

# Miscellaneous Professional Liability Form (Claims Made)



Various provisions in this Form restrict coverage. Read the entire Form carefully to determine rights, duties and what is and is not covered. The word "Insured" means any person qualifying as such under SECTION III WHO IS AN INSURED. Other words and phrases that appear in quotation marks have special meaning as defined in SECTION II – DEFINITIONS.

## SECTION I – COVERAGE

In consideration of the payment of premium and in reliance upon representations made to the Insurer during the process of obtaining this insurance and subject to the Limits of Insurance shown in the "Declaration Page(s)", and all the exclusions, terms and conditions of this form, the Insurer agrees with the Insured as follows:

### 1. Insuring Agreement

- a. The Insurer will pay for those sums that the Insured becomes legally obligated to pay as "damages" because of "injury" arising out of the rendering of, or failure to render, Professional Services in the practice of the business described in the "Declaration Page(s)". The Insurer will have the right and duty to defend any "action" seeking those "damages" and to pay for the "defence costs". This right and duty is limited as described under Item 3., Defence and Settlement. But each payment the Insurer makes for "damages" will reduce the available Limits of Insurance as described in SECTION IV.

No other obligation or liability to pay sums or perform acts or services is covered except as provided under Item 3. Defence and Settlement.

- b. This insurance applies to "injury" only if:
  - (1) The "injury" takes place in the "coverage territory" and either:
    - (a) During the "policy period"; or
    - (b) Before the inception date of this insurance, but after the retroactive date, if any, shown on the "Declaration Page(s)", provided that on the inception date of this insurance the Insured did not know, and could not have reasonably foreseen, that such "injury" could give rise to a "claim".
  - (2) A "claim" is first made against any Insured in accordance with paragraph c. below, during the "policy period" and is reported to the Insurer no later than thirty (30) days after the expiration of the policy period. Such reports shall be made as described in SECTION VI, Condition 5, Duties in the Event of "Injury", "Claim" or "Action". A "claim" first made against any Insured in accordance with paragraph c. below during any Extended Reporting Period the Insurer may provide according to Item 2. shall be deemed to have been made on the last day of the "policy period".
  - (3) The "injury" (i) is by the Insured or by any person or organization for whose rendering of, or failure to render Professional Services the Insured is legally responsible, and (ii) arises out of the Professional Services shown in the "Declaration Page(s)".
- c. A "claim" will be deemed to have been made at the earlier of the following times:
  - (1) When notice of such "claim" is received by the Insurer; or
  - (2) When the Insurer receives notice that the Insured has become aware of any "injury" which may subsequently give rise to a "claim" being made against any Insured. This provision only applies when the Named Insured gives written notice to the Insurer of such circumstances, as described in SECTION VI, Condition 5. Duties in the Event of "Injury", "Claim" or "Action" no later than the end of the policy period.

All "claims" based on or arising out of "injury" to the same person, including "damages" claimed by any person or organization for care, loss of services, or death resulting at any time from the "injury", will be deemed to have been made at the time the first of those "claims" is made against any Insured.

### 2. Extended Reporting Periods

1. The Insurer will provide an automatic Extended Reporting Period, as described in Item 3. of this section, if:
  - a. This form is cancelled or not renewed for any reason, other than for non-payment of premium; or
  - b. The Insurer renews or replaces this form with insurance that:
    - (1) Provides claims made coverage for "Injury"; and
    - (2) Has a Retroactive Date later than the date shown on the "Declaration Page(s)" applicable to this form; or
  - c. The Insurer replaces this form with other insurance that applies to "injury" on other than a claims made basis.

2. If the Insurer provides an Extended Reporting Period, the following is added to paragraph 1a. of SECTION I – COVERAGE:

A claim first made during the Extended Reporting Period will be deemed to have been made on the last day of the “policy period” provided that the “claim” is for “damages” because of “injury” that occurred before the end of the “policy period” of this form. (but not before any applicable Retroactive Date).

The Extended Reporting period will not reinstate or increase the Limits of Insurance or extend the “policy period”.

3. The automatic Extended Reporting Period will be as set forth in either a. or b. below:

- a) 60 days, starting with the end of the “policy period” of this form.
- b) One year, starting with the end of the “policy period” of this form. This automatic Extended Reporting Period applies only to “claims” as a result of “injury” of which the Insurer is notified after the Retroactive date, if any, shown in the “Declaration Page(s)”, but not later than 60 days after the end of the “policy period” of this form. Notification of the “injury” must be in accordance with paragraph 5 a. of SECTION VI – CONDITIONS (Duties in The Event of “Injury”, “Claim” or “Action”).

