or to property which is owned or rented by, or is in the care, custody or control of the insured;

- 1.2.2 for any amount in excess of the limit stated in the Certificate of Automobile Insurance, and expenditures provided for in the Additional Agreements of this Part, but subject to Section 255 of the Insurance Act (Nuclear Energy Hazard); or

- 1.2.3 for any liability arising from contamination of property carried in the automobile.

#### ADDITIONAL AGREEMENTS OF INSURER

- 1.3 Where coverage is provided by this Section, the Insurer shall,
- 1.3.1 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;
- 1.3.2 defend in the name and on behalf of the insured and at the cost of the insurer in any civil action which may be brought

#### AGREEMENTS OF INSURED

- 1.4 Where coverage is provided by this Section, the insured,
- 1.4.1 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 directly or indirectly out of the use or operation of a non-owned automobile; and
- 1.4.2 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 5 and Section 6, 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 5 and 6.

- 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 is a non-owned automobile.

In addition, insured persons also include any person who is injured or killed in an automobile accident involving a non-owned 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 of an aide or attendant.

### **Payment of Other Expenses**

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

### **Death Benefit**

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

### **Funeral Expenses**

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:

Increased Income Replacement; Caregiver, Housekeeping and Home Maintenance; Increased Medical and Rehabilitation; Increased Attendant Care; Increased Medical, Rehabilitation and Attendant Care; Increased 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 and assessment 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 Superintendent of Financial Services, 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 6, Statutory Condition 1 - Material Change in Risk; or
- g) was convicted of a criminal offence involving the operation of an automobile.

## **SECTION 3**

### **LIABILITY FOR DAMAGE TO NON-OWNED AUTOMOBILES**

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 5 and Section 6, 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 5 and 6.

**3.1** The Insurer agrees to indemnify the insured person against the liability imposed by law on the insured or assumed by the insured under any written agreement for loss or damage arising from the care, custody or control of a non-owned automobile, and resulting from loss or damage to a non-owned automobile under one or more of the following subsections:

**3.1.1** ALL PERILS – caused by any peril

**3.1.2** COLLISION OR UPSET - caused by collision with another object or by upset of the automobile.

**3.1.3** 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 the 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 3.1.4 (Specified Perils), falling or flying objects, missiles, and vandalism.

3.1.4 SPECIFIED PERILS – caused by fire, lightning, theft or attempted theft, windstorm, earthquake, hail, explosion, riot or civil disturbance, falling or forced landing of aircraft or of parts of an aircraft, rising water, 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

3.2 The Insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the Insured, if any, stated in the Certificate of Automobile Insurance EXCEPT THAT,

- (i) each occurrence causing loss or damage referred to in this Section shall give rise to a separate claim, and the sum payable by the insured shall apply to each claim;
- (ii) there shall be no sum payable by the insured where the loss or damage to the non-owned automobile is caused by fire or lightning or theft of the entire automobile and coverage is provided for these perils.

#### Exclusions

3.3 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 a non-owned automobile under a mortgage, conditional sale, lease or other similar written agreement;
- (c) caused directly or indirectly by contamination by radioactive material;
- (d) to contents of automobiles or trailers, other than their equipment;
- (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; or
- (f) 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.

- (g) For any amount in excess of the limited stated in the Certificate of Automobile Insurance, and expenditures provided for in the Additional Agreements of this Section, or

- (h) Under subsection 3.1.3 (Comprehensive) or 3.1.4 (Specified Perils), caused by theft by any person residing in the same dwelling premises as the insured, or by an employee of the insured engaged in the operation, maintenance or repair of the automobile, whether the theft occurs during the hours of such service or employment or not.

3.4 THE INSURER SHALL NOT BE LIABLE under this Section for any loss or damage suffered where the Insured drives or operates a non-owned 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:
  - I. causing death by criminal negligence,
  - II. causing bodily harm by criminal negligence,
  - III. dangerous operation of motor vehicles,
  - IV. failure to stop at the scene of an accident,
  - V. operation of a motor vehicle when impaired or with more than 80 mg of alcohol in the blood,
  - VI. refusal to comply with demand for breath sample,
  - VII. causing bodily harm during operation of vehicle while impaired or over 80 mg of alcohol in the blood, or
  - VIII. 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.

#### Additional Agreements of Insurer

3.5 Where a premium is specified under the Certificate of Automobile Insurance and loss or damage arises from an insured peril, the Insurer further agrees,

- 3.5.1 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,
- 3.5.2 upon receipt of notice of loss or damage caused to persons or property, to make such investigations, negotiations or settlement of any resulting claims on behalf of the Insured as may be deemed expedient by the Insurer,
- 3.5.3 to defend in the name and on behalf of the insured and at the cost of the Insurer any civil action which may be brought against the insured on account of the loss or damage to persons or property, and
- 3.5.4 to pay all costs assessed against the insured 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 4 UNINSURED AUTOMOBILE COVERAGE

Please note that the General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy found in Section 5 and Section 6, 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 5 and 6.

