

**DECLARATION OF AUTOMOBILE INSURANCE ALBERTA, CANADA  
STANDARD AUTOMOBILE FORM – TRANSPORTATION NETWORK S.P.F. No. 9**

**INTACT INSURANCE COMPANY**

(HEREINAFTER CALLED THE INSURER)

AGENT/BROKER <b>Aon Reed Stenhouse</b>		No. <b>72564</b>	POLICY NUMBER <b>7J9000185</b>									
ITEMS	INSURED'S FULL NAME AND POSTAL ADDRESS		2.	FROM:	DATE:			TO:	DATE:			
	1. Rasier Operations B.V., Uber Portier B.V., Uber Canada Inc., and Uber B.V.  Vijzelstraat 68-72 1017 HL Amsterdam, Netherlands  312 Adelaide Street West, Suite 200 Toronto, Ontario, M5V 1R2			12:01 AM	YYYY	MM	DD	12:01 AM	YYYY	MM	DD	
		POLICY PERIOD			2020	07	01		2020	09	01	
<b>ALL TIMES ARE LOCAL TIMES AT ALBERTA, CANADA</b>												
3.	PARTICULARS OF THE DESCRIBED AUTOMOBILE(S) Transportation Network Automobiles operating through the Transportation Network of the named insured, providing transportation services originating in the province of Alberta											
4.	INSURING AGREEMENTS											
	SECTION A			SECTION B				SECTION C				
	PERILS	LEGAL LIABILITY FOR BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY (EXCLUSIVE OF COSTS AND POST JUDGMENT INTEREST) FOR LOSS OR DAMAGE RESULTING FROM BODILY INJURY TO OR THE DEATH OF ONE OR MORE PERSONS AND FOR THE LOSS OR DAMAGE TO PROPERTY REGARDLESS OF THE NUMBER OF CLAIMS ARISING FROM ANY ONE ACCIDENT.			PAYMENTS FOR DEATH OR BODILY INJURY AS STATED IN SECTION B OF THE POLICY				THIS POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE			
	LIMITS AND AMOUNTS IN DOLLARS				EACH PERSON SUB-SEC. 1	PRINCIPAL SUM SUB-SEC. 2	WEEKLY BENEFIT MAXIMUM	UNINSURED MOTORIST SUB-SEC. 3	1. ALL PERILS	2. COLLISION OR UPSET	3. COMPREHENSIVE (EXCLUDING COLLISION OR UPSET)	4. SPECIFIED PERILS (EXCLUDING COLLISION OR UPSET)
	\$2,000,000						AS STATED IN SECTION B OF THE POLICY		\$1000	\$1000		
PREMIUM IN DOLLARS	INCL.			INCL.					INCL.	INCL.		
ENDORSEMENT NUMBERS ATTACHING	ENDORSEMENT No.	ENDORSEMENT DESCRIPTION					ENDORSEMENT PREMIUM	MINIMUM RETAINED PREMIUM		TOTAL POLICY PREMIUM		
	S.E.F. 44	Family Protection Endorsement					INCL.	\$ 0		\$ INCL.		

**Remarks:**

This is your Declaration of Automobile Insurance. Contact your Broker/Agent with any questions or if you require clarification regarding your coverage choices.

**ALBERTA STANDARD AUTOMOBILE FORM – TRANSPORTATION NETWORK  
S.P.F. No. 9**

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## 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, definitions, exclusions stated in this policy and to the provisions of any endorsement attached to this policy.

**The coverages provided by this policy are limited and they only apply to accidents that arise from the use or operation of the automobile as a transportation network automobile. Damages caused in any accident where the automobile is being used for a purpose other than as a transportation network automobile are not recoverable under this insurance policy.**

### 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 the automobile as a transportation network automobile and resulting from bodily injury to or the death of any person or damage to property.

For the purposes of this section, use or operation of the automobile as a transportation network automobile means:

- (a) anytime a transportation network driver operating a transportation network automobile is logged onto a transportation network for the purposes of accepting requests for transportation services for compensation from prospective passenger(s); or
- (b) anytime from the moment a transportation network driver operating a transportation network automobile has accepted a ride request through a transportation network, continuing while such transportation network driver is enroute to pick up prospective passenger(s) to provide transportation services for compensation, and ending when the first passenger enters the transportation network automobile or a trip is cancelled whichever is later; or
- (c) anytime from the moment a transportation network driver operating a transportation network automobile has passenger(s) in a transportation network automobile, continuing while such passenger(s) are being transported for compensation, and ending when the last passenger departs from the transportation network automobile.

**The insurer shall not be liable under this section,**

- (a) for any liability imposed by any workers' compensation law upon any person insured by this section; or

- (b) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by this section while engaged in the operation or repair of the automobile; or
- (c) for loss or damage to any property owned or rented by any person insured by this Policy; or
- (d) for any amount in excess of the limit(s) stated in section A of item 4 of the application and expenditures provided for in the Additional Agreements of this section; or
- (e) for any liability arising from contamination of property carried in the automobile; or
- (f) for any liability resulting from use or operation of the automobile for any purpose other than as a transportation network automobile; or
- (g) for any loss or damage resulting from bodily injury to or death of any person or loss or damage to property sustained while a transportation network driver operating a transportation network automobile is logged onto a transportation network for the purposes of accepting requests for transportation services for compensation from prospective passenger(s) but has not accepted a request to transport passenger(s) unless the insurer of an owner's policy issued to a transportation network driver or transportation network automobile owner has denied liability for the loss or damage. Where the insurer of an owner's policy issued to a transportation network driver or transportation network automobile owner has denied liability for the loss or damage, the insurer's liability is limited to \$1,000,000 and the expenditures provided for in the Additional Agreements of this section.

**See also General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy**

#### **ADDITIONAL AGREEMENTS OF INSURER**

Where indemnity is provided by this section the Insurer shall,

- (1) upon receipt of notice of loss or damage caused to persons or property, serve any person insured by this Policy by an investigation and negotiations with the claimant and by settlement of any resulting claims that are expedient by the insurer; and
- (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 at any time be brought against any person insured on account of such loss or damage to persons or property; and
- (3) 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 limit(s) of the Insurer's liability; and
- (4) in the case of an injury to a person, reimburse any person insured by this Policy for outlay for any medical aid as may be immediately necessary at the time; 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(s) stated in Section A of this Policy; and
- (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 the province or territory of Canada in which the accident occurred.

### **AGREEMENTS OF THE INSURED**

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

- (1) by acceptance of this policy, constitutes and appoints the insurer their 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 ownership, use or operation of the automobile as a transportation network automobile;
- (2) 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 the Policy.

### **SECTION B – ACCIDENT BENEFITS**

The Insurer agrees to pay the benefits outlined in this Section B to or with respect to each insured person as defined in this section who sustains bodily injury or death directly and independently of all other causes by an accident arising out of the use or operation of the automobile as a transportation network automobile.