These automatic Extended Reporting Periods apply only if no subsequent insurance the Named Insured purchases applies to the “claim”, or would apply but for the exhaustion of its applicable Limits of Insurance.

These automatic Extended Reporting Periods may not be cancelled.

The additional premium will not exceed 100% of the annual Premium for this form.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for “claims” first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

- 4. Extended Reporting Periods do not reinstate or increase the Limits of Insurance.
- 5. “Claims” that are first made and reported to the Insurer during an Extended Reporting Period will be deemed to have been made on the last day of the “policy period”.

### 3. Defence and Settlement

- a. The Insurer has the right and duty to defend “claims” or “actions” against the Insured for “damages” to which this form applies. The Insurer may make:

- (1) Such investigation of any “claim” or “action”; and
- (2) With the written consent of the Insured, such settlement within the applicable Limit of Insurance available as the Insurer thinks appropriate.

If the Insured refuses to consent to any settlement or compromise recommended by the Insurer, that is also acceptable to the claimant, the Insured shall thereafter negotiate and defend that “claim” or “action” at such Insured’s own cost and without the Insurer’s involvement. When this happens, the liability under this form for such “claim” or “action” shall not exceed the amount that the Insurer would have paid for “damages” and “defence costs” if the Insured had consented at that time.

- b. The Insurer’s right and duty to defend such “claims” or “actions” end when the Insurer has used up the applicable Limit of Insurance, as provided under SECTION IV – LIMITS OF INSURANCE. This applies both to “claims” and “actions” pending at that time and those filed thereafter.
- c. When the Insurer controls the defence of a “claim” or “action”, the Insurer will pay for the “defence costs”. If by mutual agreement or court order the Insured assumes control before the applicable Limit of Insurance available is used up, the Insurer will reimburse the Insured for reasonable “defence costs”. In either case, however, the amounts the Insurer pays for “defence costs” will not reduce the Limits of Insurance available, as provided under SECTION IV – LIMITS OF INSURANCE.
- d. As soon as practicable after the Insurer becomes aware that the Limit of Insurance is used up:
  - (1) The Insurer will notify the Insured of any outstanding “claims” and “actions” subject to that limit; and
  - (2) The Insured will then arrange to assume control of the defence of all such “claims” and “actions” against any Insured when the Insurer’s right and duty to defend them ends.
- e. The Insurer will assist the Insured in the transfer or control of the defence of “claims” and “actions” under c. and d. above. Until such arrangements are completed, the Insurer will take on behalf of any Insured those steps that the Insurer thinks appropriate:
  - (1) To avoid a default in any “claim” or “action”; or
  - (2) To the continued defence of a “claim” or “action”.

The Insured agrees that if the Insurer takes such steps:

- (1) The Insurer does not waive or give up any rights under this insurance; and
- (2) The Insured will reimburse the Insurer for any “defence costs” that arise out of such steps if the Limit of Insurance available has been used up.

## SECTION II – DEFINITIONS

1. **“Action”** means a civil proceeding in which “damages” because of an “injury” to which this insurance applies are alleged. “Action” includes:
  - a. An arbitration proceeding in which such “damages” are sought and to which the Insured must submit or submits with the Insurer’s consent; or
  - b. Any other alternative dispute resolution proceeding in which such “damages” are sought and to which the Insured submits with the Insurer’s consent.
2. **“Claim”** means any demand upon the Insured for “damages” or services alleging liability of the Insured as the result of any “injury”.
3. **“Coverage territory”** means Canada. Further, the “injury” must give rise to a “claim” or “action” instituted within Canada or the United States of America (including its territories and possessions).
4. **“Damages”** means compensatory monetary amounts the Insured is legally obligated to pay as judgments, awards and settlements to which the Insurer has agreed in writing. “Damages” include compensatory damages claimed by any person or organization for care, loss of services or death resulting at any time from the “injury”. “Damages” does not include:
  - a. Civil, criminal, administrative or other fines or penalties;
  - b. Any portion of a judgment or award that represents a multiple of the compensatory amounts;
  - c. The restitution of consideration or expense paid to any Insured for services or goods;
  - d. Equitable relief; injunctive relief; declarative relief or any other relief or recovery other than monetary amounts; or
  - e. Judgments or awards from acts deemed uninsurable by law.
5. **“Data”** means representations of information or concepts in any form.
6. **“Declaration Page(s)”** means the Declarations Page(s) applicable to this Form.
7. **“Defence costs”** means payments allocated to a specific “claim” or “action” for its investigation, settlement, or defence, including:
  - a. Counsel fees and all other litigation expenses;
  - b. The cost of bonds to release attachments, but only for bond amounts within the applicable Limits of Insurance. The Insurer does not have to furnish these bonds;
  - c. Costs taxed against the Insured in the “action”; and
  - d. “Pre-judgment interest” awarded against the Insured on that part of any judgment covered under this form. If the Insurer offers the applicable Limits of Insurance in settlement of a “claim” or “action”, the Insurer will not pay any “pre-judgment interest” imposed or earned after the date of such offer.
  - e. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Insurer has paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of SECTION IV – LIMITS OF INSURANCE.

