

## Part II: TechConnect Custom Professional Services Liability

THIS POLICY CONTAINS PROVISIONS WHICH MAY BE DIFFERENT FROM OTHER POLICIES YOU HAVE PURCHASED OR WHICH MAY RESTRICT COVERAGE. PLEASE REFER TO THE IMPORTANT POLICYHOLDER NOTICE ATTACHED TO THIS POLICY.

PLEASE READ THIS POLICY CAREFULLY TO DETERMINE YOUR RIGHTS AND RESPONSIBILITIES.

Other words and phrases that appear in **bold** type have special meaning. Refer to **SECTION VI – DEFINITIONS**.

The following coverages apply if purchased by the first **Named Insured** as specified in **Part I, Item 1** of the Declarations.

### SECTION I – COVERAGE PART INSURING AGREEMENTS

In consideration of the payment of the policy premium when due and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted to the Insurer, and subject to all of the terms, conditions, exclusions and limitations of this policy, the Insurer and the **insured** agree as follows:

1. **COVERAGE A – TECHNOLOGY PRODUCTS AND SERVICES LIABILITY INSURANCE – CLAIMS MADE COVERAGE**  
The Insurer shall pay on behalf of the **insured** all **damages** and **defence costs**, in excess of the applicable Retention and within the applicable Limits of Insurance, which the **insured** shall become legally obligated to pay, including liability assumed under an **indemnity contract**, as a result of a **claim** first made during the **policy period** or, if applicable, the Extended Reporting Period, against the **insured** alleging a **wrongful act respecting technology products and services**, which occurs on or after the **retroactive date** and before the end of the **policy period**.
2. **COVERAGE B - ELECTRONIC MEDIA LIABILITY – CLAIMS MADE COVERAGE**  
The Insurer shall pay on behalf of the **insured** all **damages** and **defence costs**, in excess of the applicable Retention and within the applicable Limits of Insurance, which the **insured** shall become legally obligated to pay, including liability assumed under an **indemnity contract**, as a result of a **claim** first made during the **policy period** or, if applicable, the Extended Reporting Period, against the **insured** alleging a **wrongful act respecting electronic media**, which occurs on or after the **retroactive date** and before the end of the **policy period**.
3. **COVERAGE C - NETWORK SECURITY & PRIVACY BREACH LIABILITY INSURANCE – CLAIMS MADE COVERAGE**  
The Insurer shall pay on behalf of the **insured** all **damages** and **defence costs**, in excess of the applicable Retention and within the applicable Limits of Insurance, which the **insured** shall become legally obligated to pay, as a result of a **claim** first made during the **policy period** or, if applicable, the Extended Reporting Period, against the **insured** alleging a **wrongful act respecting network security** or a **wrongful act respecting privacy breach**, which occurs on or after the **retroactive date** and before the end of the **policy period**.
  - a. **SUBPART 1. PRIVACY BREACH EXPENSE COVERAGE EXTENSION**  
The Insurer shall reimburse the **insured** for **privacy breach expense**, in excess of the applicable Retention and within the applicable Limit of Insurance, not otherwise covered under this or any other policy, resulting from a **wrongful act respecting privacy breach**, which first occurs during the **policy period**; provided the **privacy breach expense** is incurred within (1) year of the expiration of the **policy period**.
4. **COVERAGE D - INFORMATION ASSET LOSS – OCCURRENCE COVERAGE**  
The Insurer shall reimburse the **organization** for **information asset loss** the **organization** sustains, in excess of the applicable Retention and within the applicable Limit of Insurance, resulting directly from **injury to information assets**. Such **information asset loss** must first occur during the **policy period**. The **information asset loss** must result from a **failure of security** of the **organization's computer system** or the **outsourced provider's computer system**, which must also first occur during the **policy period**.
5. **COVERAGE E - BUSINESS INTERRUPTION LOSS – OCCURRENCE COVERAGE**  
The Insurer shall reimburse the **organization** for **business interruption loss** the **organization** sustains during the Period of Restoration, subject to the **waiting period retention** and within the applicable Limit of Insurance, resulting directly from a **material interruption**. The **failure of security** causing the **material interruption** and the **business interruption loss** must each first occur during the **policy period**.

## SECTION II – EXCLUSIONS

### COMMON POLICY EXCLUSIONS

1. No coverage shall be available under this policy for any **failure of security, claim or loss**:
  - a. Based upon, arising out of, or attributable to any actual or alleged dishonest, fraudulent, criminal or malicious act or omission or any willful violation of any act or statute, or gaining of any profit or advantage to which an **insured** is not legally entitled, if an admission, judgment or final adjudication adverse to an **insured** establishes such an act, omission or willful violation. This exclusion does not apply to:
    - i) **insured persons** who did not commit, acquiesce or participate in the actions that gave rise to the **claim**;
    - ii) the **organization**, unless such act, omission or willful violation is committed by any of the **insured's**:
      - 1) Directors, officers, trustees, governors, partners or equivalent positions, whether acting alone or in collusion with others; or
      - 2) **Employees**, if any of those referenced in sub-paragraph (1) above possessed, at any time, knowledge of any dishonest, fraudulent, malicious or criminal acts committed by such **employee** that caused a direct loss to an **insured** or any other person.
  2. No coverage shall be available under this Policy for any **claim**:
    - a. Based upon, arising out of, or attributable to any actual or alleged fact, circumstance, event or **wrongful act**:
      - i) That is underlying or alleged in any prior or pending litigation or administrative or regulatory proceeding of which any **insured** had received written notice before the **initial coverage date**;
      - ii) Which, before the **initial coverage date**, was subject to any notice given by or on behalf of any **insured** under any other policy, of which this policy is a direct or indirect renewal or replacement and if such prior policy affords coverage (or would do so except for the exhaustion of its limit of liability) for such **claim**, in whole or in part, or
      - iii) Which took place in whole or in part before the **retroactive date**;
    - b. Based upon, arising out of, or attributable to any actual or alleged:
      - i) Express or implied warranty or guarantee; or
      - ii) Any cost, charges or fees that result from cost guarantees, cost estimates or cost overruns
    - c. Against an **insured** that is brought by:
      - i) Any **insured**; however, this exclusion shall not apply to an otherwise covered **claim** by an **employee** alleging a **wrongful act respecting privacy breach**;
      - ii) Any entity which is owned or controlled by, or is under common ownership or control with, the **organization**;
      - iii) Any person or entity which owns or controls any entity included within the definition of **insured**;
      - iv) Any entity of which the **insured** is a director, officer, partner or principal shareholder.
      - v) Any independent contractor of an **insured**; however this exclusion shall not apply to **claims** arising out of the **insured's professional services** provided to such independent contractor;

Provided however this exclusion shall not apply to any additional insured as noted in Section IV Definition 18 **Insured**, item e.

- d. Based upon, arising out of, or attributable to any actual or alleged:
  - i) any electrical or mechanical failures, including power interruption, surge, brownout or blackout; however, this shall not apply to electrical or mechanical failures resulting from a **wrongful act respecting technology products and services** relating to the avoidance or minimization of the events set forth above or the consequences thereof; or
  - ii) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;
- e. Based upon, arising out of, or attributable to any actual or alleged discrimination of any kind, including, but not limited to, race, creed, religion, age, handicap, sex, marital status or financial condition;
- f. Based upon, arising out of, or attributable to any actual or alleged refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, harassment, humiliation or any other employment-related practices, policies, acts, errors or omissions;
- g. Based upon, arising out of, or attributable to any actual or alleged antitrust, restraint of trade or unfair, false or deceptive trade practices; or violation of any consumer protection law, other than **loss** resulting directly from any such violation which constitutes a **wrongful act respecting privacy breach**;
- h. Based upon, arising out of, or attributable to any actual or alleged breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan, or arising out of or in consequence of any alleged or actual violation of securities laws, acts or statutes;
- i. Based upon, arising out of, or attributable to any actual or alleged:
  - i) **Pollution**; or
  - ii) Any request or direction to test for, monitor, clean up, remove, contain, detoxify or neutralize **pollutants**;
- j. Based upon, arising out of, or attributable to any actual or alleged patent infringement;
- k. Based upon, arising out of, or attributable to any actual or alleged infringement of, violation or theft, copying, misappropriation, display or publication of any trade secret by or on behalf of any **insured**. However this exclusion shall not apply to **loss** arising from a **claim** alleging a failure by the **insured** to prevent the misappropriation, loss or theft of **confidential corporate information**;

- I. Based upon, arising out of, or attributable to liability of others assumed by the **insured** under any contract or agreement; however, this exclusion shall not apply to:
  - i) Liability that would have attached to the **insured** even in the absence of such an agreement or liability assumed under an **indemnity contract**; or
  - ii) Solely with respect to a **wrongful act respecting privacy breach**, liability or obligation under a confidentiality or non-disclosure agreement;
- m. Based upon, arising out of, or attributable to any actual or alleged transfer of funds, money or securities; however, this exclusion shall not apply to a **third party claim** resulting directly from **unauthorized access** to the **organization's computer system** that results in **third party** monetary loss;
- n. Based upon, arising out of, or attributable to any actual or alleged **bodily injury** or **property damage**; however, this exclusion shall not apply to a **claim** for mental injury, mental anguish, or emotional distress resulting directly from a **wrongful act respecting privacy breach** or a **wrongful act respecting electronic media**;
- o. Based upon, arising out of, or attributable to any actual or alleged costs or expenses incurred by the **insured** or others to withdraw or recall the **insured's** products or services or any part of such products or services from the marketplace or from use;
- p. Based upon, arising out of, or attributable to any actual or alleged unsolicited dissemination of any electronic communication to multiple actual or prospective customers of the **insured** or any **third party**, including, but not limited to, actions brought under the Telecommunications Act or any federal, provincial, or state anti-spam statutes or similar law or regulation relating to a person's or entity's right of seclusion or protection of privacy;
- q. Based upon, arising out of, or attributable to any actual or alleged liability imposed by or arising out of any nuclear liability act or statute;
- r. Based upon, arising out of, or attributable to any actual or alleged nuclear energy hazard arising from:
  - i) The ownership, maintenance, operation or use of a nuclear facility by or on behalf of an **insured**;
  - ii) The furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; or
- s. Based upon, arising out of, or attributable to any actual or alleged war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), rebellion, revolution, insurrection or military power.

#### **EXCLUSIONS APPLICABLE ONLY TO COVERAGE B. - WRONGFUL ACT RESPECTING ELECTRONIC MEDIA**

3. No coverage shall be available under this policy for any **claim** based upon, arising out of, or attributable to any actual or alleged:
  - a. Disputes over ownership of, licensing or royalty fees associated with, or use of or exercise of rights associated with **internet media**;
  - b. Any actual or alleged **failure of security** of the **organization's computer system**;
  - c. Any **wrongful act**, related **wrongful acts** or series of continuous or repeated **wrongful acts** where the first such **wrongful act** occurs prior to the inception of or subsequent to the termination of the **policy period**;
  - d. Any display or creation of **internet media** for or on behalf of others; provided, however, that this exclusion shall not apply to the display of **advertising** on the **insured's website**; or
  - e. False **advertising** or misrepresentation in the **insureds'** products or services; any failure of goods or products to conform to an advertised quality or performance; or any infringement of trademark or trade dress by any goods or products displayed or contained within **internet media**.

#### **EXCLUSIONS APPLICABLE ONLY TO: COVERAGE C. NETWORK SECURITY AND PRIVACY BREACH LIABILITY COVERAGE D. INFORMATION ASSET LOSS and COVERAGE E. BUSINESS INTERRUPTION LOSS**

4. No coverage shall be available under this policy for **failure of security, claim** or **loss**:
  - a. Based upon, arising out of, or attributable to any actual or alleged a failure of telephone lines, data transmission lines or other infrastructure comprising or supporting the **internet**, unless such lines or infrastructure were under the **insured's** operational control;
  - b. Based upon, arising out of, or attributable to any actual or alleged wrongful obtaining, gathering, collecting, retaining or use of protected **personal information**, including but not limited to any failure to provide adequate notice regarding the purposes for which the **protected personal information** is collected and used; or
  - c. Based upon, arising out of, or attributable to any actual or alleged seizure, confiscation, nationalization, or destruction of the **insured's computer system**, the **outsourced provider's computer system**, or **information assets** by order of any governmental or public authority.

## SECTION III – CONDITIONS

### 1. EXTENDED REPORTING PERIOD.

- a. The Extended Reporting Period applies to all claims-made insuring agreements. In case of cancellation or non-renewal of this policy by either the **insured** or the Insurer, for reasons other than the non-payment of premium or retention or non-compliance with the terms and conditions of this policy, the **insured** shall have a right, upon payment of an additional premium, to have an endorsement issued that shall provide one of the following Extended Reporting Period options covering **claims** first made and reported to the Insurer during the Extended Reporting Period for **wrongful acts** committed prior to the effective date of cancellation or non-renewal and otherwise covered under this policy:
- One (1) Year Extended Reporting Period, subject to an additional premium of no greater than one hundred percent (100%) of the annualized premium for this policy; or
  - Three (3) Years Extended Reporting Period, subject to an additional premium of no greater than two hundred percent (200%) of the annualized premium for this policy.

The additional premium shall be deemed fully earned at the inception of the Extended Reporting Period.

The right shall terminate, however, unless written notice of such election with the additional premium is received by the Insurer no later than sixty (60) days after the effective date of cancellation or non-renewal. A change in policy terms, conditions, exclusions and premiums shall not be considered a non-renewal for the purpose of triggering rights to an Extended Reporting Period.

### 2. LIMITS OF INSURANCE.

#### a. Applicable Rules

- The Limits of Insurance specified in **Part II, Item 5** of the Declarations and the rules below fix the maximum amount the Insurer shall pay for all **loss** covered under this policy regardless of the number of:
  - Insureds**;
  - Claims** made; or
  - Persons or organizations making **claims**.
- The limits of insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the **policy period** specified in **Part I, Item 2** of the Declarations, unless the **policy period** is extended after issuance for an additional period of less than 12 months. In each such case, the additional period shall be deemed part of the last preceding period for the purposes of determining the limits of insurance.
- Notwithstanding any other provision of this policy, the purchase of an Extended Reporting Period shall not under any circumstances increase or reinstate the limits of insurance set forth in this policy unless such increase or reinstatement is specifically provided for by endorsement.
- If any Limit of Insurance is exhausted, the premium for this policy shall be deemed fully earned.
- The Insurer's liability with respect to **loss** arising from each **claim** covered under this policy shall apply only to that part of **loss** which is in excess of the Retention Amount as specified in **Part II, Item 6** of the Declarations.