**The coverage for benefits under this Section B is primary until such time as the insurer of an owner's policy issued to a transportation network driver or transportation network owner accepts liability for the benefits.**

For the purposes of this section, use or operation of the automobile as a transportation network automobile means:

- (a) anytime a transportation network driver operating a transportation network automobile is logged onto a transportation network for the purposes of accepting requests for transportation services for compensation from prospective passenger(s); or
- (b) anytime from the moment a transportation network driver operating a transportation network automobile has accepted a ride request through a transportation network, continuing while such transportation network driver is enroute to pick up prospective passenger(s) to provide transportation services for compensation, and ending when the first passenger enters the transportation network automobile or a trip is cancelled whichever is later; or

- (c) anytime from the moment a transportation network driver operating a transportation network automobile has passenger(s) in a transportation network automobile, continuing while such passenger(s) are being transported for compensation, and ending when the last passenger departs from the transportation network automobile.

### **Subsection 1 - Medical Payments**

- (1) In respect of
  - (a) injuries to which the *Diagnostic and Treatment Protocols Regulation* applies and that are diagnosed and treated in accordance with the protocols under that Regulation, the expenses payable for any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment or making a report, or any other activity or function authorized under that Regulation, and payment must be made in the manner and subject to the provisions of that Regulation, notwithstanding anything to the contrary in Section B, and
  - (b) injuries
    - (i) to which the *Diagnostic and Treatment Protocols Regulation* applies but that are not diagnosed and treated in accordance with the protocols under that Regulation,
    - (ii) to which the *Diagnostic and Treatment Protocols Regulation* ceases to apply but for which the insured person wishes to make a claim under provision (3) of “Special Provisions, Definitions, and Exclusions of Section B”, and
    - (iii) to which Section B applies, other than those injuries referred to in subclauses (i) and (ii),

all reasonable expenses incurred within 2 years from the date of the accident as a result of those injuries for necessary medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing and ambulance services and, in addition, for other services and supplies that are, in the opinion of the insured person’s attending physician and in the opinion of the Insurer’s medical advisor, essential for the treatment or rehabilitation of the injured person,

to the limit of \$50,000 per person.

- (2) Notwithstanding provision (1),

- (a) expenses payable in respect of chiropractic services provided under provision (1)(b) are limited to \$750 per person;
  - (b) expenses payable in respect of massage therapy services provided under provision (1)(b) are limited to \$250;
  - (c) expenses payable in respect of acupuncture services provided under provision (1)(b) are limited to \$250.
- (3) Subject to provision (4), the Insurer is not liable under this provision for those portions of expenses payable or recoverable under any medical, surgical, dental or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of any insured person.
- (4) Except for those portions of expenses payable or recoverable under any law, provision (3) does not apply to expenses payable or recoverable for an injury to which the *Diagnostic and Treatment Protocols Regulation* applies.

**Subsection 2 - Death, Grief Counselling,  
Funeral and Total Disability**

**Part 1 - Death, Grief Counselling and Funeral Benefits**

Subject to the provisions of this Part 1, for death, a payment of a principal sum - based on the age and status at the date of the accident of the deceased in a household where the head of the household or the spouse/adult interdependent partner or dependants survive - of the following amount:

Age of Deceased at Date of Accident	Status of Deceased at Date of Accident		
	Head of Household	Spouse/Adult Interdependent Partner	Dependent Relative
Up to age of 4 years	-	-	\$1000
5 to 9 years	-	-	2000
10 to 17 years	\$10 000	\$10 000	3000

18 to 64 years	10 000	10 000	2000
65 to 69 years	10 000	10 000	2000
70 years and over	10 000	10 000	1000

In addition, funeral service expenses up to the amount of \$5000 in respect of the death of any one person.

In addition, grief counselling expenses up to the amount of \$400 per family in respect of the death of any one person.

In addition, with respect to the death of the head of household,

- (a) where there are 2 or more survivors who are
  - (i) a spouse/adult interdependent partner and one or more dependent relatives, or
  - (ii) 2 or more dependent relatives,

the principal sum payable is increased 20% for each survivor other than the first, and (b) where there is a spouse/adult interdependent partner or dependent relative survivor living in the household, the death benefit is increased

- (i) by \$15 000 for the first spouse/adult interdependent partner or dependent relative survivor, and
- (ii) by a subsequent \$4000 for each of the remaining survivors.

**For the Purposes of this Part 1**

- (1) “head of household” means that member of a household with the largest income in the year preceding the date of the accident;
- (2) “dependent relative” means a person
  - (a) under the age of 18 years for whose support the head of household or the spouse/adult interdependent partner of the head of household (or both of them) is legally liable and who is dependent upon either or both of them for financial support; or
  - (b) 18 years of age or over and residing in the same dwelling premises as the head of household who, because of mental or physical infirmity, is principally



dependent on the head of household or the spouse/adult interdependent partner of the head of household (or both the head of household and the spouse/adult interdependent partner) for financial support;

- (2.1) If the head of household has both a spouse and an adult interdependent partner, a reference to spouse/adult interdependent partner or surviving spouse/adult interdependent partner means
- (a) the spouse or surviving spouse, or
  - (b) the adult interdependent partner or surviving adult interdependent partner, living in the same dwelling premises as the head of household.
- (3) The total sum payable shall be paid with respect to death of head of household or spouse/adult interdependent partner to the surviving spouse/adult interdependent partner. If there is no surviving spouse/adult interdependent partner in the household, no amount shall be payable unless there are surviving dependent relatives, and in that event the total sum payable shall be divided equally among the surviving dependent relatives;
- (4) The total amount payable with respect to death due to a common disaster of head of household and spouse/adult interdependent partner shall be paid equally to surviving dependent relatives;
- (5) The sum payable with respect to the death of a dependent relative shall be paid to the head of household or, if he does not survive, to the surviving spouse/adult interdependent partner of the head of household but, if neither the head of household nor the spouse/adult interdependent partner survives, no amount is payable;
- (6) Amounts payable under this Part I shall be paid only to a person who is alive 60 days after the death of the insured person;
- (7) The amount payable under this Part I for the death of any person shall be reduced by the amount of any payments made to or for such person with respect to the same accident under Part II, Total Disability;
- (8) The amount payable under this Part for grief counselling is payable to the spouse/adult interdependent partner or other immediate family member of the deceased in respect of grief counselling for the immediate family members of an insured person who dies as a result of the accident.

## **Part II - Total Disability**

A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person, provided

- (a) such person was employed at the date of the accident;
- (b) within 60 days from the date of the accident such injury prevents him from performing any and every duty pertaining to his occupation or employment;
- (c) no benefit shall be payable for the first seven days of such disability or for any period in excess of 104 weeks.

**Amount of Weekly Benefit** - The weekly benefit payable shall be the lesser of:

- (a) \$400 per week, and
- (b) 80% of the average gross weekly earnings, less any payments for loss of income from occupation or employment received by or available to such insured person under Subsection 2(A) of this Section B.

The above benefits shall be subject to the terms of provision (3) below.