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

- 4.1.1 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;
- 4.1.2 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
- 4.1.3 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

4.2 For the purposes of this Section,

- 4.2.1 "person insured under the Policy" means,
  - a) in respect of a claim for damage to a non-owned automobile, the named Insured
  - b) in respect of a claim for damage to the contents of a non-owned automobile, the owner of the contents
  - c) in respect of a claim for bodily injury or death

- (i) any person while an occupant of a non-owned 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.

4.2.2 "unidentified automobile" means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;

4.2.3 "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

- 4.3 Where a dependent relative referred to in paragraph 4.2.1 (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.
- 4.4 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

- 4.5 **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 first \$300 of any loss in any one occurrence nor any amount in excess of \$25,000.
- 4.6 **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

- 4.7 **This section applies if 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

- 4.8 **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.
- 4.9 The Arbitration Act, 1991 applies to every arbitration under subsection 4.8 (b).

#### Notice of Legal Action

- 4.10 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.
- 4.11 Subject to subsections 4.5 and 4.6, where the person insured under the Policy or his or her representative obtains a judgment against the other person referred to in subsection 4.10 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.
- 4.12 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

- 4.13 **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.

- 4.14 **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

- 4.15 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.
- 4.16 The Insurer will pay for any examination it requires under subsection 4.15.
- 4.17 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

- 4.18 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.

- 4.19 An action or proceeding against the Insurer in respect of loss or damage to a non-owned automobile or its contents shall be commenced within one year next after the loss or damage occurs.
- 4.20 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

- 4.21 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 5 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 6, 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 6.

### Territory

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

### Definitions

- 5.2 In this Policy:
- 5.2.1 "accident benefits" means the benefits set out in the Statutory Accident Benefits Schedule made under the Insurance Act.
- Automobile Defined:**
- 5.2.2 For the purposes of Section 1 (Third Party Liability), Section 2 (Accident Benefits), Section 4 (Uninsured Automobile Coverage):
- "Automobile" includes a trailer and a motorized snow vehicle. Regulations may include, or exclude, certain other types or classes of vehicles as "automobiles".
- "Non-owned automobile" means any automobile including its equipment, other than an automobile owned by or registered in the name of the Insured, while the Insured is personally in control of such automobile as driver or occupant, or which is not in operation but is in the personal care, custody or control of the insured.
- 5.2.4 "occupant" in respect of a non-owned automobile, means,
- (a) the driver,
  - (b) a passenger, whether being carried in or on the automobile,
  - (c) a person getting into or on or getting out of or off the automobile.
- 5.2.5 "spouse" means either of two persons who,
- (a) are married to each other,
  - (b) 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
  - (c) have lived together in a conjugal relationship outside marriage,
    - (i) continuously for a period of not less than three years, or
    - (ii) in a relationship of some permanence if they are the natural or adoptive parents of a child.

### Notice to Insurer

- 5.3 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

- 5.4 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).

### Two or More Automobiles

- 5.5 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 Sections 1 (Third Party Liability), 2 (Accident Benefits) and 4 (Uninsured Automobile Coverage) of this Policy, and separate automobiles with respect to the limits of liability including any deductible provisions, under Section 3 (Liability for Damage to Non-Owned Automobiles).

### Exclusions

#### Garage Personnel Excluded

- 5.6 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 an automobile in the course of that business.

#### War Risks Excluded

- 5.7 THE INSURER SHALL NOT BE LIABLE under Sections 2 (Accident Benefits), Section 3 (Liability for Damage to Non-Owned Automobiles), and 4 (Uninsured Automobile Coverage) 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 war is declared or not.

#### Excluded Uses

- 5.8 THE INSURER SHALL NOT BE LIABLE while,
- (a) except as provided in Section 2 (Accident Benefits), a non-owned automobile is used to carry explosives, or radioactive material for research, education, development or industrial purposes, or for purposes incidental to these purposes; and
  - (b) a non-owned 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.

## SECTION 6 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 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, by registered mail or personal delivery, give to the insured a notice of termination of the contract.
- (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,
- (a) the 15th day after the Insurer gives the notice, if the Insurer gives the notice by registered mail; or
  - (b) the fifth day after the Insurer gives the notice, if the Insurer gives the notice by personal delivery.
- (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,
- (a) the 30th day after the Insurer gives the notice, if the Insurer gives the notice by registered mail; or
  - (b) the 10th day after the Insurer gives the notice, if the Insurer gives the notice by personal delivery.
- (1.3) A notice of termination mentioned in subcondition (1.2) shall,
- (a) state the amount due under the contract as at the date of the notice; and
  - (b) 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 or personal delivery, 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,
- (a) 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;
  - (b) 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
  - (c) 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.
- (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. Any 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. Written notice may be given to the Insured named in this contract by letter personally delivered to the Insured or by registered mail addressed to the Insured at the Insured's latest post office address as notified to the Insurer. 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*.