#### b. Limits of Insurance

##### i) Professional Services Liability Aggregate Limit

- The Professional Services Liability Aggregate Limit as specified in **Part II, Item 5** of the Declarations is the most the Insurer shall pay for all **loss** under this policy.
- Any obligation the Insurer has under this policy, including any duty to defend, ends once the Professional Services Liability Aggregate Limit is exhausted.

##### ii) Liability Insuring Agreements

- The Limit of Insurance for each Liability Insuring Agreement, namely Coverage A, Coverage B and Coverage C, if purchased by the **insured** as specified in **Part II, Item 5** of the Declarations, shall be the maximum aggregate amount the Insurer shall pay under such Insuring Agreement for all **loss** covered under such Insuring Agreement. The Limit of Insurance shall be part of and not in addition to the Policy Aggregate Limit.
- Privacy Breach Expense Extension – Sub-limit**  
The Sub-Limit of Insurance for **COVERAGE C – SUBPART 1. PRIVACY BREACH EXPENSE EXTENSION** if purchased by the **insured** as specified in **Part II, Item 5** of the Declarations, shall be the maximum aggregate amount the Insurer shall pay for such expenses. This Sub-Limit of Liability shall be part of and not in addition to the Limit of Insurance for **COVERAGE C – NETWORK SECURITY AND PRIVACY BREACH LIABILITY INSURANCE**. The Sub-Limit of Insurance shall be part of and not in addition to the Professional Services Liability Aggregate Limit.

##### iii) First Party Insuring Agreements

The Limit of Insurance for each First Party Insuring Agreement, namely Coverage D and Coverage E, if purchased by the **insured** as specified in **Part II, Item 5** of the Declarations, shall be the maximum aggregate amount that the Insurer shall pay under such Insuring Agreement for all **loss** covered under such Insuring Agreement. The Limit of Insurance shall be part of and not in addition to the Limit of Insurance for **COVERAGE C – NETWORK SECURITY AND PRIVACY BREACH LIABILITY INSURANCE**. The Limit of Insurance shall be part of and not in addition to the Professional Services Liability Aggregate Limit.

### 3. RETENTION.

For any **claim** or **loss**, the Insurer shall only be liable for the amount of **loss**, including **defence costs**, that exceeds the Retention amount applicable to the Insuring Agreement affording coverage to such **claim** or **loss**, as specified in **Part II, Item 6** of the Declarations. The Insurer shall have no obligation, either to the **insureds** or to any person or entity, to pay all or any portion of any Retention amount on behalf of any **insured**. The Insurer may, at its sole discretion, pay all or any portion of any Retention amount.

For all Insuring Agreements, in the event a **claim** or **loss** triggers more than one Retention amount, then, as to that **claim** and/or **loss**, the highest of such Retention amounts shall be deemed the Retention amount applicable to all **loss** arising from such **claim** and/or **loss**. A single Retention amount shall apply to all **loss** arising from all **claims** and **loss** alleging the same **wrongful acts**, or series of continuous, repeated or related **wrongful acts**.

### 4. INTERRELATIONSHIP OF CLAIMS.

All **claims** based upon, arising from, or in any way related to, the same **wrongful act** or **interrelated wrongful acts** shall be deemed to be a single **claim** for all purposes under this policy first made on the earliest date that:

- a. Any of such **claim** was first made, regardless of whether such date is before or during the **policy period**;
- b. Notice of any **wrongful act** or circumstance alleged in any such **claim** was given to the Insurer pursuant to **SECTION III. CONDITIONS. PARAGRAPH (5) NOTICE OF CLAIM** in this policy; or
- c. Notice of any **wrongful act** alleged in any such **claim** was given under any prior insurance policy, regardless of whether such policy was issued by the Insurer.

### 5. NOTICE OF CLAIM.

#### a. Liability Coverages - SECTION I. INSURING AGREEMENTS. COVERAGE PARTS (A), (B) and (C)

- i) The **insured** shall, as soon as practicable after being made aware of a **claim** for which coverage would be afforded by this Policy, or any applicable Extended Reporting Period, provide written notice with the full particulars thereof to the Insurer.
- ii) If during the **policy period** the **insured** becomes aware of a **wrongful act** which could reasonably give rise to a **claim**, the **insured** shall provide written notice thereof to the Insurer as soon as practicable and prior to the expiration date of the Policy. The notice shall include:
  - 1) the name of the potential claimant and a date and description of the specific **wrongful act** which forms the basis of the potential claim;
  - 2) the nature of the potential damages arising from such specific **wrongful act**; and
  - 3) the circumstances by which the insured first became aware of the specific **wrongful act**.

Any **claim** arising out of such reported **wrongful act** shall be treated as a **claim** made during the **policy period** in which such written notice was delivered.

#### b. First Party Coverages – SECTION I. INSURING AGREEMENTS. COVERAGE PARTS (D) and (E)

As a condition precedent to coverage the **insured** shall:

- i. Provide written notice during the **policy period** of any **loss** which occurs or is reasonably likely to occur;
- ii. Provide written description with the details of the **failure of security** and **material interruption** as soon as practicable;
- iii. Complete and sign a written, detailed and sworn proof of loss within ninety (90) days after the discovery of a **business interruption loss** or **information asset loss** (unless such period has been extended by the Insurer's written agreement), including a description of such **business interruption loss** or **information asset loss** and the circumstances surrounding such **business interruption loss** or **information asset loss**, including without limitation, the time, place and cause of the **business interruption loss** or **information asset loss**, a detailed calculation of any **business interruption loss**, the **insured's** interest and the interest of all others in the property, the sound value thereof and the amount of loss or damage thereto and all other insurance thereon. Proof of loss shall include the underlying documents and materials of whatever media that reasonably relates to or forms a part of the basis of the claim for such loss;
- iv. Upon the Insurer's request, submit to an examination under oath;
- v. Immediately record the specifics of any **loss** or **failure of security** and the date the **insured** first became aware of such **loss** or **failure of security**;
- vi. At the Insurer's request report such **loss** or **failure of security** to the RCMP, FBI, CIRCC, CERT, ISAC or any other central reporting or investigative organization that the Insurer may designate;
- vii. Provide the Insurer with any cooperation and assistance that the Insurer may request, including assisting the Insurer in:
  - 1) Any investigation of a **failure of security**, **loss** or circumstance that may give rise to a **claim**;
  - 2) Enforcing any legal rights the **insured** or the Insurer may have against anyone who may be liable to the **insured**;
  - 3) Executing any documents that the Insurer deems necessary to secure the Insurer's rights under this policy; and
  - 4) Any inspection or survey conducted by the Insurer.

The costs and expense of establishing or proving **information asset loss** or **business interruption loss** for this policy, including those in connection with preparing a proof of loss, shall be the obligation of the **insured** and are not covered under this policy.

#### c. Privacy Breach Expense Coverage –SECTION I. INSURING AGREEMENTS – COVERAGE PART C. Item a. Subpart 1

As a condition precedent to coverage, the **insured** shall report to the Insurer any **wrongful act respecting privacy breach** or **wrongful act respecting network security** for which the **insured** seeks **privacy breach expense** coverage under this policy. Such notice must be reported



within 30 days of the **wrongful act respecting privacy breach** or **wrongful act respecting network security**. The **insured** must obtain written approval from the Insurer prior to incurring such expenses.

- d. All notices to the Insurer under this policy of **claims** or potential **claims** shall be given in writing addressed to:

**Claims Department**  
**Berkley Canada**  
**145 King Street West, Suite 1000**  
**Toronto, ON M5H 1J8**  
**Fax: 416-304-4108**  
**Email:**  
**claims@berkleycanada.com**

**6. DEFENCE AND SETTLEMENT.**

- a. The Insurer shall have the duty and right to defend any **claim** made against the **insured** and reported under this policy;
- b. The **insured** shall provide the Insurer with such information and cooperation as the Insurer requires and agree they shall do nothing that may prejudice the Insurer's position or its potential, or actual, rights of recovery;
- c. No **defence costs** shall be incurred without the Insurer's consent;
- d. The Insurer may make any investigation it deems necessary and may, with the consent of the **insured**, make any settlement of any **claim** it deems expedient. If any **insured** withholds consent to any settlement acceptable to the claimant and recommended by the Insurer (a "Proposed Settlement"), then the Insurer's liability for **loss**, including **defence costs**, from such **claim** shall not exceed the amount of the proposed settlement plus **defence costs** incurred up to the date of the **insured's** refusal to consent to the Proposed Settlement of such **claim**;
- e. No **insured** shall settle or offer to settle any **claim**, incur any **defence costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **claim** without the Insurer's prior written consent.

**7. TERRITORY.** Coverage shall extend worldwide.

**8. ASSISTANCE AND COOPERATION.** The **Insured** shall cooperate with the Insurer and upon the Insurer's request, attend hearings and trials and shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses and in the conduct of suits. Except at his/her own cost, the **insured** shall not voluntarily make any payment, assume any liability or obligation or incur any expense, unless incurred with the written consent of the Insurer.

**9. ACTION AGAINST THE INSURER.** No legal action may be brought against the Insurer, unless, as a condition precedent thereto, the **insured** shall have fully complied with all terms of this policy, nor until the amount of the **insured's** obligation to pay shall have been fully determined either by judgment against the **insured** after the actual trial and appeal or by written agreement of the **insured**, the claimant and the Insurer.

**10. OTHER INSURANCE.** The Insurance afforded by this policy is excess to and over any valid and collectible insurance available to the **insured**. This does not apply to insurance which is purchased by the **insured** to apply in excess of this policy.

**11. SUBROGATION.** In the event of any payment under this form, the Insurer shall be subrogated to all the **insured's** rights of recovery therefor against any person or organization other than an **employee** of the **insured**, and the **insured** shall execute and deliver instruments and papers and whatever else is necessary to secure such rights. The **insured** shall do nothing after the **loss** to prejudice such rights.

**12. CANCELLATION.**

- a. The first **Named Insured** specified in **Part I, Item 1** of the Declarations may cancel this policy by mailing or delivering to the Insurer advance written notice of cancellation.
- b. The Insurer may cancel this policy by mailing or delivering to the first **Named Insured** written notice of cancellation at least:
- i) fifteen (15) days before the effective date of cancellation if the Insurer cancels for nonpayment of premium; or
  - ii) thirty (30) days before the effective date of cancellation if the Insurer cancels for any other reason.

Except in Quebec, if notice is mailed, cancellation takes effect fifteen (15) or thirty (30) days after receipt of the letter by the post office to which it is addressed, depending upon the reason for cancellation. Proof of mailing shall be sufficient proof of notice.

In Quebec, cancellation takes effect either fifteen (15) or thirty (30) days after receipt of the notice at the last known address of the first **Named Insured**, depending upon the reason for cancellation.

- c. The Insurer shall mail or deliver notice or cancellation to the first **Named Insured's** last known mailing address.
- d. The **policy period** shall end on the date cancellation takes effect.

- e. If this policy is cancelled, the Insurer shall send the first **Named Insured** any premium refund due. If the Insurer cancels, the refund shall be pro rata. If the first **Named Insured** cancels, the refund may be less than pro rata. The cancellation shall be effective even if the Insurer has not made or offered a refund.
13. **CHANGES and ENTIRE AGREEMENT.** Notice to any agent, or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy, or estop the Insurer from asserting rights under the terms of this policy; nor shall the terms of this policy be waived or changed, except by an endorsement issued by the Insurer to form part of this policy. By acceptance of this policy, the **insureds** and the Insurer agree that this policy (including the Application) and any written endorsements attached hereto constitute the entire agreement between the parties. References in this policy, including any amendments or endorsements hereto, apply only to the extent that the **insured** has purchased the relevant coverages, as indicated by a Limit of Insurance on the Declarations Page.
14. **REPRESENTATIONS.** By accepting this policy, the **insured** represents and agrees that:
- All of the information provided and statements made to the Insurer by the **insured**, including the information contained in the application and any other supplemental materials and information submitted by the **insured** or on its behalf, are true, accurate and complete, and each shall be deemed to constitute material representations made by all **insureds**;
  - The Insurer has issued this policy in reliance upon such representations; and
  - The misrepresentation of any matter by the **insured** or the **insured's** agent shall render this policy null and void with respect to the **organization** and any **insured** who knew of such willful and deliberate misrepresentation.
15. **CURRENCY.** All limits of insurance, premiums and other amounts as expressed in this policy are in Canadian Currency.
16. **AUDIT.** The Insurer may examine and audit the **insured's** books and records at any time during the **policy period** and within three (3) years after the end of the **policy period** or any Extended Reporting Period, as they relate to the matter of this policy.
17. **BANKRUPTCY.** Bankruptcy or insolvency of the **insured** or of the **insured's** estate does not relieve the Insurer of its obligations under this policy.
18. **DEATH, INCAPACITY, OR INSOLVENCY.** In the event of the death, incapacity or bankruptcy of an **insured**, any **claim** made against the estate, heirs, legal representatives or assigns of such **insureds** for a **wrongful act** of such **insured** shall be deemed to be a **claim** made against such **insured**. No coverage shall apply to any **claim** for a **wrongful act** of such estate, heirs, legal representatives or assigns.
19. **ASSIGNMENT.** Assignment of interest under this policy shall not bind the Insurer without its consent as specified in a written endorsement issued by the Insurer to form a part of this policy.
20. **AUTHORIZATION OF NAMED INSURED.** The **Named Insured** shall act on behalf of all **insureds** with respect to all matters under this policy, including, without limitation, giving and receiving of notices regarding **claims**, cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this policy.
21. **ALLOCATION OF LOSS.** If a **claim** made against the **insured** involves both covered and uncovered allegations and/or parties, the **insured** recognizes that there must be an allocation between insured and uninsured **loss**. The **insured** and the Insurer shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured **loss**.
22. **GOVERNING LAW**
- This policy shall be governed by the laws of, and subject to the exclusive jurisdiction of the province or territory where the **named insured** has its principal address, as noted in the Declarations.
  - In the event of any inconsistency between any applicable provincial or territorial legislation regarding insurance and any term or condition of this policy, then, where permitted by law, the Insurer shall apply those terms and conditions of either the applicable legislation or the policy which, in the opinion of the **insured**, are more favourable to the **insured**.
  - Where this policy is legally required to be interpreted in accordance with the laws of the Province of Quebec:
    - Les parties ont expressément convenu que cette convention ainsi que tous documents y afférents soient rédigés en langue anglaise seulement.