### **For the purpose of this Part II**

- (1) an insured person who is 18 years of age or over and who is not engaged in an occupation or employment for wages or profit and is completely incapacitated and unable to perform any of his or her household duties shall, while so incapacitated, receive \$135 per week for not more than 26 weeks;
  - (1.1) average gross weekly earnings is the greater of
    - (a) average gross weekly earnings from an occupation or employment for the 4 weeks preceding the accident, and
    - (b) average gross weekly earnings from an occupation or employment for the 52 weeks preceding the accident;
- (2) a person shall be deemed to be employed
  - (a) if actively engaged in occupation or employment for wages or profit at the date of the accident, or
  - (b) if 18 years of age or over, so engaged for any six months during the 12 months preceding the date of the accident.

- (3) if the benefits for loss of time payable under this Part, together with benefits for loss of time under another contract, including a contract of group accident insurance and a life insurance contract providing disability insurance, exceed the average gross weekly earnings of the insured person, the weekly benefit shall be calculated in accordance with the following formula:

$$WB = \frac{80\% \text{ of } WE}{PB + OB} \times PB$$

where

WB is the weekly benefit,

WE is the average gross weekly earnings of the insured person,

PB is the lesser of \$300 and 80% of WE,

OB is the total of all other weekly benefits payable to the insured person under other contracts, including a contract of group accident insurance and a life insurance contract providing disability insurance, excluding benefits under the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* (Canada);

- (4) the disability of the insured person shall be certified by a duly qualified medical practitioner, if so required by the Insurer.

**Subsection 2(A) - Supplemented Benefits  
Respecting Accidents Occurring Outside  
Alberta in a No-fault Jurisdiction**

- (1) In this Subsection, 2(A)
- (a) “accident” means an event resulting in bodily injury caused by the use or operation of the automobile as a transportation network automobile;
  - (b) “applicable laws” means, with respect to a no-fault jurisdiction, the laws in force from time to time governing the system of no-fault automobile insurance in that jurisdiction;
  - (c) “insured person” means an individual who is a resident of Alberta and who
    - (i) is an occupant of the automobile which is being used or operated as a transportation network automobile at the time of the accident, or

- (ii) while a pedestrian, is struck by the automobile or a newly acquired or temporary substitute automobile as defined in this policy, which is being used or operated as a transportation network automobile;
- (d) “no-fault jurisdiction” means the Province of Quebec, Ontario, Manitoba or Saskatchewan;
- (e) “pedestrian” means an individual who is not an occupant of an automobile;
- (f) “resident of Alberta” means an individual who
  - (i) is authorized by law to be or to remain in Canada and is living and ordinarily present in Alberta, and
  - (ii) meets the criteria for non-residency in the no-fault jurisdiction established by the applicable laws of the no-fault jurisdiction.
- (2) The definition of “insured person” under the heading Special Provisions, Definitions, and Exclusions of Section B does not apply to this Subsection.
- (3) Where an insured person suffers personal injury as a result of an accident occurring in a no-fault jurisdiction, the insurer agrees to pay to the insured person the amount that would be payable under the applicable laws of the no-fault jurisdiction as if the insured person were a resident of the no-fault jurisdiction.
- (4) For the purposes of calculating an amount payable under (3) in respect of an accident occurring in Quebec, references in the *Automobile Insurance Act* (Quebec) to other statutes or regulations of Quebec used to calculate an amount payable under (3) shall be read as references to corresponding Alberta statutes or regulations or federal statutes or regulations that apply in Alberta.
- (5) In any claim or action in Alberta arising out of an accident in Alberta, the insurer agrees not to exercise its right of subrogation against a resident of Manitoba or Saskatchewan in respect of Section B - Accident Benefits paid to a resident of Alberta under an automobile insurance policy issued in Alberta.
- (6) No exclusion or limitation in Section B or in the General Provisions, Definitions and Exclusions and the Statutory Conditions of this policy may be raised by the insurer in respect of a claim by an insured person under (3).

### **Subsection 3 – Uninsured Motorist Cover**

All sums which every insured person shall be legally entitled to recover as damages for bodily injury and all sums which any other person shall be legally entitled to recover as

damages because of the death of any insured person, from the owner or driver of an uninsured or unidentified automobile as defined herein.

(1) **The Insurer shall not be liable under this subsection,**

- (a) to any person who has a right of recovery under an unsatisfied judgment or similar fund or plan in effect in any jurisdiction of Canada or the United States of America;
- (b) to any person who, without the written consent of the Insurer, makes directly or through his representative any settlement with or prosecutes to judgment any action against any person or organization which may be legally liable therefor;
- (c) for any amount in excess of the minimum limit(s) for automobile bodily injury liability insurance applicable in the jurisdiction in which the accident occurs regardless of the number of persons so injured or killed, but in no event shall such limit(s) exceed the minimum limit(s) applicable in the jurisdiction stated in Item 1 of the application.

(2) **Uninsured automobile defined**

An “uninsured automobile” under this section means an automobile with respect to which neither the owner nor driver thereof has applicable and collectible bodily injury liability insurance for its ownership, use or operation, but shall not include an automobile owned by or registered in the name of

- (a) the named insured or any transportation network driver or any person residing in the same dwelling premises of the transportation network driver; or
- (b) the governments of Canada or the United States of America or any political sub-division thereof or any agency or corporation owned or controlled by any of them; or
- (c) any person who is an authorized self-insurer within the meaning of a financial or safety responsibility law; or
- (d) any person who has filed a bond or otherwise given proof of financial responsibility with respect to his liability for the ownership, use or operation of automobiles.

(3) **Unidentified automobile defined**

An “unidentified” automobile under this subsection means an automobile which causes bodily injury or death to an insured person arising out of physical contact of such automobile with the automobile which is being used or operated as a transportation network automobile of which the insured person is an occupant at the time of the accident, provided

- (a) the identity of either the owner or driver of such automobile cannot be ascertained, and
- (b) the insured person or someone on his behalf has reported the accident within 24 hours to a police, peace or judicial officer or to an administrator of motor vehicle laws and shall have filed with the Insurer within 30 days thereafter a statement under oath that the insured person or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity cannot be ascertained and setting forth the facts in support thereof; and
- (c) at the request of the Insurer, the insured person or his legal representative makes available for inspection the automobile of which the insured person was an occupant at the time of the accident.

**(4) Limitation of liability**

- (a) If claim is made under this subsection and claim is also made against any person who is an insured under section A – Third Party Liability of this Policy, any payment under this subsection shall be applied in reduction of any amount which the insured person may be entitled to recover from any person who is insured under section A;
- (b) Any payment made under section A or under subsections 1 or 2 of section B of this Policy to an insured person hereunder shall be applied in reduction of any amount which such person may be entitled to recover under this subsection.

**(5) Determination of legal liability and amount of damages**

The determination as to whether the insured person shall be legally entitled to recover damages and if so entitled, the amount thereof, shall be made by agreement between the insured person and the Insurer.