“Defence costs” do not include:

  - a. Salaries and expenses of the Insurer’s employees or the Named Insured’s employees other than that portion of the Insurer’s employed counsel’s fees, salaries and expenses allocated to a specific “claim” or “action”; or
  - b. Fees and expenses of independent adjusters the Insurer hires.
8. **“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.
9. **“Injury”** means bodily injury, sickness, or disease sustained by a natural person. This includes death, shock, fright, mental anguish, mental injury, or disability which results from any of these at any time.
10. **“Policy Period”** means the period shown in the “Declaration Page(s)” plus the Extended Reporting Period, if applicable.
11. **“Pre-judgment interest”** means interest added to a settlement, verdict, award or judgment based on the amount of time prior to the settlement, verdict, award or judgment whether or not made part of the settlement, verdict, award or judgment.
12. **“Spores”** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any “fungi”.
13. **“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.

### SECTION III – WHO IS AN INSURED

1. If the Named Insured is designated in the “Declaration Page(s)” as:
  - a. An individual, the Named Insured and the Named Insured’s spouse are Insureds, but only with respect to the conduct of a business of which the Named Insured is the sole owner, not in the Named Insured’s professional capacity as a physician.
  - b. A partnership or joint venture, the Named Insured is an Insured. The Named Insured’s members, the Named Insured’s partners and their spouses are also Insureds, but only with respect to the conduct of the Named Insured’s business, not in the Named Insured’s professional capacity as a physician.
  - c. An organization other than a partnership or joint venture, the Named Insured is an Insured. The Named Insured’s executive officers and directors are insureds, but only with respect to their duties as your officers or directors. The Named Insured’s stockholders are also insureds, but only with respect to their liability as stockholders.
2. Any employee of the Named Insured’s, other than the Named Insured’s executive officers or physicians, but only for acts within the scope of their employment by the Named Insured.
3. All volunteer workers, assistants and members of hospital auxiliaries, medical, or other, students, medical personnel and technicians while engaged in research for the Named Insured regardless of the source of remuneration.
4. Any heirs, executors, administrators, assignees or legal representatives of any individual insured above, in the event of his or her death, incapacity or bankruptcy, but only to the same extent as coverage would have applied directly for such individual insured.

### SECTION IV – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the “Declaration Page(s)” and the rules below fix the most the Insurer 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 Each Claim Limit is the most the Insurer will pay for the sum of all “damages” arising out of any one “claim”. Multiple “claims” arising out of or related to one act or to a series of related acts, shall be treated as one “claim” that is subject to one Each Claim Limit.
3. Subject to 2. above, the Aggregate Limit is the most the Insurer will pay for the sum of all “damages” under this form.
4. The limits of this form 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” shown in the “Declaration Page(s)”, 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.

### SECTION V – EXCLUSIONS

This insurance does not apply to any “claim”:

- a. Arising out of “injury”, expected or intended from the standpoint of the Insured.
- b. Nor shall the Insurer have any duty to defend, any “claims” or “actions” made against any Insured directly or indirectly arising out of, or on account of, resulting from, or relating to any actual or threatened “Abuse”.

“Abuse” means, but is not limited to, sexual, physical, mental, psychological or emotional abuse or molestation, sexual harassment, sexual assault, assault or battery.
- c. Arising out of “injury” caused by the Named Insured or, with the knowledge of the Named Insured, by any of his or her employees, or in the commission of any criminal act, in the violation of any law or ordinance, or while under the influence of hypnotics, narcotics or intoxicants;
- d. Arising out of the alleged or actual breach of an agreement, contract, guarantee or warranty, including any contract or agreement in which the Insured has agreed to assume the liability of another. This exclusion does not apply to liability for “damages” that the Insured would have in the absence of the contract or agreement.
- e. Arising out of liability imposed on the Insured or the Insured’s Insurer under any workers compensation, unemployment compensation or disability benefits law or any similar law.
- f. “Injury” due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.
- g.
  1. “Injury” arising out of the ownership, use or operation by or on behalf of any Insured of:
    - a) Any “automobile”;
    - b) Any motorized snow vehicle or its trailers;
    - c) 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; or