The parties have expressly agreed that this agreement and all related documents be drafted in the English language only; and

    - The policy provisions shall be deemed to be amended to comply with the applicable mandatory provisions of the Quebec Civil Code, but only to the extent necessary to comply with such mandatory provisions of the Quebec Civil Code and only to the extent that such mandatory provisions are contrary to the existing terms of this policy.
23. **HEADINGS** The titles of paragraphs, sections, provisions, or endorsements of or to this policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the policy.

## SECTION IV – DEFINITIONS

1. **ADVERTISING** means electronic promotional material and media, publicly disseminated on the **internet** or any **website** either by or on behalf of the **insured** or by the **insured** on behalf of others, regardless of whether such material or media is for the benefit of such **organization** or others.
2. **BODILY INJURY** means injury to the body, sickness, or disease sustained by a person, including death resulting from such injury. **Bodily injury** also means mental injury, mental anguish, emotional distress, pain, suffering or shock sustained by that person as a result of bodily injury.
3. **BUSINESS INTERRUPTION LOSS** means the sum of:
  - i) Actual Loss; and
  - ii) Extra Expense;

resulting directly from a **material interruption**. The **business interruption loss** shall be calculated based on the actual **business interruption loss** the **organization** sustains during the Period of Restoration. If an **organization** could reduce the Actual Loss or Extra Expense resulting from a **material interruption** by complete or partial resumption of operations, such reductions shall be taken into account in arriving at Actual Loss or Extra Expense.

Solely with respect to coverage afforded under Coverage E. Business Interruption Loss:

- a. Actual Loss means
    - i) Measurable net profit before income taxes the **organization** would have earned or incurred had there been no **material interruption** ; or net loss before income taxes that the **organization** is unable to avoid;
    - ii) continuing normal operating expenses incurred by the **organization**, including ordinary payroll expenses, provided such operating expenses must continue during the **material interruption** and only to the extent that such expenses would have been incurred by the **organization** had no **material interruption** occurred.
  - b. Extra Expense means reasonable and necessary costs and expenses incurred by the **organization** directly as a result of a **material interruption**, but only to the extent such expenses reduce Actual Loss.
  - c. Period of Restoration means the period of time that:
    - i) begins with the date and time that the **material interruption** first occurs; and
    - ii) ends with the earlier of:
      - 1) the date and time that the **material interruption** ends, or would have ended, if the **insured** had exercised due diligence and dispatch; or
      - 2) 60 days after the date and time that the **material interruption** first occurred.
  - d. **Business Interruption Loss** does not include:
    - i. Contractual penalties of any nature;
    - ii. Costs or expenses incurred to update, restore, replace or otherwise improve any **computer system** to the level of functionality beyond that which existed prior to the loss event;
    - iii. Costs or expenses incurred to identify or remediate **computer system** errors or vulnerabilities;
    - iv. Any other consequential loss or damage;
    - v. Legal costs or legal expenses of any nature; and
    - vi. Loss arising out of liability to any **third party** for whatever reason.
4. **CLAIM** means:
- a. any demand for monetary or non-monetary relief against the **insured** for a **wrongful act**;
  - b. a civil proceeding commenced by the service of a complaint or similar proceeding, or an arbitration process; and
  - c. a formal administrative or regulatory proceeding seeking to enforce a statutory mandate requiring notification to customers or credit monitoring as a result of a **wrongful act respecting privacy breach**.

**Claim** does not include criminal proceedings.

5. **COMPUTER SYSTEM** means computer hardware, software, firmware, and components thereof, including electronic data stored thereon, which are linked together through a network of two or more computers, including such networks accessible through the internet, intranets, extranets or virtual private networks.
6. **CONFIDENTIAL CORPORATION INFORMATION** means any business information of a third party not insured under this policy, and which is:
  - a. not available to the general public, and
  - b. is provided to the **organization** under a mutually executed written confidentiality agreement, or which the **organization** is legally required to maintain in confidence.

**Confidential corporate information** does not include **protected personal information**.

7. **CONTENT** means audio, visual, digital or informational material that is disseminated electronically.
8. **DAMAGES** means the total amount which any **insured** shall become legally obligated to pay as a result of a **claim** made against the **insured**, including:
  - i) judgments and settlements;
  - ii) punitive or exemplary damages to the extent that such damages are insurable under the law most favourable to the insurability of such damages of any jurisdiction which has a substantial relationship to the **insured**, the Insurer, this policy or the **claim**; and
  - iii) pre- and post-judgment interest arising from paragraphs (i) and (ii) above.



**Damages** do not include:

- a. future profits, future royalties, costs of licensing, or other costs of obtaining future use;
- b. the cost of correcting or re-performing any services provided by the **insured**;
- c. amounts for matters uninsurable under the law pursuant to which this policy is construed;
- d. taxes, fines or penalties imposed by law (except as provided with respect to punitive or exemplary damages) or the multiple portion of any multiplied damage award;
- e. the return of fees or other compensation paid to the **insured**;
- f. restitution or disgorgement by any **insured**;
- g. **defence costs**;
- h. **information asset loss**;
- i. **business interruption loss**; or
- j. **privacy breach expense**.

9. **DEFENCE COSTS** means legal, investigation and adjusting expenses incurred by the Insurer for the defence of **claims** seeking **damages** payable under this policy including:
- a. lawyer's fees and disbursements;
  - b. the premium payable on appeal bonds but the Insurer has no obligation to appeal a judgment or award; and
  - c. costs taxed against the **insured** following a judgment by a court

**Defence costs** do not include **privacy breach expense**.

10. **DENIAL OF SERVICE** means an attack launched by a person or persons that sends an excessive volume of electronic data to a **computer system** in order to deplete such **computer system's** capacity, and prevents those who are authorized to do so from gaining access to such **computer system** in a manner in which they are legally entitled, provided such depletion of capacity is not caused by a mistake in determining capacity needs.
11. **EMPLOYEE** means any present or former employee, including part-time, seasonal, and temporary employees, as well as volunteers, leased workers and interns, but for all, solely while acting on behalf of the **organization**.
12. **FAILURE OF SECURITY** means the actual failure or inability:
- a. of the **security** of the **organization's computer system** to prevent **unauthorized access** or **unauthorized use** of the **organization's computer system**, receipt or transmission of a **malicious code** or **denial of service** attack of the **organization's computer system**; or
  - b. to prevent the physical theft of hardware or firmware controlled by an **organization** on which electronic data is stored, by a person other than an **insured**, from a premises occupied and controlled by an **organization**.
  - c. as described in subsections 12a) or 12b) above resulting from the theft of a password or access code by non-electronic means in direct violation of an **organization's** specific written security policies and procedures.
  - d. for the purposes of Insuring Agreements Coverage D only, of the **security** of the **outsourced provider's computer system** to prevent **unauthorized access** or **unauthorized use** of the **outsourced provider's computer system** or receipt of a **malicious code** by the **outsourced provider's computer system**.
13. **IDENTITY THEFT** means the misappropriation of **personal protected information** of customers or members that is in the **organization's** care, custody and control or stored in the **organization's computer system**, which has resulted in, or could reasonably be expected to result in, the wrongful or fraudulent use of such information.
14. **INDEMNITY CONTRACT** means a written contract or agreement, pertaining to the **insured's** business and to which this insurance applies, in which the **insured** assumes the liability of another person or organization for damages from a **wrongful act** sustained by a third party or organization, provided such contract or agreement predates the first such **wrongful act**.
15. **INFORMATION ASSETS** means:
- a. software or electronic data, customer lists and information, financial, credit card or competitive information, and confidential or private information, stored electronically on the **insured's computer system** or maintained on the **outsourced provider's computer system** on behalf of the **organization**, which is subject to regular back-up procedures; or
  - b. capacity of the **insured's computer system**, including without limitation, memory, bandwidth, or processor time, use of communication facilities and any other computer-connected equipment.
16. **INFORMATION ASSET LOSS** means:
- i) the actual and necessary costs incurred by the **organization** to "restore" its **information assets** that have been altered, corrupted, destroyed, disrupted, deleted or damaged;
  - ii) the actual cost borne by the **organization** to "recollect" such **information assets** in the event the **organization** is unable to "restore" such **information assets**, but is able to "recollect" such **information assets**; or
  - iii) in the event the **organization** is not able to "restore" or "recollect" such **information assets**, the **information asset loss** shall mean only the actual costs incurred by the **organization** to reach this determination.
- a. **Information Asset Loss** shall not mean, and coverage shall not be afforded for:
- i) loss arising out of any liability to third-parties for whatever reason;
  - ii) costs and expenses incurred by the **insured** to update, upgrade, enhance or replace the **insured's information assets**;
  - iii) legal costs or legal expenses;

- iv) loss arising out of any physical damage to or destruction of the computer hardware, firmware or any other property except **information assets**;
  - v) that part of any **information asset loss**, for which the proof as to its existence or amount is solely dependent on an inventory computation or comparison; or a profit and loss computation or comparison; provided, however, where the **insured** establishes wholly apart from such comparison that it has sustained an **information asset loss**, then it may offer its inventory records and actual physical count of inventory in support of the amount of such **information asset loss** claimed;
  - vi) the cost or expenses incurred for researching or developing **information assets**, including without limitation **trade secrets**;
  - vii) the economic or market value of, or the monetary value of lost market share, profits, or royalties related to, any **information assets**, including without limitation **trade secrets**;
  - viii) costs or expenses incurred to identify and remove software program errors or vulnerabilities;
  - ix) the monetary value of any electronic fund transfers or transactions by the **insured** or on the **insured's** behalf, which is lost, diminished or damaged during transfer from, into or between the **insured's** accounts; or
  - x) compensation, fees, benefits, overhead or internal charges of **insured persons**.
- b. "Recollect" means costs or expenses to:
- i) recollect the information making up the **information asset**, including without limitation, information from non-electronic sources; and
  - ii) organize and transcribe such information into the same or substantially similar form as the original **information asset**.
- c. "Restore" means costs or expenses to restore **information assets** from any collection of partially or fully matching electronic data or software, or through electronic data or disaster recovery methods.
17. **INITIAL COVERAGE DATE** means the date specified in **Part I, Item 3** of the Declarations as the inception date of the first policy issued by the Insurer that provides the same, or essentially the same, coverage as this policy and is continually renewed by the Insurer.
18. **INSURED** means:
- a. the **organization**;
  - b. **insured persons**;
  - c. for the purposes of Insuring Agreement A- TECHNOLOGY PRODUCTS AND SERVICES LIABILITY INSURANCE only, an individual or business corporation acting as an independent contractor under terms specified in a written contract on behalf of the **organization**, while performing **professional services** for the **organization**;
  - d. for the purposes of Insuring Agreement A- TECHNOLOGY PRODUCTS AND SERVICES LIABILITY INSURANCE only, an individual or business corporation acting as a subcontractor to the **organization** under terms specified in a written contract; while performing **professional services** for the **organization**; and
  - e. for the purposes of Insuring Agreement A- TECHNOLOGY PRODUCTS AND SERVICES LIABILITY INSURANCE only, any person or business corporation required by written contact to be added as an additional insured but only for **wrongful acts** of the **organization**. However, no person or business corporation is an additional insured for any **claim** that results from: 1.their own independent acts, errors or omissions; or 2. any act error or omission that was committed before such contract was made.
19. **INSURED PERSON** means:  
If the designated **Named Insured** in the Declarations is:
- a. an individual, **insured person** means the **Named Insured** and their spouse, but only with respect to the conduct of business of which the **Named Insured** is the sole owner;
  - b. a partnership or joint venture, **insured person** means any present or former members, partners and their spouses, but solely while acting on behalf of the **organization**;
  - c. a business corporation, **insured person** means any present or former **employees**, but solely while acting on behalf of the **organization**. Its present or former officers or directors are also **insured persons**, but solely with respect to their duties as the **organization's** officers and directors. The **organization's** shareholders are also **insured persons**, but solely with respect to their liability as shareholders; and
  - d. any person provided by an employment contractor or agency under a written agreement between an **organization** and the employment contractor or agency to perform duties related to the conduct of the **organization's professional services**.
20. **INTERNET** means the worldwide public network of computers which enables the transmission of electronic data and which includes intranets, extranets and virtual private networks.
21. **INTERNET MEDIA** means:
- a. **Content** that is disseminated electronically on the **organization's website**; or
  - b. The **organization's content** or **advertising** that is disseminated on the **internet**, including **content** disseminated by other means of media transmittal by the **organization** provided that it is a duplication of **content** already disseminated electronically on the **organization's website**.
22. **INTERNET PROFESSIONAL SERVICES** means any one of the following:
- a. application service provider (ASP services);
  - b. domain name registration services;
  - c. internet hosting services;
  - d. internet service provider (ISP services);
  - e. web portal services; or
  - f. search engine services.
23. **INTERRELATED WRONGFUL ACTS** means **wrongful acts** that have a common nexus, fact, circumstance, situation, event, transaction, goal, motive, methodology, or cause or series of causally connected facts, circumstances, situations, events, transactions, goals, motives, methodologies or causes. Any failures, interruptions, suspensions or delays of an **organization's computer system** that result from the same or interrelated **wrongful acts respecting network security** without regard for the number of such failures, interruptions, suspensions or delays or dates when such failures, interruptions, suspensions or delays happened, shall be considered a single **wrongful act**.