If any difference arises between the insured person and the Insurer as to whether the insured person is legally entitled to recover damages and, if so entitled, as to the amount thereof these questions shall be submitted to arbitration of 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 insured person and the other by the Insurer and a third person to be appointed by the persons so chosen. The submission shall be subject to the provisions of The Arbitration Act and the award shall be binding upon the parties.

(6) Notice of legal action

If, before the Insurer makes payment of loss hereunder, the insured person or his representative shall institute any legal action for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the writ of summons or other process served in connection with such legal action shall be forwarded immediately to the Insurer.

**Special Provisions, Definitions,  
and Exclusions of Section B**

(1) **“INSURED PERSON” DEFINED**

In this section, the words “insured person” mean

- (a) any person while an occupant of the automobile or of a newly acquired or temporary substitute automobile as defined in this policy and which is being used or operated as a transportation network automobile at the time of the accident;
- (b) in subsection 1 and 2 of Section B only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck in Canada, by the automobile or a newly acquired or temporary substitute automobile as defined in the policy and which is being used or operated as a transportation network automobile at the time of the accident.

(1.1) **“Prescribed claim form” defined** - In this section, the words “prescribed claim form” mean a form prescribed by the Minister under section 803 of the *Insurance Act*.

(1.2) **“Spouse/adult interdependent partner” defined** - In this section, the words “spouse/adult interdependent partner” mean the spouse or adult interdependent partner, as the case may be.

## (2) EXCLUSIONS

- (a) The Insurer shall not be liable under provision (1) of subsection 1, nor under Part II of subsection 2 of this section B for bodily injury to any person
  - (i) resulting from the suicide of such person or attempt thereat, whether sane or insane; or
  - (ii) who is entitled to receive the benefits of any workmen's compensation law or plan as a result of the accident; or
  - (iii) where the person at the time of the accident is engaged in a race or speed test; or
  - (iv) caused directly by sickness or disease; or
  - (v) who is using the automobile for any illicit or prohibited trade or transportation.
- (b) The Insurer shall not be liable under Part II of Subsection 2 of this Section B for Bodily injury
  - (i) sustained by any person who is convicted of an offence under section 253(b) of The Criminal Code (driving with more than 80 milligrams of alcohol in 100 millilitres of blood) or under section 253(a) of The Criminal Code (driving while ability to drive impaired by alcohol or a drug) occurring at the time of the accident, or
  - (ii) sustained by any person driving the automobile which is being used or operated as a transportation network automobile who is under the age prescribed by the law of the jurisdiction in which the accident occurs as being the minimum age at which a licence or permit to drive the automobile may be issued to him; or
  - (iii) sustained by any person driving the automobile which is being used or operated as a transportation network automobile who is not for the time being either authorised by law or qualified to drive the automobile.

## (3) NOTICE AND PROOF OF CLAIM

Subject to the *Diagnostic and Treatment Protocols Regulation*, the insured person or the insured person's agent, or the person otherwise entitled to make a claim or that person's agent, shall

- (a) deliver personally,



- (b) mail,
- (c) fax, or
- (d) send by e-mail if both parties have agreed to this method of sending and receiving notices and other documents,

a properly completed prescribed claim form, containing at least the information referred to in provision (3.1), to the chief agency or head office of the Insurer in Alberta within 30 days of the accident, or if giving notice within 30 days is not reasonable, as soon as practicable after that.

(3.1) **Contents of Claim Form** - The completed prescribed claim form must include

- (a) details of the injury, and
- (b) details of the accident that are within the personal knowledge of the insured person.

(3.2) **Responsibility for Expenses Related to Completion of Claim Form** - The Insurer shall pay all expenses incurred by or on behalf of the insured person in completing the medical report portion of the prescribed claim form.

(3.3) **Total Disability Claim** - With respect to a total disability claim, the insured person shall, if so required by the Insurer, furnish a certificate from a duly qualified medical practitioner as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby.

(4) **Medical Reports** - Subject to provision (4.1), the Insurer has the right and the claimant shall afford to a duly qualified medical practitioner named by the Insurer an opportunity to examine the person of the insured's person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(4.1) **Exemption** - The Insurer has no right and the claimant is under no obligation under provision (4) with respect to

- (a) injuries to which the Diagnostic and Treatment Protocols Regulation applies during the period and with respect to any service, diagnostic imaging, laboratory testing, specialized testing, supply, treatment, visit, therapy, assessment, making a report or other activity or function authorized under that Regulation;
- (b) subject to provision (4.2), any other injuries for which the following services are provided:

- (i) chiropractic services;
- (ii) massage therapy services;
- (iii) acupuncture services;
- (iv) the following services to the extent of the specified limit:
  - (A) psychological services, up to \$600 per person;
  - (B) physical therapy services, up to \$600 per person;
  - (C) occupational therapy services, up to \$600 per person.

(4.2) Non-application - Provision (4.1)(b) does not apply to those injuries to which the Diagnostic and Treatment Protocols Regulation ceases to apply.

(5) RELEASE

Notwithstanding any release provided for under the relevant sections of the *Insurance Act* (Alberta), the insurer may demand, as a condition precedent to payment of any amount under Section B of the Policy a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(6) WHEN MONEYS PAYABLE

- (a) Except for the expenses authorized to be paid in accordance with the *Diagnostic and Treatment Protocols Regulation*, all amounts payable under Section B other than benefits under Part II of Subsection 2 shall be paid by the Insurer within 60 days after it has received a completed prescribed claim form. The initial benefits for loss of time under Part II of Subsection 2 shall be paid within 30 days after the Insurer has received the completed prescribed claim form, and payments shall be made thereafter within each 30-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes, prior to payment, proof of continuing disability.
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions (3) and (4) are complied with, nor until the amount of the loss has been ascertained as provided in this section.

- (c) Every action or proceeding against the Insurer for the recovery of a claim under this Section B must be commenced not later than 2 years after the cause of action against the insurer arose.

**See also General Provisions, Definitions, Exclusions, and Statutory Conditions of this policy.**

### **SECTION C – LOSS OF OR DAMAGE TO INSURED AUTOMOBILE**

The insurer agrees to indemnify the Insured against direct and accidental loss of or damage to the automobile, including its equipment while the automobile is being used or operated as a transportation network automobile.

For the purposes of this section, use or operation of the automobile as a transportation network automobile means:

- (a) anytime from the moment a transportation network driver operating a transportation network automobile has accepted a ride request through a transportation network, continuing while such transportation network driver is enroute to pick up prospective passenger(s) to provide transportation services for compensation, and ending when the first passenger enters the transportation network automobile or a trip is cancelled whichever is later; or
- (b) anytime from the moment a transportation network driver operating a transportation network automobile has passenger(s) in a transportation network automobile, continuing while such passenger(s) are being transported for compensation, and ending when the last passenger departs from the transportation network automobile.

Insurance under this Section C is for those perils for which a premium is specified in item x of the application.