- d) Any vehicle which if it were to be insured would be required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such contract, but this exclusion does not apply to 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;
- 2. "Injury" with respect to which any motor vehicle liability policy is in effect or would be in effect but for its termination upon exhaustion of its limits of liability or is required by law to be in effect.
- h. (1) Which arises out of or would not have occurred in whole or in part but for the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" at any time.
- (2) For 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, decontaminate, stabilize, remediate or neutralize, or in any way respond to or assess the effects of "pollutants";
  - (b) "Claim" or "action" by or on behalf of a governmental authority 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 "pollutants".

"Pollutants" means 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.
- i. Arising out of:
  - 1. Liability imposed by or arising under any nuclear liability act, law or statute, or any law amendatory thereof;
  - 2. "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. "Injury" 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 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.

As used in this form:

- 1. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- 2. The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and the 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 of or application of atomic energy;
- 3. The term "nuclear liability" 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 utilizing spent fuel, or (iii) handling, 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 any 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.
- 4. The term "fissionable substance" means any substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- j. Arising out of any circumstances or occurrence known to the Insured prior to the inception date of this Form.
- k. for:
  - (1) erasure, destruction, corruption, misappropriation, misinterpretation of "data"; or
  - (2) erroneously creating, amending, entering, deleting or using "data"; and any loss of use arising therefrom.

- l. arising out of the distribution or display of "data", by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "data".
- m. 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 "claim".
- n.
  - (1) 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";
  - (2) for any supervision, instructions, recommendation, warnings, or advice given or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of, "fungi" or "spores"; or
  - (3) for any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the "claim", damage or activity referred to in (1). or (2). above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the "claim", damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the "claim", damage, expenses or costs.
- o. for liability, whether actual or alleged, in respect of any loss or losses, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving 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 "claim", loss, damage, cost or expense.

## SECTION VI – CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Insured of their obligations under this form.

### 2. Canadian Currency Clause

All Limits of Insurance, premiums and other amounts as expressed in this form are in Canadian currency.

### 3. Cancellation

- a. The first Named Insured shown in the "Declaration Page(s)" may cancel this form 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:
  - (1) Fifteen (15) days before the effective date of cancellation when cancelling for non-payment of premium; or
  - (2) Thirty (30) days before the effective date of cancellation when cancelling for any other reason.

Except in Quebec, if notice is mailed, cancellation 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 cancellation. Proof of mailing will be sufficient proof of notice.

In Quebec, cancellation 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 cancellation.

- c. The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.
- d. The "policy period" will end on the date cancellation takes effect.
- e. If this insurance is cancelled, the Insurer will send the first Named Insured any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Insurer has not made or offered a refund.

### 4. Changes

This form contains all the agreements between the Named Insured and the Insurer concerning the insurance afforded. The first Named Insured shown in the "Declaration Page(s)" is authorized to make changes in the terms of this form with the Insurer's consent. This form's terms can be amended or waived only by endorsement issued by the Insurer, and made part of this form.

### 5. Duties In The Event Of "Injury", "Claim" Or "Action"

- a. The Named Insured must see to it that the Insurer is promptly notified of any "injury" which may result in a claim. The date this is reported to the Insurer may be deemed to be the date any actual resulting "claim" is first made as described in item 1.c. of the Insuring Agreements. To qualify under that provision, notice must include:
  - (1) How, when and where the "injury" took place;
  - (2) The names and addresses of any injured persons or organizations and any witnesses; and
  - (3) The nature of any "damages" that may result.

Notice of an "injury" is not notice of a "claim".

- b. If a "claim" is received by any Insured the Named Insured must:
  - (1) Immediately record the specifics of the "claim" and the date received; and
  - (2) Notify the Insurer promptly.

The Named Insured must see to it that the Insurer receives written notice of the "claim" as soon as practicable.

- c. The Named Insured and any other involved Insured must:
  - (1) Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the "claim" or an "action";
  - (2) Authorize the Insurer to obtain records and other information;
  - (3) Cooperate with the Insurer in the investigation, settlement or defence of the "claim" or "action"; and
  - (4) Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the Insured because of "damages" to which this insurance may also apply.
- d. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without the written consent of the Insurer.

#### **6. Examination of the Named Insured's Books and Records**

The Insurer may examine and audit the Named Insured's books and records as they relate to this insurance at any time during the "policy period" and up to three years afterward.