24. **LOSS** means **damages, defence costs, information asset loss, business interruption loss and privacy breach expenses.**
25. **MALICIOUS CODE** means an unauthorized corrupting or harmful piece of code, including, but not limited to, computer viruses, Trojan horses, worms, time or logic bombs, spy ware, malware or spider ware.
26. **MATERIAL INTERRUPTION** means a total or partial disruption or deterioration of the **insured's computer system**, which is directly caused by a **failure of security.**
27. **NAMED INSURED** means the person(s) or entity(ies) specified as such in **Part I, Item 1** of the Declarations. The first **Named Insured** is the **Named Insured** first specified in **Part I, Item 1** of the Declarations.
28. **ORGANIZATION** means:
- the **Named Insured**;
  - any entity that the **Named Insured** acquires or forms and which the **Named Insured** either owns or in which the **Named Insured** maintains a fifty-one percent (51%) or more controlling interest provided there is no other insurance available to that entity. However, coverage under this policy shall only apply if:
    - the **Named Insured** advises the Insurer within ninety (90) days of the acquisition or formation of such entity and provides the Insurer with reasonable information as it deems necessary to evaluate any material change to the risk; and
    - the **Named Insured** agrees to pay any additional premium requested by the Insurer.
- Such acquired or newly formed entity shall only be entitled to coverage as an **organization** with respect to claims for **wrongful acts, information asset loss or business interruption loss** occurring after the effective date of acquisition or formation.
29. **OUTSOURCED PROVIDER** means an entity who is under written contract with the **organization** to process, store, maintain or host the **organization's** electronic data, including an entity that provides hosted computer application services.
30. **OUTSOURCED PROVIDER'S COMPUTER SYSTEM** means a **computer system** that is operated for the benefit of the **organization** by an **outsourced provider**. The term **outsourced provider's computer system** does not include an **organization's computer system**.
31. **POLICY PERIOD** means the period of one (1) year following the effective date of this policy as specified in **Part I, Item 2** of the Declarations, or, the time between the effective date and the termination of this policy.
32. **POLLUTANTS** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by the environmental protection authority for that jurisdiction. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, asbestos products, fungi or spores.
33. **POLLUTION** means the actual, alleged or threatened discharge, release, escape or disposal of **pollutants** into or on real or personal property, water or the atmosphere or any direction or request that the **insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize any **pollutants**, or any voluntary decision to do so.
34. **PRIVACY BREACH EXPENSE** means the following expense where incurred with the Insurer's prior consent in order to comply with any **privacy law** or to minimize any **loss** otherwise covered under this policy:
- Notification Expense**  
The required amount of necessary expenses incurred on the **organization's** behalf to provide notice to a **protected person** of any actual or potential disclosure of or unauthorized access to **protected personal information**.
  - Credit Monitoring and Data Recovery Expense**  
Costs incurred by the **organization** or on the **organization's** behalf:
    - To provide credit monitoring expenses to **protected persons** to the extent required by **privacy law** or to minimize any **loss** otherwise covered under this policy; or
    - To recover information which has been accessed without the **protected person's** permission where the costs of recovery would minimize any **loss** otherwise covered under this policy;
  - Cyber Investigation Expense**  
Costs incurred by the **organization**, or on the **organization's** behalf, with the prior approval of the Insurer, to pay a **third party** to conduct an investigation of a **computer system** from which **protected personal information** has been accessed in order to determine the manner in which and the date and time such information was accessed. Such costs do not include compensation, fees, benefits, overhead or the charges or expenses of any **insured person**; and
  - Crisis Management Expense**  
Costs incurred by the **organization** or on the **organization's** behalf, with the prior approval of the Insurer, to pay a public relations firm, law firm or crisis management firm, hired with the prior written consent of the Insurer, to perform crisis management services to minimize the potential harm to a **protected person** resulting from unauthorized disclosure or access to **protected personal information**.  
Such costs may include extortion amounts paid to a person demanding such payment in return for a promise not to disclose **protected personal information** which has been wrongfully accessed, but only if the law enforcement authorities having jurisdiction over the theft of the information have been advised of and do not object to such payment.  
Such costs do not include compensation, fees, benefits, overhead or the charges or expenses of any **insured person**.
35. **PRIVACY LAW** means:
- the Personal Information and Electronic Documents Act (PIPEDA);

- b. other similar federal, provincial, state or local identity theft and privacy protection laws requiring commercial entities that collect personal information to post privacy policies, adopt specific privacy controls, or notify individuals or others in the event that personal information has potentially been compromised.
36. **PROFESSIONAL SERVICES** means one or more of the following provided for others for compensation:
- the development, design, assembly, manufacture, sale, leasing, licensing, distribution, installation, modification, integration, servicing, supporting or repairing of computers, computer hardware, firmware and/or software, computerized networks, or similar electronic information systems or telecommunications equipment;
  - the provision of computer system, network related, or telecommunication related consulting, analysis, programming, training or support;
  - data processing; or
  - internet professional services.**
37. **PROPERTY DAMAGE** means:
- physical injury to, loss or destruction of tangible property, including loss of use thereof; or
  - loss of use of tangible property which has not been physically damaged or destroyed.
38. **PROTECTED PERSON** means a person whose nonpublic information is protected from unauthorized disclosure or access by a **privacy law**.
39. **PROTECTED PERSONAL INFORMATION** means a person's first name and last name in combination with any one or more of the following:
- information concerning a natural person that constitutes "personal information" as defined in Canada by the federal Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, ("PIPEDA") and any amendments thereto or any rules or regulations promulgated in connection therewith;
  - medical or health care information concerning a natural person, including "protected health information" as defined in Canada by PIPEDA, and as defined in provincial legislation in Canada (eg. The Ontario Personal Health Information Protection Act, 2004, S.O. 2004, c.3), and other similar provincial or territorial statutes in Canada, and any amendments thereto or any rules or regulations promulgated in connection therewith;
  - information concerning a natural person that is defined as private personal information under any federal, provincial, state, foreign or local statutory law; and
  - a natural person's driver's license, social insurance number, unpublished telephone number, unpublished IP address, digital facial identity (not including photos and videos), digital fingerprint identity, and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins.
- If such information allows such person to be uniquely and reliably identified or contacted or allows access to the person's financial account or medical record information. The term **Personally Identifiable Information** does not include publicly available information that is lawfully made available to the general public, or **Corporate Information**.
40. **RETROACTIVE DATE** means the date specified in **Part II, Item 4** of the Declarations.
41. **SECURITY** means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent **unauthorized access** to, **unauthorized use** of, receipt or transmission of a **malicious code** to or **denial of service** attack on the **organization's computer system**, or in the case of Insuring Agreement Coverage D only, the **outsourced provider's computer system**. **Security** includes, without limitation, firewalls, filters, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users. **Security** also includes specific written policies and procedures intended to directly prevent theft of a password or access code by non-electronic means.
42. **THIRD PARTY** means any person or entity which is not an **insured**.
43. **UNAUTHORIZED ACCESS** means the gaining of access to a **computer system** by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.
44. **UNAUTHORIZED USE** means the use of a **computer system** by a person unauthorized by the **insured** or a person authorized by the **insured** who uses the **computer system** for a purpose not intended by the **insured**.
45. **WAITING PERIOD** means the number of hours the **organization's computer systems** experiences **material interruption** before the Insurer is first obligated to pay **loss** (other than Extra Expense). The **waiting period** incepts immediately following the **material interruption**. The **waiting period** is specified in **Part II, Item 6** of the Declarations.
46. **WAITING PERIOD RETENTION** means the dollar amount of **business interruption loss** an **organization** incurs during the **waiting period**.
47. **WEBSITE** means the software, content and other materials accessible via the internet at a designated Uniform Resource Locator (URL) address owned by the **organization**.
48. **WRONGFUL ACT** means the following, if a limit of insurance is specified in **Part II, Item 6** of the Declarations, when committed by an **insured** in their capacity as such:
- wrongful act respecting electronic media;**
  - wrongful act respecting network security;**
  - wrongful act respecting privacy breach;** and
  - wrongful act respecting technology products and services .**
49. **WRONGFUL ACT RESPECTING ELECTRONIC MEDIA** means solely in the display of **internet media**, any actual or alleged act, error or omission, breach of duty, misstatement or misleading statement by the **insured**, which results in:
- wrongful publication, defamation, slander or libel, product disparagement, trade libel or other tort related to disparagement or harm to the reputation or character of any person or organization in the **organization's content** or in the **organization's advertisement;**

- b. invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness; or
- c. plagiarism, piracy or misappropriation of ideas under implied contract, infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name in connection with the **organization's content or organization's advertising**.

Multiple displays of **internet media** on one or more dates relating to the same subject, person or class of persons, without regard to the number of repetitions, modifications, alterations or forms of such display shall be considered a single **wrongful act respecting electronic media**.

50. **WRONGFUL ACT RESPECTING NETWORK SECURITY** means any actual or alleged breach of duty, neglect, act, error or omission by the **insured** that results in a **failure of security**.

Any failures, interruptions, suspensions and delays of an **organization's computer system** that result in the same or interrelated **wrongful act respecting network security** shall be considered a single **wrongful act**, regardless of the number of such failures, interruptions, suspensions or delays or dates when such failures, interruptions, suspensions or delays happened.

51. **WRONGFUL ACT RESPECTING PRIVACY BREACH** means any actual or alleged breach of duty, neglect, act, error or omission by the **insured** that results in:

- a. Theft, loss or unauthorized public disclosure of **protected personal information** and/or **confidential corporate information**; or
- b. Unauthorized access by a third party to **protected personal information** and/or **confidential corporate information**,

when the **protected personal information** and/or **confidential corporate information** is in the care, custody or control of (i) the **insured**; (ii) an entity under written contract with the **organization** to process, store, maintain or host the **organization's** data in any form, including an entity that provides hosted computer application services; or (iii) a **third party** for whom the **organization** is legally liable. The term **Wrongful act respecting privacy breach** also includes the **insureds'** failure to provide **notification expense** or **credit monitoring expense** in response to a. and b. above.

52. **WRONGFUL ACT RESPECTING TECHNOLOGY PRODUCTS AND SERVICES** means any actual or alleged error, omission or negligent act, breach of duty, negligent misstatement committed by the **insured** solely in the conduct of the **insured's professional services**. Such wrongful act includes plagiarism or misappropriation of ideas under implied contract, infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name.

**In witness whereof, the Insurer has caused this Policy to be executed on the Declarations page.**

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



## COMMERCIAL GENERAL LIABILITY POLICY

### Read Your Policy Carefully

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under Paragraph 3. of Section II – Who is an Insured.

The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V –Definitions.

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

## SECTION I – COVERAGES

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

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "action" that may result. But:

- (1) The amount we will pay for "compensatory damages" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A, B and D.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for "compensatory damages" because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. "Compensatory damages" because of "bodily injury" include "compensatory damages" claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### 2. Exclusions

This insurance does not apply to:

- a. **Expected or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "compensatory damages":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable legal fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "compensatory damages" because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such legal fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "compensatory damages" to which this insurance applies are alleged.

**c. Workers' Compensation and Similar Laws**

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

**d. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph 2. d. (1) above.

This exclusion applies:

- (i) Whether the insured may be liable as an employer or in any other capacity; and
- (ii) To any obligation to share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the injury.

This exclusion does not apply to:

- (a) Liability assumed by the insured under an "insured contract"; or
- (b) A claim made or an "action" brought by a Canadian resident "employee" on whose behalf contributions are made by or required to be made by you under the provisions of any Canadian provincial or territorial workers' compensation law, if cover or benefits have been denied by any Canadian Workers' Compensation Authority.

**e. Aircraft or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others by or on behalf of any insured of:

- (i) Any aircraft, air cushion vehicle or watercraft owned or operated by or rented or loaned to any insured; or
- (ii) Any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.

Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 8 metres long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law, if the "bodily injury" results from an "occurrence" involving watercraft.

**f. Automobile**

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the ownership, maintenance, use or entrustment to others of any "automobile" owned or operated by or on behalf of or rented or loaned to any insured. Use includes operation and "loading or unloading". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage".

This exclusion also applies to:

- (a) any motorized snow vehicle or its trailers.
- (b) any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity whether or not it is required by law to be insured under a contract evidenced by a motor vehicle liability policy.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "automobile" that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law.
- (2) "Bodily injury" or "property damage" arising out of a defective condition in, or improper maintenance of, any "automobile" owned by the Insured while leased to others for a period of 30 days or more provided the lessee is obligated under contract to ensure that the "automobile" is insured.
- (3) the ownership, use or operation of machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use or operation of such equipment, but this exception does not apply when such equipment is used for the purpose of "loading or unloading".

**g. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in your care, custody or control;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

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

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**h. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**i. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**j. Damage To Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**k. Recall of Products, Work or Impaired Property**

"Compensatory damages" claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

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

**l. Electronic Data**

"Compensatory damages" arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data."

**m. Personal and Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**n. Professional Services**

"Bodily injury" (other than "incidental medical malpractice injury"), or "property damage" due to the rendering of or failure to render by you or on your behalf of any "professional services" for others, or any error or omission, malpractice or mistake in providing those services.

**o. Abuse**

**a.** Claims or "actions" arising directly or indirectly from "abuse" committed or alleged to have been committed by an insured, including the transmission of disease arising out of any act of "abuse".

**b.** Claims or "actions" based on your practices of "employee" hiring, acceptance of "volunteer workers" or supervision or retention of any person alleged to have committed "abuse".

**c.** Claims or "actions" alleging knowledge by an insured of, or failure to report, the alleged "abuse" to the appropriate authority(ies).

**p. Asbestos** – see Common Exclusions

**q. Fungi or Spores** – see Common Exclusions

**r. Nuclear** – see Common Exclusions

**s. Pollution** – see Common Exclusions

**t. Terrorism** – see Common Exclusions

**u. War Risks** – see Common Exclusions

**v. Employment Related Practices** – see Common Exclusions

**w. Punitive or Exemplary Damages** – see Common Exclusions

## COVERAGE B. PERSONAL and ADVERTISING INJURY LIABILITY

### 1. Insuring Agreement

**a.** We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "action" that may result. But:

(1) The amount we will pay for "compensatory damages" is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D, or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A, B and D.

**b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

### 2. Exclusions

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for "compensatory damages" that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media and Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **23. a., b. and c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Asbestos – see Common Exclusions**

**n. Fungi or Spores – see Common Exclusions**

**o. Nuclear – see Common Exclusions**

**p. Pollution – see Common Exclusions**

**q. Terrorism – see Common Exclusions**

**r. War Risks – see Common Exclusions**

**s. Employment Related Practices – see Common Exclusions**

**t. Punitive or Exemplary Damages – see Common Exclusions**

## COVERAGE C. MEDICAL PAYMENTS

### 1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or



- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance as described in Section III – Limits of Insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## 2. Exclusions

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers Compensation and Similar Laws**  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**  
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**  
Included within the "products-completed operations hazard".
- g. **Coverage A Exclusions**  
Excluded under Coverage A.
- h. **Punitive or Exemplary Damages**  
We do not cover Punitive or Exemplary damages claimed under this coverage.