**Subsection 1 – ALL PERILS – from all perils;**

**Subsection 2 – COLLISION OR UPSET – caused by collision with another object or by upset;**

**Subsection 3 – COMPREHENSIVE – from any peril other than by collision with another object or by upset;**

The words “another object” as used in this subsection 3 shall be deemed to include (a) a vehicle to which the automobile, which is being used or operated as a transportation network automobile, is attached and (b) the surface of the

ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 3.

**Subsection 4 – SPECIFIED PERILS – caused by fire, lightning, theft or attempt thereat, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile, which is being used or operated as a transportation network automobile, is being transported on land or water;**

### **DEDUCTIBLE CLAUSE**

Each occurrence causing loss or damage covered under any subsection of Section C except loss or damage caused by fire or lightning or theft of the entire automobile, which is being used or operated as a transportation network automobile, covered by such subsection, shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the amount deductible, if any, stated in the applicable subsection of section C of Item 4 of the application.

### **EXCLUSIONS**

**The Insurer shall not be liable,**

- (1) under any subsection of Section C for loss or damage
  - (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection; or
  - (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement; or
  - (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense; or
  - (d) caused directly or indirectly by contamination by radioactive material; or

- (e) to contents of trailers or to rugs or robes; or
  - (f) to tapes and equipment for use with a tape player or recorder when such tapes or equipment are detached therefrom; or
  - (g) where the insured drives or operates the automobile
    - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
    - (ii) while in a condition for which he is convicted of an offence under section 253 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under section 254 of the Criminal Code (Canada); or
  - (h) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (g);
- (2) under subsections 3 (Comprehensive), 4 (Specified Perils) only, for loss or damage caused by theft by any person or persons residing in the same dwelling premises as the Insured, or by any 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.

**See also General Provisions, Definitions, Exclusions and Statutory Conditions of this Policy**

#### **ADDITIONAL AGREEMENTS OF INSURER**

- (1) Where loss or damage arises from a peril for which a premium is specified under a subsection of this Section, the Insurer further agrees:
- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the Insured is legally liable;
  - (b) 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 (1) having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles, or (2) 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 (i) or (ii) of paragraph (g) of the Exclusions to Section C of this policy;

- (c) to indemnify the Insured and any other person who personally drives a temporary substitute automobile as defined in the General Provisions of this Policy against the liability imposed by law or assumed by the Insured or such other person under any contract or agreement for direct and accidental physical loss or damage to such automobile and arising from the care, custody and control thereof; provided always that:
  - (i) such indemnity is subject to the deductible clause and exclusions of each such subsection;
  - (ii) if the owner of such automobile has or places insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this Policy;
  - (iii) the Additional Agreements under section A of this Policy shall insofar as they are applicable, extend to the indemnity provided herein.

- (2) Loss of Use by Theft – Where indemnity is provided under subsections 1, 3 or 4 of section C hereof the Insurer further agrees, following a theft of the entire automobile covered thereby, to reimburse the Insured for expense not exceeding \$25.00 for any one day nor totalling more than \$750.00 incurred for the rental of a substitute automobile including taxicabs and public means of transportation.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating, regardless of the expiration of the policy period, (a) upon the date of the completion of repairs to or the replacement of the property lost or damaged, or (b) upon such earlier date as the insurer makes or tenders settlement for the loss or damage caused by such theft

## **GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS**

### **1. TERRITORY**

This Policy applies only while the automobile is being used or operated as a transportation network automobile and is operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.

2. **OCCUPANT DEFINED**

In this Policy the word “occupant” means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

3. **CONSENT OF OWNER**

No person shall be entitled to indemnity or payment under this Policy who is an occupant of any automobile which is being used without the consent of the owner thereof.

4. **GARAGE PERSONNEL EXCLUDED**

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 the automobile in the course of that business or while so engaged is an occupant of the described automobile or a newly acquired automobile as defined in this Policy.

5. **AUTOMOBILE DEFINED**

In this Policy except where stated to the contrary the words “the automobile” mean:

**Under sections A (Third Party Liability), B (Accident Benefits), C (Loss of or Damage to Insured Automobile)**

- (a) The Described Automobile – an automobile, specifically described in the Policy or within the description of insured automobiles set forth therein;
- (b) A Newly Acquired Automobile – an automobile, ownership of which is acquired by the insured and, within fourteen days following the date of its delivery to him, notified to the Insurer in respect of which the insured has no other valid insurance, if either it replaces an automobile described in the application or the Insurer insures (in respect of the section or subsection of the Insuring Agreements under which claim is made) all automobiles owned by the Insured at such delivery date and in respect of which the Insured pays any additional premium required; provided however, that insurance hereunder shall not apply if the Insured is engaged in the business of selling automobiles;

**and under sections A (Third Party Liability) and B (Accident Benefits) only**

- (c) A Temporary Substitute Automobile – an automobile not owned by the Insured, nor by any person or persons residing in the same dwelling premises as the Insured, while temporarily used as the substitute for the described automobile which is not in use by any person insured by this Policy, because of its breakdown, repair, servicing, loss, destruction or sale;

## 6. TWO OR MORE AUTOMOBILES

- (a) When two or more automobiles are described hereunder with respect to the use or operation of such described automobiles, each automobile shall be deemed to be insured under a separate policy;
- (b) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the limit(s) of liability under insuring Agreements A and B and separate automobiles with respect to the limit(s) of liability, including deductible provisions, under Insuring Agreement C.

## 7. WAR RISKS EXCLUDED

The Insurer shall not be liable under section B or C of this Policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war be declared or not.

## 8. EXCLUDED USES

Unless coverage is expressly given by an endorsement of this Policy, the insurer shall not be liable under this Policy while:

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental to those purposes. "Radioactive material" means
  - (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
  - (b) radioactive waste material,
  - (c) unused enriched nuclear fuel rods, or



- (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged;
- (c) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance.

## 9. LIMITATION OF ACTIONS

Every action or proceeding against the insurer for the recovery of insurance money payable under this contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

## 10. DEFINITIONS

In this Policy:

- (a) “transportation network” means any online enabled application, digital platform, software, website, or any other system offered, used or operated by a transportation network company and that is used by persons to prearrange the transportation of passenger(s) for compensation in a transportation network automobile.
- (b) “transportation network automobile” means an automobile used to provide prearranged transportation of passenger(s) for compensation through the use of a transportation network.
- (c) “transportation network company” means a corporation, partnership, sole proprietorship, association or other entity or individual that connects passenger(s) with transportation network drivers for prearranged transportation exclusively through the offering, use or operation of a transportation network.
- (d) “transportation network driver” means a person authorized by a transportation network company to use a transportation network automobile to provide prearranged transportation of passenger(s) for compensation through the use of a transportation network.
- (e) “transportation network automobile owner” means the owner of a transportation network automobile, or if the transportation network automobile is leased, the lessee and lessor of the transportation network automobile.