#### **7. Legal Action Against the Insurer**

No person or organization has a right under this form:

- a. To join the Insurer as a party or otherwise bring the Insurer into an "action" asking for "damages" from an Insured; or
- b. To sue the Insurer under this form unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgment against an Insured obtained after an actual trial; but the Insurer will not be liable for "damages" that are not payable under the terms of this form or that are in excess of the applicable Limits of Insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the Insured and the claimant or the claimant's legal representative. Every "action" or proceeding against the Insurer shall be commenced within one year next after the date of such judgment or agreed settlement and not afterwards. If this form is governed by the law of Quebec every "action" or proceeding against the Insurer shall be commenced within three years from the time the right of "action" arises.

#### **8. Other Insurance**

If other valid and collectible insurance is available to the Insured for "damages" the Insurer covers under this form, the Insurer's obligations under this form are limited as follows:

- a. As this insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this form's Limits of Insurance, the Insurer will pay only their share of the amount of "damages", if any, that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.
- b. The Insurer will have no duty under this form to defend any "claim" or "action" that any other Insurer has a duty to defend. If no other Insurer defends, the Insurer may undertake to do so, but the Insurer will be entitled to the Insured's rights against all other Insurers.

#### **9. Premium Audit**

- a. The Insurer will compute all premiums for this form in accordance with the Insurer's rules and rates.
- b. Premium shown on the "Declaration Page(s)" applicable to this form as advance premium is a deposit premium only. At the close of each audit period, the Insurer 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, the Insurer will return the excess to the first Named Insured, but not if such audit premium is less than the Minimum Premium shown in the "Declaration Page(s)".
- c. The first Named Insured must keep records of the information the Insurer needs for premium computation, and send the Insurer copies at such times as the Insurer may request.

#### **10. Premiums**

The first Named Insured shown in the "Declaration Page(s)":

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

## 11. Representations

By accepting this form, the Named Insured agrees that:

- a. The information shown on the "Declaration Page(s)" is accurate and complete;
- b. The information is based upon representations the Named Insured makes to the Insurer in the Named Insured's application(s) for this form and such application will be deemed to be a part of this form as if it had been physically attached;
- c. The Insurer has issued this form in reliance upon the Named Insured's representations; and
- d. Except as otherwise provided in this form or by law, this form is void in any case of fraud or if the Named Insured intentionally conceals or misrepresents any material facts concerning this form, in the Named Insured 's application for this form or otherwise.

## 12. Separation of Insureds, Cross Liability

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned 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. Sole Agent

The first Named Insured shown on the "Declaration Page(s)" is authorized to act on behalf of all Insureds with respect to giving or receiving notice of cancellation or non-renewal, receiving refunds, requesting "claim" information, requesting any Extended Reporting Period and agreeing to any changes in this form.

## 14. Transfer Of Rights Of Recovery Against Others To the Insurer

If the Insured has rights to recover all or part of any payments the Insurer has made under this form, those rights are transferred to the Insurer. The Insured must do nothing before or after an "injury" to impair them. At the Insurer's request, the Insured will bring an "action" or transfer those rights to the Insurer and help the Insurer enforce them.

## 15. Transfer of the Named Insured's Rights and Duties Under This Form

The Named Insured's rights and duties under this form may not be transferred without the Insurer's written consent except in the case of death of an individual Named Insured.

## IMPORTANT

The notice below applies to insurance contracts containing non-automobile legal liability coverages in provinces where statistical data relating to such contracts must be reported to the Superintendent of Insurance.

### NOTICE TO INSUREDS pursuant to the

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987.  
LEGAL AUTHORITY FOR COLLECTION.  
Insurance Act, R.S.O., 1990, c.1.8, section 101(1)

### PRINCIPAL PURPOSE FOR WHICH PERSONAL INFORMATION IS INTENDED TO BE USED:

Information collected by Insurers from Insureds or supplied to insurers pertaining to the attached document will be used:

- to compile aggregate statistical data to be used in monitoring trends in the insurance industry;
- to develop statistical exhibits to be used in monitoring the insurance industry;
- to respond to requests for customized statistical information on the insurance industry;
- to respond to inquiries on statistical information made to the Office of the Superintendent of Insurance; and
- to use and disclose such information for purposes which are consistent with the previous clauses.

### THE PUBLIC OFFICIAL WHO CAN ANSWER QUESTIONS ABOUT THE COLLECTION IS:

Novex Insurance Company  
Privacy Officer  
700 University Avenue, Suite 1500  
Toronto, Ontario  
M5G 0A1

OR

Provincial Regulator or Superintendent of Insurance in your Province.