## COVERAGE D. TENANTS' LEGAL LIABILITY

### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of "property damage" to which this insurance applies. This insurance applies only to "property damage" to premises of others rented to you or occupied by you. We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" for "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "action" that may result. But:

- (1) The amount we will pay for "compensatory damages" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B or D or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A, B and D.

- b. This insurance applies to "property damage" only if:

- (1) The "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "property damage" occurred, then any continuation, change or resumption of such "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "property damage" after the end of the policy period.
- d. "Property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - (1) Reports all, or any part, of the "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for "compensatory damages" because of the "property damage"; or
  - (3) Becomes aware by any other means that "property damage" has occurred or has begun to occur.

## 2. Exclusions

This insurance does not apply to:

- a. **Expected or Intended Injury**  
"Property damage" expected or intended from the standpoint of the insured.
- b. **Contractual Liability**  
"Property damage" for which the insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "compensatory damages":
  - (1) That the insured would have in the absence of the contract or agreement; or
  - (2) Assumed in a contract or agreement that is an "insured contract", provided the "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable legal fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "compensatory damages" because of "property damage", provided:
    - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
    - (b) Such legal fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "compensatory damages" to which this insurance applies are alleged.
- c. **Asbestos** – see Common Exclusions
- d. **Fungi or Spores** – see Common Exclusions
- e. **Nuclear** – see Common Exclusions
- f. **Pollution** – see Common Exclusions
- g. **Terrorism** – see Common Exclusions
- h. **War Risks** – see Common Exclusions
- i. **Punitive or Exemplary Damages** – see Common Exclusions

## COMMON EXCLUSIONS – COVERAGES A, B, C and D

This insurance does not apply to:

### 1. Asbestos

"Bodily injury", "property damage" or "personal and advertising injury" related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

### 2. Fungi or Spores

- a. "Bodily injury", "property damage" or "personal and advertising injury" or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "fungi" or "spores";
- b. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with a. above; or
- c. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in a. or b. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

This exclusion shall not apply to claims arising solely from the presence of bacteria in food products manufactured, sold distributed or served by the Insured.

### 3. Nuclear Energy Liability

- (1) Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- (2) "Bodily injury", "property damage" or "personal and advertising injury" with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (3) "Bodily injury", "property damage" or "personal and advertising injury" resulting directly or indirectly from the "nuclear energy hazard" arising from:
  - 1) The ownership, maintenance, operation or use of a "nuclear facility" by or on behalf of an insured;
  - 2) the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility";
  - 3) the possession, consumption, use, handling, disposal or transportation of "fissionable substances", or of other "radioactive material" (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contribute concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

### 4. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapour or soot from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapours from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "action" by or on behalf of a governmental authority for "compensatory damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this Section (2) does not apply to liability for "compensatory damages" because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "action" by or on behalf of a governmental authority.

#### 5. Punitive or Exemplary Damages

Punitive or Exemplary damages arising out of or on account of, resulting from or relating to:

- a. Any claim made against an Insured alleging actual or threatened "bodily injury", "property damage", "personal and advertising injury" or medical expenses, under Coverages A, B, C, and/or D of this policy
- b. Any judicial, arbitration or administrative decision condemning an Insured to the payment of Punitive or Exemplary damages following a claim made against any Insured alleging actual or threatened "bodily injury", "property damage", "personal and advertising injury" or medical expenses, under Coverages A, B, C, and/or D of this policy.

#### 6. Terrorism

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly, in whole or in part, out of "terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

#### 7. War Risks

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly, in whole or in part, out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage" or "personal and advertising injury".

#### 8. Employment Related Practices

Any claim, "action" or suit alleging or asserting in any respect loss, injury or damage (including consequential bodily injury) in connection with "wrongful termination" of your "employees" and/or "discrimination" involving your "employees" and/or "sexual harassment" of your "employees".

### SUPPLEMENTARY PAYMENTS – COVERAGES A, B and D

1. We will pay, with respect to any claim we investigate or settle, or any "action" against an insured we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses you incur at our request to assist us in the investigation or defense of the claim or "action", including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs assessed or awarded against you in the "action".
- e. Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against an "action" and an indemnitee of the insured is also named as a party to the "action", we will defend that indemnitee if all of the following conditions are met:

- a) The "action" against the indemnitee seeks "compensatory damages" for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b) This insurance applies to such liability assumed by the insured;
- c) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d) The allegations in the "action" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "action" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f) The indemnitee:
  - (1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "action";
  - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "action";
  - (c) Notify any other insurer whose coverage is available to the indemnitee; and
  - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
- (a) Obtain records and other information related to the "action"; and
  - (b) Conduct and control the defense of the indemnitee in such "action".

So long as the above conditions are met, legal fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b. (2) of Section I – Coverage A – Bodily Injury and Property Damage Liability, such payments will not be deemed to be "compensatory damages" for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for legal fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership, limited liability partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, limited liability partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your shareholders are also insureds, but only with respect to their liability as shareholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, limited liability partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership, limited liability partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
      - (c) For which there is any obligation to share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the injury described in Paragraphs (1)(a) or (b) above;
      - (d) Arising out of his or her providing or failing to provide professional health care services; or
      - (e) To any person who at the time of injury is entitled to benefits under any workers' compensation or disability benefits law or a similar law.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by,
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by



you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership, limited liability partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. Any organization you newly acquire or form, other than a partnership, limited liability partnership or joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** and **D** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, limited liability partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "actions" brought; or
  - c. Persons or organizations making claims or bringing "actions".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. "Compensatory damages" under Coverage **A**, except "compensatory damages" because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
  - b. "Compensatory damages" under Coverage **B**; and
  - c. Medical expenses under Coverage **C**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for "compensatory damages" because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. "Compensatory damages" under Coverage **A**; and
  - b. Medical expenses under Coverage **C**because of all "bodily injury" and "property damage" arising out of any one "occurrence".
5. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all "compensatory damages" because of all "personal and advertising injury" sustained by any one person or organization.
6. The Tenants' Legal Liability Limit is the most we will pay under Coverage **D** for "compensatory damages" because of "property damage" to any one premises.
7. Subject to 4. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person

The Limits of Insurance of this policy apply to the policy period stated on the Declarations page. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### 8. Deductible

- a. Our obligation under Bodily Injury Liability, Property Damage Liability and Tenants' Legal Liability to pay "compensatory damages" on your behalf applies only to the amount of "compensatory damages" in excess of any deductible amounts stated in the Declarations as applicable to such coverages, and the limits of insurance applicable to each "occurrence" for Bodily Injury Liability and Property Damage Liability and any one premises for Tenants' Legal Liability will be reduced by the amount of such deductible.
- b. If the deductible on the Declarations Page includes expenses, it is agreed that our obligation under Coverage A to pay "compensatory damages" on your behalf applies only to the amount of "compensatory damages", legal fees and all other allocated loss adjustment expenses in excess of the deductible amount stated in the Declarations. The deductible amount applies to all "compensatory damages" because of "bodily injury", "property damage", legal fees and all other allocated loss adjustment expenses as the result of any one "occurrence".
- c. The deductible amounts stated in the Declarations apply as follows:
  - 1) Per Claim Basis - if the deductible is on a per claim basis, the deductible amount applies:
    - i. Under Coverage A:
      - a) Bodily Injury Liability or Property Damage Liability respectively:
        - (1) To all "compensatory damages" because of "bodily injury" sustained by one person, or
        - (2) To all "compensatory damages" because of "property damage" sustained by one person or organization, as the result of any one "occurrence".
      - b) Bodily Injury Liability and Property Damage Liability combined, to all "compensatory damages" because of "bodily injury" and "property damage" sustained by one person or organization as the result of any one "occurrence".
    - ii. Under Coverage D. Tenants' Legal Liability, to all "compensatory damages" because of "property damage" sustained by one person or organization as the result of any one "occurrence".
  - 2) Per Occurrence Basis - if the deductible is on a per occurrence basis, the deductible amount applies:
    - i) Under Coverage A:
      - a) Bodily Injury Liability or Property Damage Liability respectively:
        - (1) To all "compensatory damages" because of "bodily injury" as the result of any one "occurrence", or
        - (2) To all "compensatory damages" because of "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain "compensatory damages" because of that "occurrence".
      - b) Bodily Injury Liability and Property Damage Liability combined, to all "compensatory damages" because of "bodily injury" and "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain "compensatory damages" because of that "occurrence".
    - ii) Under Coverage D. Tenants' Legal Liability, to all "compensatory damages" because of "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain "compensatory damages" because of that "occurrence".
- d. The terms of this insurance, including those with respect to:
  - 1) our right and duty to defend any "action" seeking those "compensatory damages"; and
  - 2) your duties in the event of an "occurrence", claim or "action" apply irrespective of the application of the deductible amount.
- e. We may pay any part or all of the deductible amount to effect settlement of any claim or "action" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

## SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### 2. Canadian Currency Clause

All limits of insurance, premiums and other amounts as expressed in this policy are in Canadian currency.

### 3. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

#### 4. Duties In The Event Of Occurrence, Offense, Claim or Action

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "action" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "action" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "action" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "action";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "action"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 5. Examination Of Your Books and Records.

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

#### 6. Inspections and Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under provincial or municipal statutes, ordinances, bylaws or regulations, of boilers, pressure vessels or elevators.

#### 7. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into an "action" asking for "compensatory damages" from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for "compensatory damages" that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 8. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A**, **B** or **D** of this policy, our obligations are limited as follows:

### a. Primary Insurance

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

### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) If the loss arises out of the maintenance or use of watercraft or "automobile" to the extent not subject to either Exclusion **e.** or **f.** of Section I – Coverage **A**–Bodily Injury and Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for "compensatory damages" arising out of the premises or operations or products-completed operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages **A**, **B** or **D** to defend the insured against any "action" if any other insurer has a duty to defend the insured against that "action". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this policy.

### c. Method Of Sharing

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

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

## 9. Premium Audit

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

## 10. Premiums

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

## 11. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

## 12. Separation Of Insureds, Cross Liability

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "action" is brought.

## 13. Termination

- a. The first Named Insured shown in the Declarations may terminate this policy by mailing or delivering to us advance written notice of termination.
- b. We may terminate this policy by mailing or delivering to the first Named Insured written notice of termination at least:
  - 1) 5 days written notice of termination personally delivered; or
  - 2) 15 days before the effective date of termination if we terminate for non-payment of premium; or
  - 3) 30 days before the effective date of termination if we terminate for any other reason.

Except in Quebec, if notice is mailed, termination takes effect 15 or 30 days after receipt of the letter by the post office to which it is addressed, depending upon the reason for termination. Proof of mailing will be sufficient proof of notice.

In Quebec, termination takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for termination. The Insurer will mail or deliver the Insurer's notice to the first Named Insured's last mailing address known to the Insurer.

- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. The policy period will end on the date termination takes effect.
- e. If this policy is terminated, we will send the first Named Insured any premium refund due. If we terminate, the refund will be pro rata. If the first Named Insured terminates, the refund may be less than pro rata. The termination will be effective even if we have not made or offered a refund.

## 14. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "action" or transfer those rights to us and help us enforce them.

## 15. Transfer Of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

## SECTION V – DEFINITIONS

1. "Abuse" means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.

2. "Action" means a civil proceeding in which "compensatory damages" because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Action" includes:
  - a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the insured submits with our consent.
3. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
4. "Automobile" means a land motor vehicle, trailer or semitrailer that is required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, including any attached machinery or equipment.
5. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
6. "Compensatory damages" means damages due or awarded in payment for actual injury or economic loss. "Compensatory damages" does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.
7. "Coverage territory" means:
  - a. Canada and the United States of America (including its territories and possessions).
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of an insured person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communicationprovided the insured's responsibility to pay "compensatory damages" is determined in an "action" on the merits, in the territory described in a. above or in a settlement we agree to.
8. "Discrimination" means termination of an employment relationship or a demotion or a failure or refusal to hire or promote an individual because of race, color, religion, age, sex, disability, pregnancy, natural origin, sexual orientation or other protected category or characteristic established pursuant to any applicable statute or ordinance.
9. "Electronic Data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
10. "Employee" includes a "leased worker" and a "temporary worker".
11. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
12. "Fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
13. "Fungi" includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens or pathogens.
14. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
15. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or



b. Your fulfilling the terms of the contract or agreement.

16. “ Incidental medical malpractice injury” means "bodily injury" arising out of the rendering of or failure to render, during the Policy Period, the following services:

i) medical, surgical, dental, x-ray or nursing services or treatment or the furnishing of food or beverages in connection therewith; or

ii) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;

by any insured or any indemnitee causing the “incidental medical malpractice injury” who is not engaged in the business or occupation of providing any of the services described in **i)** and **ii)** above.

17. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;

d. Any other easement agreement;

e. An obligation, as required by ordinance or bylaw, to indemnify a municipality, except in connection with work for a municipality;

f. An elevator maintenance agreement;

g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “compensatory damages” because of “bodily injury” or “property damage” to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **g.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render “professional services”, including those listed in **(1)** above and supervisory, inspection, architectural or engineering activities.

18. "Leased worker" means a person leased to you by a labour leasing firm under an agreement between you and the labour leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

19. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "automobile";

b. While it is in or on an aircraft, watercraft or "automobile"; or

c. While it is being moved from an aircraft, watercraft or "automobile" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "automobile".