## 11. Additional Insureds

The insurer agrees to indemnify as an insured person every transportation network driver and every transportation network automobile owner; however, transportation network drivers and transportation network owners shall not have the right to cancel, renew or otherwise amend this contract.

### **STATUTORY CONDITIONS**

In these Statutory Conditions, unless the context otherwise requires, “insured” means a person insured by the contract whether named in the contract or not.

- (i) Statutory Condition 3 does not apply when the contract does not insure against liability for loss or damage to persons and property;
- (ii) Statutory Condition 4 does not apply when the contract does not insure against loss of or damage to the automobile. Statutory Conditions 2, 3, 4, 5, 6 and 7 shall not apply to Section B- Accident Benefits.

### **Material Change in Risk**

- 1. (1) The insured named in this contract must promptly notify the insurer or its 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 subparagraph (1) of this condition, “change in the risk material to the contract” includes
  - (a) any change in the insurable interest of the insured named in the 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
  - (b) in respect to insurance against loss of or damage to the automobile,
    - (i) any mortgage, lien or encumbrance affecting the automobile after the application for the contract, and
    - (ii) any other insurance of the same interest, whether valid or not, covering loss or damage insured by the contract or any portion of the contract.

### **Prohibited Use by Insured**

- 2. (1) The insured must not drive or operate the automobile

- (a) unless the insured is for the time being either authorized by law or qualified to drive or operate the automobile,
- (b) while the insured's licence to drive or operate an automobile is suspended or while the insured's right to obtain a licence is suspended or while the insured is prohibited under order of any court from driving or operating an automobile,
- (c) while the insured is under the age of 16 years or under any other age prescribed by the law of the province in which the insured resides 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 to the insured,
- (d) for any illicit or prohibited trade or transportation, or
- (e) in any race or speed test.

### **Prohibited Use by Others**

- (2) The insured must not permit or allow the use of the automobile
  - (a) by any 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 any other age prescribed by the law of the province in which the person resides 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 to the person,
  - (b) by any person who is a member of the household of the insured while the person's licence to drive or operate an automobile is suspended or while the person's right to obtain a licence is suspended or while the person is prohibited under order of any court from driving or operating an automobile,
  - (c) for any illicit or prohibited trade or transportation, or
  - (d) in any race or speed test.

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

3. (1) The insured must
  - (a) promptly 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 accident,
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile as a transportation network 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 the contract,
  - (c) forward immediately to the insurer every letter, document, advice or writ received by the insured from or on behalf of the claimant, and
  - (d) in addition to the requirement of (a), promptly give to the insurer the precise times that a transportation network driver logged onto a transportation network for the purposes of accepting requests for transportation services for compensation from prospective passengers(s) and logged out of a transportation network.
- (2) The insured must 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 must, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and must cooperate 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 the Automobile**

4. (1) When loss of or damage to the automobile occurs, the insured must, if the loss or damage is covered by the contract,
  - (a) promptly give notice of the loss or damage in writing to the insurer with 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 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 in the automobile, the encumbrances on the automobile, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance 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 subparagraph (1) of this condition is not recoverable under the contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, may be undertaken and no physical evidence of the loss or damage may be removed
- (a) without the written consent of the insurer, or
  - (b) until the insurer has had a reasonable opportunity to make the inspection for which provision is made in Statutory Condition 5.

### **Examination of Insured**

- (4) The insured must submit to examination under oath and must produce for examination at any reasonable place and time 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 must permit extracts and copies of the documents to be made.

### **Insurer Liable for Cash Value of Automobile**

- (5) The insurer is not liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage must be ascertained or estimated according to that actual cash value with proper deductions for depreciation, however caused, and must not exceed the amount that it would cost to repair or replace the automobile, or any part of the automobile, with material of similar kind and quality, but if any part of the automobile is obsolete and unavailable, the liability of the insurer in respect of

the automobile 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 a dispute resolution process has been initiated, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of similar 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 must be no abandonment of the automobile to the insurer without the insurer's consent.
- (8) If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, vests in the insurer.

### **In Case of Disagreement**

- (9) 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 of the loss or damage, those questions must be determined by a dispute resolution process as provided under the *Insurance Act* before there can be recovery under the contract, whether the right to recover under the contract is disputed or not, and independently of all other questions.
- (10) There is no right to a dispute resolution process until
  - (a) a specific demand for it is made in writing, and
  - (b) the proof of loss has been delivered.

### **Inspection of Automobile**

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

### **Time and Manner of Payment of Insurance Money**

6. (1) The insurer must pay the insurance money for which it is liable under the

contract within 60 days after the proof of loss has been received by it or, where a dispute resolution process is conducted under Statutory Condition 4(9), within 15 days after the decision is rendered.

### **When Action May Be Brought**

- (2) The insured may not bring an action to recover the amount of a claim under the 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 for under Statutory Conditions 3 and 4 or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

### **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 the 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.

### **Termination**

8. (1) The 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, or
  - (b) by the insured at any time on request.
- (2) If the contract is terminated by the insurer,
  - (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event, may the prorated premium for the expired time be less than any minimum retained premium specified, and
  - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund must be made as soon as practicable.
- (3) If the contract is terminated by the insured, the insurer must 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 may the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.

- (4) The 15-day referred to in subparagraph 1(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

### **Notice**

9. (1) 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.
- (2) Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest postal address as notified to the insurer.
- (3) In this condition, "registered" means registered in or outside Canada.



## S.E.F. 44 Family Protection Endorsement

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### 1. DEFINITIONS: where used in this endorsement,

- (a) The term “automobile” shall mean a vehicle with respect to which motor vehicle liability insurance would be required if it were subject to the law of the province governing the policy.
- (b) The term “dependant relative” means:
  - (i) a person,
    - (1) under the age of 18 years who resides with the named insured and is principally dependent upon the named insured or the spouses/adult interdependent partners of the named insured for financial support.
    - (2) 18 years of age or over who, because of mental or physical infirmity, is principally dependant upon the named insured or the spouses/adult interdependent partners of the named insured for financial support, or
    - (3) 18 years of age or over who, because of full-time attendance at a school, college or university, is principally dependant upon the named insured or the spouse of the named insured for financial support; or
  - (ii) a parent or relative,
    - (1) of the named insured, or
    - (2) of the spouses/adult interdependent partners of the named insured,

residing in the same dwelling premises and principally dependant upon the named insured or the spouses/adult interdependent partners of the named insured for financial support.

- (c) The term “eligible claimant” means:
  - (i) the insured person sustaining bodily injury;
  - (ii) any other person who, in the jurisdiction in which the accident occurred, is entitled to maintain an action against the inadequately insured motorist for damages because of the death of an insured person or because of bodily injury to an insured person.
- (d) The words “Family Protection Coverage” mean the insurance as provided by this form of endorsement and any other coverage provided by virtue of a contract of insurance providing indemnity similar in nature to the indemnity provided by this endorsement, whether described as underinsured motorist coverage or not.
- (e) The term “inadequately insured motorist” means:
  - (i) the identified owner or identified driver of an automobile with respect to which the total motor vehicle liability insurance or provided bonds, cash deposits or other financial guarantees as required by law in lieu of insurance, of the owner and driver is less than the Limit of Family Protection Coverage.
  - (ii) the driver or owner of an uninsured automobile or unidentified automobile as defined in the “Uninsured Automobile Coverage” of the Policy:

Provided That:

- (A) where an eligible claimant is entitled to recover damages from an inadequately insured motorist and the owner or operator of any other automobile, for the purpose of 1 (e) (i) above and determining the insurer’s limit of liability under paragraph 3 of this endorsement, the limits of motor vehicle liability insurance shall be deemed to be the aggregate of all limits of liability insurance and all bonds, cash deposits, or other financial guarantees as required by law in lieu of such insurance, with respect to all of the said automobiles;
- (B) where an eligible claimant is entitled to recover damages from the identified owner or identified driver of an uninsured automobile as defined in this policy, for the purpose of 1 (e) (i) and (ii) above and for the purpose of determining the limit of coverage under paragraph 3 of this endorsement, uninsured motorist coverage available to the eligible claimant shall be taken into account as if it were motor vehicle liability insurance with the limits stated to be those of the uninsured motorist coverage:

- (C) where an eligible claimant alleges that both the owner and driver of an automobile referred to in 1 (e) (ii) cannot be determined, the eligible claimant's own evidence of the involvement of such automobile must be corroborated by other material evidence; and
- (D) "other material evidence" for the purposes of this section means:
- (i) independent witness evidence, other than evidence of a spouses/adult interdependent partners as defined in this endorsement or a dependent relative as defined in this endorsement; or
  - (ii) physical evidence indicating the involvement of an unidentified automobile
- (f) The words "insured person" means:
- (i) the named insured and his or her spouses/adult interdependent partners if residing in the same dwelling premises and any dependant relative of either, while
    - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy,
    - (2) an occupant of any other automobile but excluding the person who leases such other automobile for a period in excess of 30 days or who owns such other automobile unless underinsured motorist insurance is in force in respect of such other automobile, or
    - (3) not an occupant of an automobile who is struck by an automobile;
  - (ii) if the named insured is a corporation, an unincorporated association or partnership, any officer, employee or partner of the named insured for whose regular use the described automobile is provided (which individual shall be considered the "named insured" for the purposes of Definition 1 (b), and his or her spouses/adult interdependent partners if residing in the same dwelling premises, and any dependant relative of either, while
    - (1) an occupant of the described automobile, a newly acquired automobile or a temporary substitute automobile as defined in the general provisions, definitions and exclusions of the policy.
    - (2) an occupant of an automobile other than the automobile referred to in (ii) (1) above leased by the named insured for a period in excess of 30 days or owned by the named insured provided underinsured motorist insurance is in force in respect of such other automobile, or
    - (3) not an occupant of an automobile who is struck by an automobile;
 provided that where the policy has been endorsed to grant permission to rent or lease the described automobile for a period in excess of 30 days, any reference to the named insured shall be construed as a reference to the lessee specified in that endorsement.
- (g) The term "Limit of Family Protection Coverage" means the amount set out in the policy documents, with respect to this endorsement. If no amount is set out in the policy documents then the Section A limit with respect to the automobile to which this endorsement applies is the Limit of Family Protection Coverage.
- (h) The words "limits of motor vehicle liability insurance" mean the amount stated in the said policy of insurance referred to as the limit of liability of the Insurer with respect to liability claims, regardless of whether the stated limits are reduced by the payment of claims or otherwise, provided however, in the event that an Insurer's liability under a policy of insurance is reduced by operation of law to the statutory minimum limits in a jurisdiction because of a breach of the said policy of insurance, then the statutory minimum limits are the "limits of motor vehicle liability insurance" in the said policy.
- (i) The term "spouses/adult interdependent partners" means either of a man or woman who
- (i) are married to each other;
  - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity; or
  - (ii) have gone through a form of marriage with each other, in good faith, that is void and are cohabitating or have cohabited within the preceding year, and includes.
  - (iv) either of a man and woman not being married to each other who have cohabited
    - (1) continuously for a period of not less than five years, or
    - (2) in a relationship of some permanence where there is a child born of whom they are the natural parents, and have so cohabited within the preceding year.
- (j) The term "the policy" means the policy to which this endorsement is attached.

## 2. INSURING AGREEMENT

In consideration of the premium charged and subject to the provisions hereof, it is understood and agreed that the Insurer shall indemnify each eligible claimant for the amount that such eligible claimant is legally entitled to recover from an inadequately insured motorist as compensatory damages in respect of bodily injury or death sustained by an insured person by accident arising out of the use or operation of an automobile.

## 3. LIMIT OF COVERAGE UNDER THIS ENDORSEMENT

- (a) The Insurer's maximum liability under this endorsement, regardless of the number of eligible claimants, or number of insured persons injured or killed, or number of automobiles insured under the policy shall be the amount by which the Limit of Family Protection Coverage exceeds the total of all limits of motor vehicle liability insurance, or bonds or cash deposits, or other financial guarantees as required by law in lieu of such insurance, of the inadequately insured motorist and of any person jointly liable therewith.
- (b) Where this endorsement applies as excess, the Insurer's maximum liability under this endorsement is the amount determined in accordance with paragraph 3(a) less the amounts available to eligible claimants under any first loss insurance as referred to in paragraph 7 of this endorsement.

## 4. AMOUNT PAYABLE PER ELIGIBLE CLAIMANT

- (a) the amount payable under this endorsement to any eligible claimant shall be ascertained by determining the amount of damages the eligible claimant is legally entitled to recover from the inadequately insured motorist and deducting from that amount the aggregate of the amounts referred to in paragraph 4(b), but in no event shall the Insurer be obliged to pay any amount in excess of the limit of coverage as determined under paragraph 3 of this endorsement.
- (b) The amount payable under this endorsement to any eligible claimant is excess to any amount actually recovered by the eligible claimant from any source (other than money payable on death under a policy of insurance) and is excess to any amounts the eligible claimant is entitled to recover (whether such entitlement is pursued or not) from:
  - (i) the insurers of the inadequately insured motorist, and from bonds, cash deposits or other financial guarantees given on behalf of the inadequately insured motorist;
  - (ii) the insurers of any person jointly liable with the inadequately insured motorist for the damages sustained by an insured person;
  - (iii) the Société de l'assurance automobile du Québec;
  - (iv) an unsatisfied judgment fund or similar plan or which would have been payable by such fund or plan had this endorsement not been in effect;
  - (v) the uninsured motorist coverage of a motor vehicle liability policy;
  - (vi) any automobile accident benefits plan applicable in the jurisdiction in which the accident occurred;
  - (vii) any policy of insurance providing disability benefits or loss of income benefits or medical expense or rehabilitation benefits;
  - (viii) any Worker's Compensation Act or similar law of the jurisdiction applicable to the injury or death sustained;
  - (ix) any Family Protection Coverage of a motor vehicle liability policy;
- (c) In the event that the insurer is presented with claims by more than one eligible claimant and the total of the amounts payable to the eligible claimants exceeds the limit of the Insurer's liability under the endorsement as set out in paragraph 3, the insurer may pay to each eligible claimant a pro rata portion of the amount otherwise payable to each eligible claimant. In the event that payments are made to eligible claimants under this endorsement prior to the receipt of actual notice of any additional claim, then the limits of this endorsement as referred to in paragraph 3 of this endorsement shall be the amount determined in paragraph 3 less the amounts paid to the prior eligible claimants.