20. "Nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;

21. "Nuclear facility" means:

a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or packaging waste;

c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

22. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
23. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- False arrest, detention or imprisonment;
  - Malicious prosecution;
  - The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - The use of another's advertising idea in your "advertisement"; or
  - Infringing upon another's copyright, trade dress or slogan in your "advertisement".
24. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
25. "Products-completed operations hazard":
- Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - Products that are still in your physical possession; or
    - Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - When all of the work called for in your contract has been completed.
      - When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
  - Does not include "bodily injury" or "property damage" arising out of:
    - The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
    - The existence of tools, uninstalled equipment or abandoned or unused materials.
26. "Professional services" shall include but not be limited to:
- Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
  - Any professional service or treatment conducive to health;
  - Professional services of a pharmacist;
  - The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
  - The handling or treatment of deceased human bodies including autopsies, organ donations or other procedures;
  - Any cosmetic, body piercing, tonsorial, massage, physiotherapy, chiropody, hearing aid, optical or optometrical services or treatments;
  - The preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications;
  - Supervisory, inspection, architectural, design or engineering services;
  - Accountant's, advertiser's, notary's (Quebec), public notary's, paralegal's, lawyer's, real estate broker's or agent's, insurance broker's or agent's, travel agent's, financial institution's, or consultant's professional advices or activities;
  - Any computer programming or re-programming, consulting, advisory or related services; or
  - Claim, investigation, adjustment, appraisal, survey or audit services.
27. "Property damage" means:
- Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

28. "Radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
29. "Sexual harassment" means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment and/or (2) are used as a basis for employment decisions and/or (3) create a work environment that interferes with performance.
30. "Spores" includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi".
31. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
32. "Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.
33. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
34. "Wrongful termination" means termination of an employment relationship in a manner which is against the law, wrongful or in breach of an implied or written agreement to continue employment.
35. "Your product":
- a. Means:
- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
36. "Your work":
- a. Means:
- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

#### **Description Of Terms Used For Rating Basis In The Liability Rating Schedule**

**Area** -The total number of square metres of floor space at the insured premises, excluding that portion of basements used exclusively for storage or that portion of the premises used for heating or air conditioning plant purposes.  
Rates apply per 100 square metres of area.

**Basic** – A basic charge is in addition to the premium developed from the application of exposure charges and applies per location.

**Cost of Work (For work sublet to others) -** The total cost of all operations performed for you by independent contractors, including the cost of materials furnished, used or delivered for use in the execution of the work.  
Rates apply per \$1,000 of cost of work.

**Admissions -** The total number of persons, other than your employees, admitted to the event insured or to events conducted on the premises whether on paid admissions, tickets, complimentary tickets or passes.  
Rates apply per 100 admissions.

**Payroll -** The total earnings for each owner, partner, executive officer and employee.  
Rates apply per \$1,000 of payroll.

**Revenue -** The gross amount of money charged for all work or services performed by or on your behalf or for goods and products sold and distributed by you or by others trading under the your name.  
Rates apply per \$1,000 of revenue.

**Each -** The unit of exposure is indicated in the Liability Rating Schedule.  
Rates apply per unit of exposure.

**Units -** A single room or group of rooms intended for occupancy as separate living quarters by a family, by a group of unrelated persons living together or by a person living alone.  
Rates apply per unit.

**Other –** Rates apply per designated article. (i.e. person, object, event)

**In witness whereof, the Insurer has caused this Policy to be executed on the Declarations page.**

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

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Anti-Stacking of Limits Endorsement

This endorsement modifies the insurance provided under the following:

TechConnect Custom Technology Policy for Sayf's Test Client.

In consideration of an additional premium of \$0, it is hereby understood and agreed that:

**Insurer Responsible for only the largest applicable limit:**

If any **Occurrence, Claim or Loss**, gives rise to coverage afforded by both Part II and Part III of this Policy,

1. Only the largest of the two applicable limits will apply;
2. The largest limit will be the maximum aggregate liability for all loss (including defense costs) under this Policy on account of such Occurrence, Claim or Loss;
3. In no event shall the Policy limit exceed the largest limit regardless of the number of insured persons or entities pursued, number of claimants or suits brought or the amount of the damages sought;

**Insurer Responsible for same maximum in multi-year, multi-part trigger event:**

If any **Occurrence, Claim or Loss** gives rise to coverage afforded by both Part II of this Policy and Part III of any policy issued in any previous years by this insurer or coverage under Part III of this policy and Part II of any policy issued to you in any subsequent years by this insurer,

4. The same restriction on the maximum aggregate liability under the two policies shall apply notwithstanding there are two separate policy years triggered.

**Deductible or Retention**

5. For the purposes of applying a Deductible or Retention amount where an Occurrence, Claim or Loss triggers coverage afforded by both Part II and Part III, only one amount, the highest such amount, will be applicable between the two coverages and will be governed by the deductible or retention clause in the Part or Policy to which it applies.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein: September 17, 2019

All other terms and conditions of the Policy remain unchanged.

TEC 07 05 60-2B

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

### Breach Coach Contact Endorsement

(Applicable to Part II TechConnect Custom Professional Services Liability)

In the event of a **failure of security, wrongful act respecting privacy breach, or wrongful act respecting network security** that is covered by the policy please contact the following individual at the contact details noted below:

Alex Cameron  
Partner and Leader, Privacy and Cybersecurity Group  
Faskens  
Direct: 416-865-4505  
Toll Free: 844.200.7505  
[acameron@fasken.com](mailto:acameron@fasken.com).

Notice of claim is still required as per **Section 5 Notice of Claim** of the policy.

All other terms and conditions of the Policy remain unchanged.

TEC1901-0500-01

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:



# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Additional Insured – Where Required Under Contract Or Agreement

This endorsement modifies insurance provided under the following:

### Commercial General Liability

Section II – Who is an Insured, 1., is amended to add:

3. Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you. However, the insurance provided will not exceed the lesser of:
  - a. The coverage and/or limits of this policy, or
  - b. Coverage and/or limits required by said contract or agreement

All other terms and conditions of the policy remain unchanged.

CGL 07 05 131-2

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Amendment of Professional Services Definition

It is hereby understood and agreed that the Policy is amended as follows:

**SECTION V – DEFINITIONS, 26.** is deleted in its entirety and replaced by the following:

**26.** "Professional services" shall include but not be limited to:

- a. Medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;
- b. Any professional service or treatment conducive to health;
- c. Professional services of a pharmacist;
- d. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
- e. The handling or treatment of deceased human bodies including autopsies, organ donations or other procedures;
- f. Any cosmetic, body piercing, tonsorial, massage, physiotherapy, chiropody, hearing aid, optical or optometrical services or treatments;
- g. The preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications;
- h. Supervisory, inspection, architectural, design or engineering services;
- i. Accountant's, advertiser's, notary's (Quebec), public notary's, paralegal's, lawyer's, real estate broker's or agent's, insurance broker's or agent's, travel agent's, financial institution's, or consultant's professional advices or activities;
- j. Claim, investigation, adjustment, appraisal, survey or audit services.

All other terms and conditions of the Policy remain unchanged.

SPO 07 05 162-1

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Electronic Spam Exclusion Endorsement

This endorsement modifies insurance under the following:

### Commercial General Liability Policy - Coverage A, B, C and D

Common Exclusions: The following exclusion is added:

This insurance does not apply to:

"Bodily injury", "property damage", or "personal and advertising injury" or any other cost, loss or expense arising from or allegedly arising from unsolicited dissemination of any electronic communication to multiple actual or prospective customers of the insured or any third party, including, but not limited to, actions brought under the Telecommunications Act or any federal, provincial, or state anti-spam statutes or similar law or regulation relating to a person's or entity's right of seclusion or protection of privacy.

Definition of Electronic Spam:

Any electronic commercial message sent without the express consent of the recipient.

All other terms and conditions of the Policy remain unchanged.

CGL 07 05 335-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Rider Employee Benefits Liability Coverage Form

**Retroactive Date: September 17, 2019**

This insurance does not apply to damages caused by an "employee benefit claim" which occurred before the Retroactive Date shown above.

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

Throughout this Coverage Form the words "you" and "your" refer to the Named Insured shown in the Declaration Pages, and any other person or organization qualifying as a Named Insured under paragraph 3. of SECTION II – WHO IS AN INSURED of this Coverage Form. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VI - DEFINITIONS.

### SECTION I – COVERAGE

#### a. Insuring Agreement.

- a. We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of any act, error or omission, of the insured, or of any person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" to which this insurance does not apply. We may at our discretion investigate any report of an act, error or omission and settle any "claim" or "action" that may result. But:
  - 1) The amount we will pay for "compensatory damages" is limited as described in SECTION III - LIMITS OF INSURANCE ; and
  - 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgements or settlements under this Coverage Form.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS.

#### b. This insurance applies to "compensatory damages" only if:

- 1) The act, error or omission is negligently committed in the "administration" of your "employee benefit program" and takes place in the "coverage territory";
- 2) The act, error or omission did not take place after the end of the policy period; and
- 3) A "claim" for "compensatory damages" because of an act, error or omission is first made against any insured, in accordance with Paragraph c. below, during the policy period. or an Extended Reporting Period we provide under SECTION V – EXTENDED REPORTING PERIOD.

#### c. A "claim" seeking "compensatory damages" will be deemed to have been made at the earlier of the following times:

- 1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or
- 2) When we make settlement in accordance with Paragraph 1. a. above.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- d. All "claims" for "compensatory damages" made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including "compensatory damages" claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.

b. Exclusions

This insurance does not apply to:

- a. "Compensatory damages" arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission committed by any insured, including the wilful or reckless violation of any statute.
- b. "Bodily injury", "property damage" or "personal and advertising injury".
- c. "Compensatory damages" arising out of failure of performance of contract by any insurer.
- d. "Compensatory damages" arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".
- e. Any "claim" based upon:
- 1) Failure of any investment to perform;
  - 2) Errors in providing information on past performance of investment vehicles; or
  - 3) Advice given to a person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".
- f. Any "claim" arising out of your failure to comply with any workers' compensation, unemployment or employment insurance, social security or disability benefits law or any similar law.
- g. Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.
- h. Taxes, fines or penalties.
- i. "Compensatory damages" arising out of wrongful termination of employment, discrimination, or other employment-related practices.
- j. Any "claim", the result of circumstances of which any insured had knowledge at the effective date of this insurance.
- k. Any "claim", the result of circumstances which any insured could reasonably have foreseen at the effective date of this insurance.
- l. Any "claim" for "compensatory damages" arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate "electronic data".
- m. Any "claim" for "compensatory damages";
1. Arising directly or indirectly from "abuse" committed or alleged to have been committed by an insured, including the transmission of disease arising out of any act of "abuse".
  2. Based on the insured's practices of "employee" hiring, acceptance of "volunteer workers" or supervision or retention of any person alleged to have committed "abuse".
  3. Alleging knowledge by an insured of, or failure to report, the alleged "abuse" to the appropriate authority(ies).

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- n. Any "claim" for "compensatory damages" related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of asbestos or any materials containing asbestos in what ever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".

- o. Any "claim" for "compensatory damages":
1. Arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "fungi" or "spores";
  2. Arising directly or indirectly from any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with 1. above; or
  3. Arising directly or indirectly from any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in 1. or 2. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".

- p. 1. Any "claim" for "compensatory damages" imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
2. Any "claim" for "compensatory damages" with respect to which an insured under this Coverage Form is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
3. Any "claim" for "compensatory damages" resulting directly or indirectly from the "nuclear energy hazard" arising from:
- (a) The ownership, maintenance, operation or use of a "nuclear facility" by or on behalf of an insured;
  - (b) The furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility";
  - (c) The possession, consumption, use, handling, disposal or transportation of "fissionable substances", or of other "radioactive material" (except radioactive isotopes, away from a "nuclear facility", which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".

- q. Any "claim" for "compensatory damages"
- (1) Arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":
  - (2) Arising out of any:
    - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:



# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- (b) "Claim" or "action" by or on behalf of a governmental authority for "compensatory damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".

- r. Any "claim" for "compensatory damages" arising directly or indirectly, in whole or in part, out of "terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".
- s. Any "claim" for "compensatory damages" due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "compensatory damages".

## **SUPPLEMENTARY PAYMENTS**

We will pay, with respect to any "claim" we investigate or settle, or any "action" against an insured we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defence of the "claim" or "action", including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs assessed or awarded against the insured in the "action".
- e. Any interest accruing after entry of judgement upon that part of the judgement which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

## **SECTION II - WHO IS AN INSURED**

1. If you are designated in the "Declaration Pages" as:
- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership, limited liability partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, limited liability partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your shareholders are also insureds, but only with respect to their liability as shareholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Each of your "employees" who is or was authorized to administer your "employee benefit program".

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Form.
3. Any organization you newly acquire or form, other than a partnership, limited liability partnership joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, limited liability partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declaration Pages.

## **SECTION III - LIMITS OF INSURANCE**

1. a. The Limits of Insurance shown in the Declaration Pages and the rules below fix the most we will pay regardless of the number of:
- (1) Insureds;
  - (2) "Claims" made or "actions" brought;
  - (3) Persons or organizations making "claims" or bringing "actions";
  - (4) Acts, errors or omissions; or
  - (5) Benefits included in your "employee benefit program".
- b. The Aggregate Limit is the most we will pay for all "compensatory damages" because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all "compensatory damages" sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
- (1) An act, error or omission; or
  - (2) A series of related acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this Coverage Form shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

The Aggregate Limit applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declaration Pages, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

2. a. Our obligation to pay "compensatory damages" on behalf of the insured applies only to the amount of "compensatory damages" in excess of the deductible amount stated in the Declaration Pages as applicable to Employee Benefits Liability. The Employee Benefits Each Employee Limit will be reduced by this amount. The Employee Benefits Aggregate Limit shall not be reduced by the amount of this deductible.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- b. The deductible amount stated in the Declaration Pages applies to all "compensatory damages" sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- c. The terms of this insurance, including those with respect to:
  - (1) Our right and duty to defend any "actions" seeking those damages; and
  - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim" apply irrespective of the application of the deductible amount.
- d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "action" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

## **SECTION IV - EMPLOYEE BENEFITS LIABILITY CONDITIONS**

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Form.

### 2. Canadian Currency Clause

All limits of insurance, premiums and other amounts as expressed in this Coverage Form are in Canadian currency.

### 3. Changes.

This Coverage Form contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declaration Pages is authorized to make changes in the terms of this Coverage Form and with our consent. This Coverage Form's terms can be amended or waived only by endorsement issued by us and made a part of this Coverage Form.

### 4. Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Action".

- a) You must see to it that we are notified as soon as practicable of an act, error or omission, which may result in a "claim". To the extent possible, notice should include:
  - (1) What the act, error or omission was and when it occurred; and
  - (2) The names and addresses of anyone who may suffer "compensatory damages" as a result of the act, error or omission.
- b) If a "claim" is made or "action" is brought against any insured, you must:
  - (1) Immediately record the specifics of the "claim" or "action" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "action" as soon as practicable.
- c) You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "action";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defence against the "action"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization, which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- d) No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

## 5. Legal Action Against Us.

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into an "action" asking for "compensatory damages" from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgement against an insured; but we will not be liable for "compensatory damages" that are not payable under the terms of this Coverage Form or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 6. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Form, our obligations are limited as follows:

### a) Primary Insurance.

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

### b) Excess Insurance.

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown on the Declaration Pages of this insurance policy and applies to an act, error or omission on other than a claims-made basis.
- (2) When this insurance is excess, we will have no duty to defend the insured against any "action" if any other insurer has a duty to defend the insured against that "action". If no other insurer defends, we will undertake to do so, but we will be entitled to all the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declaration Pages for this Coverage Form.