## 5. DETERMINATION OF THE AMOUNT AN ELIGIBLE CLAIMANT IS LEGALLY ENTITLED TO RECOVER

- (a) The amount that an eligible claimant is legally entitled to recover shall be determined in accordance with the procedures set forth for determination of the issues of quantum and liability by the uninsured motorist coverage provisions of the policy.
- (b) In determining the amount an eligible claimant is legally entitled to recover from the inadequately insured motorist, issues of quantum shall be decided in accordance with the law of the province governing the policy and issues of liability shall be decided in accordance with the law of the place where the accident occurred.

- (c) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to pre-judgment interest accumulating prior to notice as required by this endorsement.
- (d) In determining any amounts an eligible claimant is legally entitled to recover, no amount shall be included with respect to punitive, exemplary, aggravated or other damages the award of which is based in whole or in part on the conduct of the inadequately insured motorist or person jointly liable therewith, to the extent that the said damages are not for the purpose of compensating the eligible claimant for actually incurred losses.
- (e) In determining any amounts an eligible claimant is legally entitled to recover from an inadequately insured motorist as defined in paragraph I (e)(i), no amount shall be included with respect to costs.
- (f) No findings of a Court with respect to issues of quantum or liability are binding on the Insurer unless the Insurer was provided with a reasonable opportunity to participate in those proceedings as a party.

## 6. PROCEDURES

- (a) The following requirements are conditions precedent to the liability of the Insurer to the eligible claimant under this endorsement:
  - (i) the eligible claimant shall promptly give written notice, with all available particulars, of any accident involving injury or death to an insured person and of any claim made on account of the accident;
  - (ii) the eligible claimant shall, if so required, provide details of any policies of insurance, other than life insurance, to which the eligible claimant may have recourse.
  - (iii) the eligible claimant and the insured person 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 their possession or control that relate to the matters in question, and they shall permit extracts and copies thereof to be made.
- (b) Where an eligible claimant commences a legal action for damages for bodily injury or death against any other person owning or operating an automobile involved in the accident, a copy of the Writ of Summons or other initiating process shall be delivered or sent by registered mail immediately to the chief agency or head office of the Insurer in the province together with particulars of the insurance and loss.
- (c) Every action or proceeding against the Insurer for recovery under this endorsement shall be commenced within 12 months from the date upon which the eligible claimant or his legal representatives knew or ought to have known that the quantum of the claims with respect to an insured person exceeded the minimum limits for motor vehicle liability insurance in the jurisdiction in which the accident occurred. No action which is commenced within 2 years of the date of the accident shall be barred by this provision.

## 7. MULTIPLE COVERAGES

Subject to the provisions hereof, where an eligible claimant is entitled to payment under Family Protection Coverage under more than one policy and the insured person

- (a) is an occupant of an automobile, such insurance on the automobile in which the insured person is an occupant is first loss insurance and any other such insurance is excess;
- (b) is not an occupant of an automobile, such insurance in any policy in the name of the insured person is first loss insurance and any other such insurance is excess.

All applicable first loss Family Protection Coverage shall be apportioned on a pro rata basis but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage provided by any one of such first loss insurances. The applicable first loss insurance shall be exhausted before recourse is made to excess insurances. All applicable excess Family Protection Coverage shall be similarly apportioned on a pro rata basis but in no event shall the aggregate payment under all such insurances exceed the highest limit of coverage as defined in paragraph 3(b) thereof, provided by any one of such excess insurances.

**8. ACCIDENTS IN THE PROVINCE OF QUEBEC**

This endorsement does not apply to an accident occurring in the Province of Quebec for which compensation is payable under the automobile Insurance Act of Quebec or by virtue of an agreement referred to in that Act.

**9. SUBROGATION**

Where a claim is made under this endorsement, the Insurer is subrogated to the rights of the eligible claimant by whom a claim is made, and may maintain an action in the name of that person against the inadequately insured motorist and the persons referred to in paragraph 4(b).

**10. ASSIGNMENT OF RIGHTS OF ACTION**

Where a payment is made under this endorsement, the Insurer is entitled to receive from the eligible claimant, in consideration thereof, an assignment of all rights of action whether judgment is obtained or not, and the eligible claimant undertakes to cooperate with the Insurer, except in a pecuniary way, in the pursuit of any subrogated action or any right of action so assigned.

**11. MISCELLANEOUS PROVISIONS**

If more than one automobile is insured under the policy, this endorsement shall apply only to the automobile(s) against which S.E.F. No. 44 is designated in the schedule of automobiles forming part of the policy. If S.E.F. No. 44 is designated with respect to more than one automobile in the schedule of automobiles forming part of this policy, then the coverages provided shall be construed as if provided by separate policies of insurance with respect to each automobile to which endorsement S.E.F. No. 44 is applicable, subject always to the provisions of paragraph 7 hereof.

This endorsement is attached to and forms part of the policy and shall be effective from the local time and effective date of the policy or renewal thereof, or if added to the policy during the policy period, from the local time and effective date of the endorsement specifying the addition of this coverage.

Except as otherwise provided in this endorsement, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.

**S.E.F. No. 44 SUPPLEMENT**

**AGREEMENTS**

1. (a) Supplementary Agreement 1(b) below applies only where the person injured or killed is not an insured person as defined in the Family Protection Coverage of any policy of insurance or does not own an automobile which is licensed in any jurisdiction of Canada where Family Protection Coverage is available,  
(b) Subject to 1(a) above, the insurer undertakes to include in the definition of 'dependant relative' the following:
  - (i) any relative of the named insured, or of the spouses/adult interdependent partners of the named insured, who resided in the same premises as the named insured; and,
  - (ii) any other relative of the named insured, or of the spouses/adult interdependent partners of the named insured, but only while an occupant of the described automobile, a newly acquired automobile, or a temporary substitute automobile, as defined in the policy.
2. The amount determined under paragraph 3 of the Family Protection Endorsement is the insurer's limit of liability for the aggregate of all claims arising out of any one occurrence. Nothing in this Supplement is to be construed so as to increase the insurer's limit of liability under the Family Protection Coverage which these agreements supplement.
3. These supplementary agreements modify only the Family Protection Coverage of the policy. Except as provided herein, all limits, terms, conditions, provisions, definitions and exclusions of the policy shall have full force and effect.