### c) Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## 7. Premiums

The first Named Insured shown in the Declaration Pages:

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

## 8. Representations or Fraud

By accepting this policy, you agree:

- a. The statements in the Declaration Pages are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any "claim" or "action" under this policy.

## 9. Separation Of Insureds, Cross Liability.

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom "claim" is made or "action" is brought.

## 10. Termination

- a. The first Named Insured shown in the Declaration Pages may terminate this policy by mailing or delivering to us advance written notice of termination.
- b. Subject to paragraph c. below, we may terminate this policy by giving to the first Named Insured
  - (1) 5 days written notice of termination personally delivered, or
  - (2) 15 days notice of termination by registered mail if termination is for non-payment of premium, or
  - (3) 30 days notice of termination by registered mail if termination is for any other reason.

**Registered mail termination takes effect 15 or 30 days after receipt of the letter by the post office to which it is addressed, depending upon the reason for termination.**

- c. To the extent that the Civil Code of the Province of Quebec is applicable to this policy General Conditions and Provisions as set out in the Civil Code of the Province of Quebec apply. Accordingly, we may terminate this policy by giving to the first Named Insured
  - (1) 15 days notice of termination by registered mail if termination is for non-payment of premium, or
  - (2) 30 days notice of termination by registered mail if termination is for any other reason.

**Registered mail termination takes effect 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for termination.**

- d. The policy period will end on the date termination takes effect.
- e. If this policy is terminated, we will send the first Named Insured any premium refund due. If we terminate, the refund will be pro rata. If the first Named Insured terminates, the refund may be less than pro rata. The termination will be effective even if we have not made or offered a refund.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

## 11. Transfer Of Rights Of Recovery Against Others To Us.

If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring "action" or transfer those rights to us and help us enforce them.

## 12. Transfer Of Your Rights and Duties Under This Coverage Form

Your rights and duties under this Coverage Form may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative.

## SECTION V - EXTENDED REPORTING PERIOD

1. We will provide an Extended Reporting Period as described below, if this Coverage Form is cancelled or not renewed for any reason except nonpayment of premium.

2. The Extended Reporting Period starts with the end of the policy period and lasts for sixty days.

The Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

3. The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the policy period.

"Claims" for such acts, errors or omissions, which are first received and recorded during the Extended Reporting Period, will be deemed to have been made on the last day of the policy period.

4. The Extended Reporting Period does not reinstate or increase the Limits of Insurance applicable to any "claim" to which this Coverage Form applies.

## SECTION VI - DEFINITIONS

1. "Abuse" means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.

2. "Action" means a civil proceeding in which "compensatory damages" because of an act, error or omission to which this insurance applies are alleged. "Action" includes:

- a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the insured submits with our consent.

3. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Handling records in connection with the "employee benefit program"; or
- c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:



## Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

4. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
5. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
6. "Compensatory damages" means damages due or awarded in payment for actual injury or economic loss. "Compensatory damages" does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.
7. "Claim" means any demand or "action", made by an "employee" or an "employee's" dependents and beneficiaries, for "compensatory damages" as the result of an act, error or omission.
8. "Coverage territory" means Canada.
9. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
10. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee does not include a "temporary worker".
11. "Employee benefit program" means a program providing some or all of the following benefits to "employees".
  - a. Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits;
  - d. Vacation plans, leave of absence programs, tuition assistance plans, transportation and health club subsidies.
12. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
13. "Fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
14. "Fungi" includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens or pathogens.
15. "Leased worker" means a person leased to you by a labour leasing firm under an agreement between you and the labour leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
16. "Nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of "radioactive material".
17. "Nuclear facility" means:
  - a. Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- b. Any equipment or device designed or used for
    - (1) Separating the isotopes of plutonium, thorium and uranium or any one or more of them;
    - (2) Processing or packaging waste;
  - c. Any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste "radioactive materials"; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
18. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
19. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property; or
  - b. Loss of use of tangible property that is not physically injured.
21. "Radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
22. "Spores" includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi".
23. "Temporary worker" means a person who is retained by you under a contract of service to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
24. "Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

25. "Volunteer worker" means a person who is not your "employee" and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

All other terms and conditions of the policy remain unchanged.

CGL 07 05 24-6

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

## **Employers' Liability And Employee Retirement Income Security Exclusion**

(Applicable to Commercial General Liability Policy)

**This endorsement modifies insurance provided under the Commercial General Liability Policy as follows:**

This insurance does not apply to:

1. Bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, including death resulting at any time therefrom, sustained by any employee of the "Insured" arising out of and in the course of employment by the "Insured" in the United States of America, its territories or possessions;
2. Any liability arising out of the Employee Retirement Income Security Act (E.R.I.S.A) of 1974 including any changes or amendments thereto.

All other terms and conditions of the policy remain unchanged.

CGL 07 05 27-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Employers' Liability Coverage Extension

In consideration of an **Additional Premium of \$0** it is hereby understood and agreed that this endorsement modifies insurance provided under the following:

### Commercial General Liability Coverage Form

With respect to claims or "actions" arising because of "bodily injury" to an "employee" of the insured arising out of and in the course of employment by the Insured in the business described on the Declaration page the following exclusion is deleted in its entirety:

Exclusion 2. d. under SECTION 1 – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

This extension of insurance does not apply

- a. to "bodily injury" to an employee while employed in violation of the law with your actual knowledge or the actual knowledge of any of your "executive officers".
- b. to "bodily injury" arising out of structural alterations which involve changing the size or moving buildings or other structures, new construction or demolition operations.

The Insurer's maximum aggregate limit of liability shall not exceed \$1,000,000 limit, which amount is included within, and not in addition to, any applicable limit of liability stated in the Declarations.

All other terms and conditions of the policy remain unchanged.

SPO 07 05 72-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Lead Exclusion

Under "Exclusions", the following exclusion is added:

### Lead

1. any liability arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of "lead";
2. any loss, cost or expense arising out of any:
  - a. request, demand or order that any insured or others test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "lead"; or
  - b. claim, action or suit by or on behalf of a governmental authority or others for damages because of testing for, monitoring, cleaning-up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "lead".

As used in this exclusion, "lead" means the element lead in any form, including its use or presence in any alloy, compound, by-product, or other material or waste. Waste includes materials to be disposed of, recycled, reconditioned or reclaimed.

All other terms and conditions of the policy remain unchanged.

CAS 07 05 101-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## O.E.F. No. 98B Reduction Of Coverage For Lessees Or Drivers Of Leased Vehicles Endorsement (for attachment only to the Standard Non-Owned Policy S.P.F. No. 6)

### 1. Purpose of this endorsement:

This endorsement alters the coverage provided by this policy with respect to claims in Ontario for loss or damage arising directly or indirectly from the use or operation of a motor vehicle that is leased.

### 2. How the policy coverage is changed:

- The Insurer also agrees to pay on behalf of every partner, officer or employee of the Insured who, in the business of the Insured stated in Item 3 of the application, leases an automobile **for a period of not more than 30 days** in their own name, all sums which such partner, officer or employee is legally obligated to pay as a result of liability imposed by law arising from the negligence of the driver of such leased automobile(s).
- The insurance provided under this policy with respect to leased automobiles is in excess of the underlying coverage available to the Insured or to the partner, officer or employee of the Insured.
- Underlying coverage available to the Insured or to the partner, officer or employee of the Insured includes any motor vehicle liability insurance that is required to respond to the liability of the driver or lessee of the leased automobile.

The terms leased, lease and lessee are used as equivalent to rented, rent and renter.

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

All other terms and conditions of the policy remain unchanged.

CGL 07 05 51-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:



# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

**S.E.F. No. 94**  
**Legal Liability For Damage To Hired Automobiles Endorsement**  
(for attachment only to a Non-Owned Policy S.P.F. No. 6)

In consideration of the premium herein stated, it is understood and agreed that the policy to which this endorsement is attached is extended, subject always to the condition that the Insurer shall be liable under the subsection or subsections of the Insuring Agreement hereof for which a premium is stated and no other.

## SECTION B – LEGAL LIABILITY FOR DAMAGE TO HIRED AUTOMOBILES

The Insurer agrees to indemnify the Insured against the liability imposed by law upon the Insured or assumed by him under any contract or agreement for loss or damage arising from the care, custody or control of "Hired Automobiles" as defined in such policy and resulting from loss or damage thereto, caused solely by:

**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 shall be deemed to include (a) a vehicle to which the 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 for which insurance is provided under this subsection 3.

**Subsection 4 – SPECIFIED PERILS – caused by fire, lightning, theft or attempt thereof, 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 is being transported on land or water.**

## DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under any subsection hereof except loss or damage caused by fire or lightning or theft of the entire 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 of the deductible, if any, stated in the applicable subsection thereof.

## TWO OR MORE AUTOMOBILES

A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be separate automobiles with respect to the limit of liability, including the deductible provision, if any, under this Insuring Agreement.

## EXCLUSIONS

The Insurer shall not be liable

- (1) for loss or damage to any automobile while personally driven by the Insured if the Insured is an individual or
- (2) under any subsection hereof for loss or damage
  - (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of an 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) to any automobile while being used without the consent of the owner thereof; or
  - (c) caused directly or indirectly by contamination by radioactive material; or
  - (d) to radios designed both for transmitting and receiving or their equipment; or

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

**This endorsement changes the policy.  
Please read it carefully.**

- (e) to contents of trailers or to rugs or robes; or
  - (f) to tapes and equipment for use with a tape recorder when detached therefrom; or
  - (g) caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by the operation of armed forces while engaged in hostilities whether war be declared or not; or
  - (h) for any amount in excess of the limit stated in the applicable subsection hereof and expenditures provided for in the Additional Agreements of the policy to which this endorsement is attached; or
- (3) under subsections 3 (Comprehensive) 4 (Specified Perils) for a collision loss or damage occurring after 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 unless the policy provides insurance under subsections 1 and 2.

### ADDITIONAL AGREEMENT

The Insurer further agrees to pay general average, salvage and fire department charges and custom duties of Canada or of the United States of America for which the Insured is legally liable.

SUBSECTION	LIMITS AND AMOUNTS		TYPE OF AUTOMOBILE	ESTIMATED COST OF HIRE	RATE PER \$100	ADVANCE PREMIUM
<b>1. All Perils</b>	\$ 50,000 \$ 1,000	(exclusive of interests and costs) any one accident. Amount of deductible	Private passenger & light commercial vehicles			
<b>2. Collision or Upset</b>	\$ \$	(exclusive of interests and costs) any one accident. Amount of deductible				
<b>3. Comprehensive</b>	\$ \$	(exclusive of interests and costs) any one accident. Amount of deductible				
<b>4. Specified Perils</b>	\$ \$	(exclusive of interests and costs) any one accident. Amount of deductible				
Minimum Retained Premium						

The advance premiums for this endorsement are subject to adjustment in the same manner as those stated under Item 5 of the application.

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

CGL 07 05 73-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## S.E.F. No. 96 Contractual Liability Endorsement

(for attachment only to a Non-owned Policy S.P.F. No. 6)

In consideration of the premium charged it is understood and agreed that exclusion (c) of the Insuring Agreement of the Policy to which this endorsement is attached is amended to read as follows:

- c) For any liability assumed by any person insured by this policy voluntarily under any contract or agreement other than those stated below:

Date(s) of contract(s): As Known to Insurer

Name(s) of other contracting party or parties:

As Known to Insurer

### ALL WRITTEN AGREEMENTS

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

CGL 07 05 74-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

### S.E.F. No. 99 Excluding Long-Term Leased Vehicle Endorsement

In consideration of the premium for which this policy is issued, it is understood and agreed that Item 3 (Hired Automobiles Defined) of General Provisions and Definitions of the policy to which this endorsement is attached is hereby amended to read as follows:

The term "Hired Automobiles" as used in this policy means (a) automobiles hired or leased from others with drivers or (b) hired or leased by the named Insured from others without driver for periods not exceeding 30 days, used under the control of the Insured in the business stated in item 3 of the application but shall not include any automobile owned in whole or in part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

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

CGL 07 05 75-3

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

This endorsement changes the policy.  
Please read it carefully.

## S.P.F. No. 6 – Standard Non-Owned Automobile Policy

**BROKER: Marsh Canada Limited**

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

<b>ITEMS</b>	<b>APPLICATION</b>
1. FULL NAME OF THE APPLICANT	
POSTAL ADDRESS (INCLUDING COUNTY OR DISTRICT)	
APPLICANT IS A(AN):	
(STATE WHETHER INDIVIDUAL, PARTNERSHIP, CORPORATION, MUNICIPALITY OR ESTATE)	

2. POLICY PERIOD FROM	<b>September 17, 2019</b>	TO	<b>September 17, 2020</b>	12.01 A.M. STANDARD TIME AT THE APPLICANT'S ADDRESS STATED HEREIN AS TO EACH OF SAID DATES
-----------------------	---------------------------	----	---------------------------	--

3. THE AUTOMOBILES IN RESPECT OF WHICH INSURANCE IS TO BE PROVIDED ARE THOSE NOT OWNED IN WHOLE OR IN PART BY, NOR LICENSED IN THE NAME OF THE APPLICANT, USED IN THE APPLICANT'S Business OF:

4. THE APPLICANT'S PARTNERS, OFFICERS, EMPLOYEES AND AGENTS AS OF THE DATE OF THIS APPLICATION ARE AS FOLLOWS:												
LOCATION	PARTNERS, OFFICERS AND EMPLOYEES WHO REGULARLY USE AUTOMOBILE NOT OWNED BY THE APPLICANT IN HIS Business						ALL OTHER PARTNERS, OFFICERS AND EMPLOYEES			ALL APPLICANT'S AGENTS		
	CLASS "A1" PRIVATE Passenger			CLASS "A2" COMMERCIAL			CLASS "B"			CLASS "C"		
	NUMBER	RATE	PREMIUM	NUMBER	RATE	PREMIUM	NUMBER	RATE	PREMIUM	NUMBER	RATE	PREMIUM
<b>COVERED</b>		\$	<b>IF</b>	<b>ANY</b>		\$	<b>TO</b>	<b>BE</b>	\$	<b>REPORT</b>	<b>ED</b>	\$

5. "HIRED AUTOMOBILES" – THE AUTOMOBILES HIRED BY THE APPLICANT ARE AS FOLLOWS:			
TYPE OF AUTOMOBILE	ESTIMATED COST OF HIRE	RATES PER \$100 OF COST OF HIRE	ADVANCE PREMIUM
<b>COVERED IF ANY</b>	<b>TO BE</b>	<b>REPORTED</b>	\$

THE ADVANCE PREMIUM IS SUBJECT TO ADJUSTMENT AT THE END OF THE POLICY PERIOD AS PROVIDED IN THE POLICY.

6. "AUTOMOBILE OPERATED UNDER CONTRACT" ON BEHALF OF THE APPLICANT ARE AS FOLLOWS:			
TYPE OF AUTOMOBILE AND DESCRIPTION OF USE	ESTIMATED CONTRACT COST	RATES PER \$100 OF CONTRACT COST	ADVANCE PREMIUM
<b>COVERED IF ANY</b>	<b>TO BE</b>	<b>REPORTED</b>	\$

THE ADVANCE PREMIUM IS SUBJECT TO ADJUSTMENT AT THE END OF THE POLICY PERIOD AS PROVIDED IN THE POLICY.

7. THIS APPLICATION IS MADE FOR INSURANCE AGAINST THE PERILS MENTIONED IN THIS ITEM AND UPON THE TERMS AND CONDITIONS OF THE INSURER'S CORRESPONDING STANDARD POLICY FORM AND FOR THE FOLLOWING SPECIFIED LIMIT.			
INSURING AGREEMENT	PERILS	LIMIT	COMBINED PREMIUMS
SECTION A THIRD PARTY LIABILITY	LEGAL LIABILITY FOR BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE APPLICANT.	<b>\$As per Policy Declarations</b>  (EXCLUSIVE OF INTEREST AND COSTS) FOR LOSS OR DAMAGE RESULTING FROM BODILY INJURY TO OR THE DEATH OF ONE OR MORE PERSONS, AND FOR LOSS OR DAMAGE TO PROPERTY, REGARDLESS OF THE NUMBER OF CLAIMS ARISING FROM ANY ONE ACCIDENT.	<b>\$As per Policy Declarations</b>

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

This endorsement changes the policy.  
Please read it carefully.

ENDORSEMENTS	SEF NO. 94 - Legal Liability for Damage to Hired Automobiles SEF NO. 96 - Contractual Liability Endorsement SEF NO. 99 - Excluding Long Term Leased Vehicle Endorsement	<b>\$As per Pol. Decis</b>
MINIMUM RETAINED PREMIUM \$		TOTAL PREMIUM <b>\$As per Pol. Decis</b>
8. HAS ANY INSURER CANCELLED, DECLINED OR REFUSED TO RENEW OR ISSUE, AUTOMOBILE INSURANCE TO THE APPLICANT WITHIN THREE YEARS PRECEDING THIS APPLICATION? IF SO, STATE NAME OF INSURER. <b>N/A</b>		
9. STATE PARTICULARS OF ALL ACCIDENTS OR CLAIMS ARISING OUT OF THE USE OR OPERATION IN HIS Business OF NON-OWNED AUTOMOBILES BY THE APPLICANT WITHIN THE THREE YEARS PRECEDING THIS APPLICATION.		
INJURY TO PERSONS		DAMAGE TO PROPERTY OF OTHERS
<b>AS KNOWN TO COMPANY</b>		<b>AS KNOWN TO COMPANY</b>
10. ALL THE STATEMENTS IN THIS APPLICATION ARE TRUE AND THE APPLICANT HEREBY APPLIES FOR A CONTRACT OF AUTOMOBILE INSURANCE TO BE BASED ON THE TRUTH OF THE SAID STATEMENTS.		
11. <b>Where, (a) an applicant for a contract gives false particulars of the described automobile to be insured to the prejudice of the Insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein; or (b) the Insured contravenes a term of the contract or commits a fraud; or (c) the Insured wilfully makes a false statement in respect of a claim under the contract, a claim by the Insured is invalid and the right of the Insured to recover indemnity is forfeited.</b>		

## INSURING AGREEMENTS

Now, therefore, in consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms condition, provisions, definitions an exclusions herein stated

### SECTION A – THIRD PARTY LIABILITY

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

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

Provided always the Insurer shall not be liable under this policy:

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

\*Not applicable in the Province of Ontario

### ADDITIONAL AGREEMENTS OF INSURER

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

- upon receipt of notice of loss or damage caused to persons or property to serve any person insured by this policy by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer; and
- to defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action which may at any time be brought against such person on account of such loss or damage to persons or property; and
- to pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limits of the Insurer's liability; and
- in case the injury be to a person, reimburse any person insured by this policy for outlay for such medical aid as may be immediately necessary at the time of such injury; and
- be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit stated in Section A of Item 7 of the application; and

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

- (6) not set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada in which the accident occurred.

## AGREEMENTS OF INSURED

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

- (a) by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the Insured arising out of the use or operation of an automobile with respect to which insurance is provided hereunder;
- (b) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this policy.

## GENERAL PROVISIONS AND DEFINITIONS

### 1. ADDITIONAL INSURED

The Insurer agrees to indemnify in the same manner and to the same extent as if named herein as the Insured, every partner, officer or employee of the Insured who, with the consent of the owner thereof, personally drives (a) in the business of the Insured stated in Item 3 of the application, any automobile not owned in whole or in part by or licensed in the name of (i) the Insured, or (ii) such additional Insured person, or (iii) any person or persons residing in the same dwelling premises as the Insured or such additional insured person, or (b) any automobile hired or leased in the name of the Insured except an automobile owned in whole or in part or licensed in the name of such additional insured person.

### 2. TERRITORY

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

### 3. HIRED AUTOMOBILES DEFINED

The term "Hired Automobiles" as used in this policy means automobiles hired or leased from others with or without drivers, used under the control of the Insured in the business stated in Item 3 of the application but shall not include any automobile owned in whole or in part by or licensed in the name of the Insured or any partner, officer or employee of the Insured.

### 4. AUTOMOBILES OPERATED UNDER CONTRACT DEFINED

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

### 5. TWO OR MORE AUTOMOBILES

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

### 6. PREMIUM ADJUSTMENT

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

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

The Advance Premiums are subject to adjustment at the end of the Policy Period when the Insured shall deliver to the Insurer a written statement of the total amounts expended for cost of hire during the Policy Period. If such amounts exceed the estimates stated in the application, the Insured shall immediately pay additional premium at the rates stated therein; if less, the Insurer shall return to the Insured the unearned premium when determined but the Insurer shall, in any event, receive or retain not less than the Minimum Retained Premium stated therein.

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

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## STATUTORY CONDITIONS

(Common Law Jurisdictions)

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

**NOTE:** *All of the Statutory Conditions contain the above wording. However, - in all of the Provinces and Territories using these standard, approved forms, only Statutory Conditions 1, 8 and 9 are made applicable to accident benefits insurance and uninsured motorist insurance where it is provided by the contract. - in the Northwest Territories the definition of "Insured Person" must be read as containing in addition the words "and includes any person to whom benefits may be payable under the accident benefits set out in the Schedule to the Insurance Ordinance."*

### 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 his 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 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.

**NOTE:** *In Prince Edward Island Statutory Condition 1, sub- conditions 2 and 3 are identical with the above quoted Statutory Conditions relating to material change in risk.*

### Prohibited Use by Insured

2. (1) The Insured shall not drive or operate the automobile,
  - (a) any change in the insurable interest of the Insured named in this contract in the automobile by sale, assignment or otherwise, except
  - (b) while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
  - (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him; or
  - (d) for any illicit or prohibited trade or transportation; or
  - (e) in any race or speed test.

### Prohibited Use by Others

- (2.) (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 sixteen years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him; or
- (b) by any person who is a member of the household of the Insured while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

**In the case of British Columbia and Saskatchewan, Statutory Condition 2 reads as follows:**

### Prohibited Use by Insured

2. (1) The Insured shall not drive or operate the Automobile
  - (a) 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
  - (b) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
  - (c) while he is under the age of 16 years or under such other age as is prescribed by the law of the Province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him; or
  - (d) for any illicit or prohibited trade or transportation; or
  - (e) in any race or speed test.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:



# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## Prohibited Use by Others

- (2.) The Insured shall not drive or operate the Automobile
- (a) by any person 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
  - (b) 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 such other age as is prescribed by the law of the Province in which he resides at the time this contract is made as being the minimum age at which a license or permit to drive an automobile may be issued to him; or
  - (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 shall,
- (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 Property 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 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 writ received by him from or on behalf of the claimant.
- (2) The Insured shall not,
- (a) voluntarily assume any liability or settle any claim except at his 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

4. (1) Where loss or damage to the automobile occurs, the Insured shall, if the loss or damage is covered by this contract,
- (a) promptly 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 his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the Insured and of all others therein, the encumbrances thereon, 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 sub-condition (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 5.

## 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 his possession or control that relate to the matters in question, and he 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.

## Repair or Replacement

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

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

## 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.

## In Case of Disagreement

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

## Inspection of Automobile

5. 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

6. (1) The Insurer shall pay the insurance money for which it is liable under the contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under sub-condition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

## When Action May Be Brought

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

## Limitation of Actions

- (3) Every action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile 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 property shall be commenced within one year next after the cause of action arose and not afterwards.

**NOTE: In Yukon Territory, Northwest Territories, Manitoba and New Brunswick, the one year limitation period in sub-condition (3) should read "2 years".**

## In the case of Nova Scotia, Newfoundland and Prince Edward Island sub-condition (3) reads as follows:

- (3) "Every action or proceeding under this contract against the Insurer in respect of a claim for indemnification for liability of the Insured for loss or damage to property of another person or for personal injury to or death of another person shall be commenced within two years after the liability of the Insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the Insurer under this contract in respect of loss or damage to the automobile shall be commenced within two years from the time the loss or damage was sustained and not afterwards."

## Who May Give Notice and Proofs of Claim

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

## Termination

8. (1) This contract may be terminated. (a) by the Insurer giving to the Insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;  
(b) by the Insured at any time on request.
- (2) Where this contract is terminated by the Insurer,  
(a) the Insurer shall refund the excess of premium actually paid by the Insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and  
(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the Insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of sub-condition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

This endorsement changes the policy.  
Please read it carefully.

**NOTE:** *In the Northwest Territories, paragraph (a) of sub-condition 1 has the following words added: "and by notifying the registrar of motor vehicles as required by the Vehicles Ordinance".*

### Notice

9. 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 him or by registered mail addressed to him at this latest post office address as notified to the Insurer. In this condition, the expression "registered" means registered in or outside Canada.

**NOTE:** *In the Northwest Territories, the reference is to Territories and in the Yukon Territory the reference is to Territory rather than the Province.*

CGL 07 05 76-5

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

## Berkley Insurance Company

---

This endorsement applies to Video Game Developers only.  
This endorsement changes the policy.  
Please read it carefully.

### Gambling Addiction Endorsement

The insurance provided by the present policy does not *apply to* or provide coverage for any **“bodily injury”**, **“property damage”**, **“personal injury”**, **“advertising liability”** or any other damage, **loss or cost** of any kind whatsoever caused by or resulting from any of the following circumstances regardless of any other occurrence, cause or event, which may have contributed concurrently or in any way to losses **resulting from**:

- (a) Any failure of any insured to bar or prohibit any casino patron or any other gambling facility from continuing to gamble;
- (b) Any allegations that a gambling patron sustained loss by reason of addiction to or otherwise being unable to terminate activity;
- (c) The failure of any insured to warn a patron of the dangers potentially arising from gambling activity; and
- (d) Any insured encouraging, by any means, a patron to engage in gambling activity.
- (e) We will not defend any claim resulting from personal injury, bodily injury, property damage, or advertising injury resulting from the above stated in (a), (b), (c) or (d).

All other terms and conditions of the Policy remain unchanged.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement applies to  
Video Game Developers only.  
This endorsement changes the policy.  
Please read it carefully.

## Intellectual Property Endorsement

(Applicable to Part II: TechConnect Custom Professional Services Liability)

In consideration of an additional premium of \_\_\_\_\_, it is hereby understood and agreed that the definition of **wrongful act respecting technology products services, SECTION IV – DEFINITIONS, Item 52.** is deleted in its entirety and replaced with the following:

52. **WRONGFUL ACT RESPECTING TECHNOLOGY PRODUCTS AND SERVICES** means any actual or alleged error, omission or negligent act, breach of duty, negligent misstatement committed by the insured solely in the conduct of the **insured's professional services**. Such wrongful act includes coverage for **intellectual property infringements** to a maximum of \_\_\_\_\_ which is included within, and not in addition to any applicable limit of liability stated in the Declarations and which is subject to a retention of \$10,000.

### DEFINITIONS

The following definition is only applicable to this endorsement:

**Intellectual Property Infringements** means infringements, errors and omissions or negligent acts, plagiarism or misappropriation of ideas under implied contract, infringement of copyright, domain name, trade dress, title or slogan, or the dilution of infringement or trademark, service mark, service name or trade name.

All other terms and conditions of the policy remain unchanged.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued:

# Berkley Insurance Company

---

This endorsement applies to  
Video Game Developers only.  
This endorsement changes the policy.  
Please read it carefully.

## *Over-Redemption and Games of Chance Exclusion*

(Applicable to Part II: TechConnect Custom Professional Services Liability)

It is hereby understood and agreed that the Policy is amended as follows:

**SECTION II – EXCLUSIONS – COMMON POLICY EXCLUSIONS** of the Policy is amended to include the following:

2. No coverage shall be available under this Policy for any **claim**:

Based upon, arising out of, or attributable to any actual or alleged lotteries, sweepstakes, contests, or games of chance, including but not limited to the **over-redemption** relating therefrom.

### **DEFINITIONS**

The following definition is only applicable to this endorsement:

**OVER-REDEMPTION** means price discounts, prizes, awards, or other valuable consideration given in excess of the total contracted or expected amount.

All other terms and conditions of the Policy remain unchanged.

---

Insured:  
Effective Date:  
Policy Number:  
Date Issued: