



# BUSINESS UMBRELLA INSURANCE

## AGREEMENT

We provide **Business** Umbrella Insurance and those added coverages described in this policy during the policy period in return for payment of the premium when due. This agreement is subject to all the **terms** of this policy. The complete **Business** Umbrella Insurance consists of the Declarations Page, this Agreement, and other endorsements which may be added, including required state endorsements. This coverage is applicable only to **occurrences** and/or **offenses** occurring during the policy period. There is no coverage for any injury and/or damage resulting from an **occurrence** and/or **offense** in progress and/or discovered prior to the inception of this policy.

This **Business** Umbrella Insurance form may not be used with any claims-made **underlying policy**.

It is important that **you** read each part of this policy carefully to understand the coverages provided; **your** policy obligations and **our** policy obligations. Each coverage part is subject to all **terms** relating to that coverage. The Table of Contents that follows shows how each coverage part is organized and it will help **you** locate the various policy sections.

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#### A. DEFINITIONS-these definitions apply to this policy.

We define certain words which appear throughout the policy text in **bold/italic** face type. They do not necessarily imply that coverage is provided under **your** policy. The definitions help **you** understand the coverage which is described elsewhere in the policy.

1. The words **you** and **your** refer to the person or entity named in the Declarations, and the words **we**, **us** and **our** refer to the insurance company named in the Declarations.
2. **Advertising Injury** means injury, other than **bodily injury**, arising out of an **offense** committed during the policy period occurring in the course of the **named insured's business** advertising activities. The **advertising injury** must occur from libel, slander, defamation, violation of the right of privacy, misappropriation of advertising ideas or style of doing **business** or infringement of copyright, title or slogan.
3. **Automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any machinery or apparatus attached to the **covered automobile**. **Automobile** DOES NOT INCLUDE **mobile equipment**.
4. **Automobile Hazard** means liability resulting from the ownership, maintenance, use or entrustment of a **covered automobile**. Use includes loading or unloading of a **covered automobile**.
5. **Bodily Injury** means **bodily injury**, sickness and/or disease sustained by any person occurring during the policy period, including death resulting from the **bodily injury**, sickness and/or disease.
6. **Business** means a full or part time trade, profession, or other occupation including the rental of property but not including farming.
7. **Corridor Deductible** means that designated amount that **you** must pay that exceeds the **underlying insurance** limit and precedes the application of the umbrella liability insurance coverage limits.

8. **Coverage Territory** means that we are obliged to defend any covered third party action in any jurisdiction in the world except:
- a. any action filed in those jurisdictions which are subject to trade, embargo or other economic sanctions imposed by the United States.
    - 1) In the event that a third party action is initiated in such prohibited jurisdiction or **we** are precluded from defending the **insured**, **we** will pay reasonable and necessary defense costs incurred by the **insured** in defending against those third party actions.
    - 2) **We** will pay the expenses or proceeds in U.S. currency at the appropriate exchange rate at the time that the costs are incurred.
  - b. With respect to a **covered automobile**, **we** will defend **suits** filed only within the United States, including its territories and possessions, Puerto Rico and Canada.
  - c. Any **suit** between an **insured** and **us**, may only be lodged in the United States, including its territories and possessions, Puerto Rico or Canada.

The **insured** is obligated to maintain any coverage mandated by law or regulatory authority during the pendency of this policy. The diminution of aggregate limits by payment is acknowledged, however, if there is a failure to maintain the mandated coverages, this coverage will apply as if the mandated coverage was in full effect.

9. **Covered Automobile** means those **automobiles** shown in the **underlying insurance**.
10. **Employee** includes leased **employees** but does not include temporary **employees**. Leased **employees** means those employees secured by contract or agreement with a labor contractor or similar source. Temporary **employees** means those **employees** hired as substitutes during absences or leaves of regular **employees**.
11. **Impaired property** means tangible property (other than **your product** or **your work**):
- a. whose usefulness has been decreased:
    - 1) because it includes **your product** or **your work** that is, or is thought to be, defective, deficient or dangerous; or
    - 2) because **you** failed to comply with the **terms** of a contract or agreement; and
  - b. whose usefulness can be restored:
    - 1) by the repair, replacement, adjustment or removal of **your product** or **your work**; or
    - 2) by **your** compliance with the **terms** of the contract.
12. **Insured** includes all **insureds** in the **underlying insurance** and it means that each of the following is also an **insured** under the conditions and limitations set forth below:
- a. if the **named insured** is an individual, both the individual and his/her spouse are **insureds** but only with respect to the conduct of a **business** of which he/she is the sole proprietor.
  - b. if the **named insured** is a partnership or joint venture, any partner or member and their spouse is an **insured** but only with respect to the conduct of the **business**.
  - c. if the **named insured** is an organization, the executive officers, members of the board of trustees, directors, and governors are **insureds** while acting within the scope of their duties as officers and directors. Stockholders are also **insureds** but only with respect to their liability as stockholders.
  - d. if the **named insured** is a limited liability company, the members and managers are **insureds** while acting within the scope of their duties as members and managers.
  - e. any person (other than an **employee** of the **named insured**) or organization while acting as real estate manager for the **named insured**.
  - f. with respect to the operation, for the purpose of locomotion upon a public highway, of **mobile equipment** registered under any motor vehicle registration law:
    - 1) an **employee** of the **named insured** while operating any such equipment in the course of his/her employment; and
    - 2) any other person while operating with the permission of the **named insured** any such equipment registered in the name of the **named insured** and any other person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided that no person or organization shall be an **insured** under this paragraph f. with respect to:

    - a) **bodily injury** to any co-employee of the person driving the equipment; or
    - b) **property damage** to property owned by, rented to, in charge of or occupied by the **named insured** or the employer of any person described in subparagraph 2).
  - g. each of the following is also an **insured**:
    - 1) any person or organization having proper temporary custody of **your** property if **you** die, but only:
      - a) with respect to liability arising out of the maintenance or use of that property; and
      - b) until **your** legal representative has been appointed.

2) **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 Umbrella Liability Insurance.

This insurance DOES NOT APPLY to liability arising out of the conduct of any partnership, joint venture, or limited liability company of which the **insured** is a partner or member and which is not designated in this policy as a **named insured**.

h. as respects **bodily injury, property damage, personal injury** and **advertising injury** coverages under the definition of **Insured**, the following are added as an **insured**:

1) any **employee** of the **named insured** while acting within the scope of his/her duties, BUT the insurance afforded to such **employee** DOES NOT APPLY:

- a) to **bodily injury** or **personal injury** to another **employee** of the **named insured** arising out of or in the course of his/her employment;
- b) to **bodily injury** or **personal injury** arising out of his/her providing or failing to provide professional health care services;
- c) to **personal injury** or **advertising injury** to the **named insured** or, if the **named insured** is a partnership or joint venture, any partner or member or the spouse of any partner or member.

This insurance DOES NOT APPLY to **bodily injury** or **property damage** arising out of the conduct of any current or past partnership or joint venture of which the **insured** is a partner or member and which is not designated in this policy as a **named insured**.

i. **Automatic Coverage-Newly Acquired Organizations (90 days).**

The word **insured** shall include as **named insured** any organization which is acquired or formed by the **named insured** and over which the **named insured** maintains ownership or majority interest, other than a joint venture, provided this insurance DOES NOT APPLY to **bodily injury, property damage, personal injury** or **advertising injury** with respect to which such new organization under this policy is also an **insured** under any other similar liability or indemnity policy or would be an **insured** under any such policy BUT for exhaustion of its limits of liability. The insurance afforded **you** shall terminate 90 days from the date any such organization is acquired or formed or at the end of the policy period, whichever is earlier.

**Business** umbrella insurance coverage does not apply to **bodily injury** or **property damage** that occurred before **you** acquired or formed the new organization nor does it apply to **personal injury** or **advertising injury** arising out of an **offense** committed before **you** acquired or formed the new organization.

13. With respect to the definition of **insured** for liability arising out of the ownership, maintenance, or use of a **covered automobile**:

a. **You** are an **insured**.

b. Any permissive user of a **covered automobile** **you** own, hire, or borrow is also an **insured** except:

- 1) The owner or any other lender from whom **you** hire or borrow a **covered automobile**. However, this exception is not applicable if the **covered automobile** is a trailer or semi-trailer connected to a **covered automobile** **you** own.
- 2) **Your employee** if the **covered automobile** is owned by that **employee** or a member of his/her household.
- 3) Anyone using a **covered automobile** while he/she is working in a **business** that sells, services, repairs, parks or stores **automobiles** unless that **business** is **yours**.
- 4) Anyone other than **your employees**, partners (if **your business** is a partnership), members (if **your business** is a limited liability company), or a lessee or borrower, or any of their **employees**, while moving property to or from a **covered automobile**.
- 5) A partner (if **your business** is a partnership) or a member (if **your business** is a limited liability company) for a **covered automobile** owned by him or her or a member of his or her household.
- 6) **Your employees** with respect to **bodily injury** to any fellow **employee** arising out of and in the course of the fellow **employee's** employment or while performing duties related to the conduct of **your business**.

c. Anyone liable for the conduct of an **insured** described above is also an **insured**, but only to the extent of that vicarious liability.

14. With respect to the definition of **insured** for liability arising out of the ownership, maintenance, or use of a covered aircraft or watercraft:

a. anyone using an aircraft or watercraft chartered with crew by **you** or on **your** behalf or anyone legally responsible for its use except:

- 1) the owner or crew of the aircraft or watercraft;
- 2) any manufacturer of the aircraft or watercraft and any of its parts, or any of their **employees**;
- 3) any sales, service or repair company or person or any of their **employees**; and
- 4) any airport, hangar operator or servicing, storing or docking operation or any of their **employees**.

15. With respect to the definition of *insured*, any additional *insured* covered by an *underlying insurance* policy will automatically be an *insured* under this insurance.

If *we* are contractually obliged to provide coverage to an additional *insured*, the maximum *we* pay on behalf of an additional *insured* is the amount of insurance required by the contract, minus any amounts recoverable from the *underlying insurance*.

Coverage for additional *insureds* provided by this umbrella liability insurance shall not be broader than coverage provided by the *underlying insurance*.

16. **Insured Contract** means any written:

- a. leases of premises;
- b. easement agreements, except those concerning construction or demolition operations abutting railroad property;
- c. obligation to insure a municipality required by law or ordinance, except in connection with *work* for the municipality;
- d. sidetrack agreements;
- e. elevator maintenance agreements;
- f. easements or license agreements in connection with vehicle or pedestrian private railroad crossings at grade;
- g. that part of any other contract or agreement pertaining to *your business* under which *you* assume the tort liability of another to pay damages because of *bodily injury* and/or *property damage* to a third person or organization. That contract or agreement must be made prior to the *bodily injury* and/or *property damage* and *your* tort liability must result from *your* negligence. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An *insured contract* does not include that part of any contract or agreement:

- a. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - 1) preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, specifications and other related services; or
  - 2) giving directions or instructions, or failing to give them, if that is a cause of the injury or damage;
- b. under which the *insured*, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the *insured's* rendering or failing to render *professional services*, including those listed in a. above and supervisory, inspection or engineering services; or
- c. that indemnifies any person or organization for damage by fire to premises rented or loaned to *you*.

Paragraphs f. and g. above do not apply to that part of any contract or agreement:

- a. that relates to the lease, rental or loan of an *automobile* to *you* or any of *your employees*, if the *automobile* is leased, rented or loaned with a driver;
- b. that holds a person and/or organization engaged in the *business* of transporting property by *automobile* for hire harmless for *your* use of a *covered automobile* over a route or territory that person or organization is authorized to serve by public authority; or
- c. that indemnifies a railroad for *bodily injury* or *property damage* arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge, tracks, road-beds, trestle, underpass, crossing or tunnel.

17. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. vehicles maintained for use solely on or next to premises *you* own or rent;
- c. vehicles that travel on crawler treads;
- d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) power cranes, shovels, loaders, diggers or drills; or
  - 2) road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. vehicles not described in a., b., c., or d. above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) cherry pickers and similar devices used to raise or lower workers;
- f. vehicles not described in a., b., c., d., or e. above, maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered *automobiles*:

- 1) equipment designed primarily for:

- a) snow removal;
  - b) road maintenance, but not construction or resurfacing; or
  - c) street cleaning;
- 2) cherry pickers and similar devices mounted on **automobile** or truck chassis and used to raise or lower workers; and
- 3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
18. **Named Insured** means the person or entity named in the Declarations.
19. **Named Insured's Products** means **business** personal property or products manufactured, sold, handled, distributed or disposed of by the **named insured**, or by others trading under his/her name, or a person or organization whose **business** or assets **you** have acquired.
- Products includes:
- a. warranties or representations made at any time with respect to the fitness, quality, durability, or performance of the **named insured's products**;
  - b. provision of or failure to provide warnings, instructions or other sales support information; and
  - c. containers (other than vehicles), materials, parts or equipment furnished in connection with such **business** personal property or products.
- Products does not include:
- a. vending machines;
  - b. property that is rented to or placed for the use of others, but not sold; or
  - c. real property.
20. **Occurrence** means an accident including continuous or repeated exposure to substantially similar conditions.
21. **Offense** means any of those listed **offenses** shown in the **advertising injury** and/or **personal injury** definitions in this umbrella liability insurance form.
22. **Personal Injury** means injury, other than **bodily injury**, arising out of one or more of the following **offenses** committed in the conduct of **your business**, occurring during the policy period:
- a. false arrest, detention, false imprisonment, or malicious prosecution;
  - b. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupied; or
  - c. a publication or utterance which:
    - 1) libels or slanders a person or organization or disparages a person's or organization's goods, **products** or services;
    - 2) is in violation of an individual's right of privacy;
23. **Pollution** means:
- a. **bodily injury** and/or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
    - 1) at or from premises owned, rented, loaned or occupied by the **named insured**;
    - 2) at or from any site or location used by or for the **named insured** or others for the handling, storage, disposal, processing or treatment of **waste**;
    - 3) which are at any time transported, handled, stored, treated, disposed of, or processed as **waste** by or for the **named insured** or any person or organization for whom the **named insured** may be legally responsible; or
    - 4) at or from any site or location on which the **named insured** or any contractors or subcontractors working directly or indirectly on behalf of the **named insured** are performing operations:
      - (a) if the pollutants are brought on or to **your** site or location in connection with such operations; or
      - (b) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
- For the purpose of this definition, a pollutant means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **waste**. **Waste** includes materials to be recycled, reconditioned or reclaimed.
- b. With respect to **business automobile** coverage, **bodily injury** and/or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; including:
    - 1) any cost from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants that:
      - (a) are being transported, towed, handled or moved to or from the **covered automobile**;
      - (b) are otherwise in the course of transit by or on behalf of the **insured**; or
      - (c) are being stored, disposed of, treated or processed in or on the **covered automobile**.

- 2) any cost before the pollutants are moved from the place where they are accepted by the *insured* for movement in or upon the *covered automobile*; or
- 3) any cost after the pollutants are removed from the *covered automobile* to the place where they are finally delivered, disposed of or abandoned by the *insured*.

Part 1) of the paragraph above does not apply to fuels, lubricants, fluids, emissions or similar pollutants that are consumed in or produced by the normal functioning of the *covered automobile* or its parts, if:

- (a) the pollutants escape or are discharged, dispersed or released directly from an *automobile* part designed by its manufacturer to hold, store, receive or dispose of such pollutants; and
- (b) the *bodily injury*, *property damage* or covered *pollution* costs do not arise out of the use or operation of any equipment or vehicles listed in the definition of *mobile equipment*.

Parts 2) and 3) of the first paragraph of the *pollution* definition do not apply to accidents occurring away from the premises owned by or rented to an *insured* with respect to pollutants not in or upon a *covered automobile* if:

- 1) the pollutants, or any property containing them, are upset, overturned or damaged as a result of the maintenance or use of the *covered automobile*; and
- 2) the discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.

For the purpose of this provision, pollutant means any solid, liquid, gaseous, or thermal irritant or contaminant. Pollutants include smoke, vapor, soot, fumes, acids, alkalis, chemicals and *waste*. *Waste* includes materials to be recycled, reconditioned or reclaimed.

**24. Products/Completed Operations Hazard.**

- a. Products hazard means *bodily injury* and/or *property damage* occurring away from premises *you* own or rent and arising out of *your product* after physical possession of it has been relinquished to others.
- b. Completed operations hazard means *bodily injury* and/or *property damage* arising out of *your work*. *Your work* does not include incomplete or abandoned *work*.

*Your work* is completed at the earliest of the following times:

- 1) when all *work* specified in *your* contract has been done;
- 2) when all *work* to be done at a job site has been completed if *your* contract includes *work* at more than one site; or
- 3) when *your work* at a job site has been put to its intended use by someone other than another contractor or subcontractor working on the same job site.

*Work* which requires further service, maintenance, correction, repair or replacement because of a defect or deficiency, but which is otherwise complete, shall be considered completed.

- c. Neither the products hazard nor completed operations hazard includes *bodily injury* and/or *property damage* arising out of:
  - 1) the transport of property, aboard a vehicle not owned or operated by *you*, unless injury or damage occurs from a condition that was created by *your* loading or unloading of the vehicle;
  - 2) the presence of tools, uninstalled equipment, abandoned or unused materials; or
  - 3) products or *work* for which the classification on the Declarations/schedule states "including Products/Completed Operations".

**25. Professional Service** means:

- a. the rendering or failure to render:
  - 1) any *professional service* including but not limited to any cosmetic, body piercing, tonsorial, massage therapy, physical therapy, podiatry, hearing aid, optical or optometrical services or treatments; or
  - 2) any service or treatment conducive to health or of a professional nature including but not limited to the furnishing or dispensing of drugs, medical, dental, veterinarian or surgical supplies and services or the handling or performing of autopsies or necropsies.

**26. Property Damage** means:

- a. physical injury to tangible property occurring during the policy period, including the loss of use resulting from such physical injury;
- b. loss of use of tangible property which has not been physically injured provided such loss of use is caused by a covered *occurrence* during the policy period;
- c. *property damage*, but it does not include loss or damage to intangible electronic data stored or used in an electronic format in the random access memory (RAM) of a computer or computer system including storage media such as floppy discs, hard drives, CD-Rom discs and similar electronic storage devices; or
- d. with respect to *business automobile* coverage when provided by *underlying insurance*, *property damage* also includes *pollution* costs or expense as shown in the *pollution* definition above.

27. **Retained Limit** means those limits of **underlying insurance** shown on the declarations, supplemental declarations, forms or endorsements or the amount of **your self-insured retention** or deductible, as is applicable.
28. **Self-insured retention** means that amount shown on the declarations, supplemental declarations, forms or endorsements that **you** are obliged to pay before this insurance becomes applicable. The **self-insured retention** applies only to **occurrences** or **offenses** not covered by the **underlying insurance**.
29. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage, personal injury** and/or **advertising injury** to which this insurance applies are alleged. **Suit** includes an arbitration proceeding alleging such damages to which **you** must submit or submit with **our** consent. However, **suit** does not mean that **we** shall have the duty to respond to any process designating **you** as a potentially responsible party (PRP) in connection with any **pollution** matter.
30. **Terms** as used in this policy means provisions, limitations, exclusions, definitions and conditions of **your** policy.
31. **Ultimate net loss** means the total sum, less reductions for recoveries, salvage, **retained limits** and/or **corridor deductibles you** are obligated to pay by reason of settlement, judgments or other dispute resolution method entered into with **our** consent or the **underlying insurer's** consent.
32. **Underlying insurance** means those policies of insurance listed in the declarations, supplemental declarations, forms or endorsements on the **underlying insurance** schedule.
33. **Underlying insurer** means any insurer who provides any policy of insurance listed in the declarations, supplemental declarations, forms or endorsements on the **underlying insurance** schedule.
34. **"X" Explosion** means damage to property described on the declarations, supplemental declarations, forms or endorsements on the **underlying insurance** schedule resulting from **explosion** or blast EXCEPT **property damage**:
  - a) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment; or
  - b) arising out of operations performed for the **named insured** by independent contractors;
  - c) included within the **completed operations hazard** or the **underground property damage hazard**; or
  - d) for which liability is assumed by the **insured** under an **insured contract**.
35. **"C" Collapse** means the **collapse** of or structural injury to a building or structure due to:
  - a) grading of land, excavating, burrowing, filling, back-filling, tunneling, pile driving, cofferdam **work** or caisson **work**; or
  - b) moving, shoring, under-pinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support.

The **collapse hazard** DOES NOT INCLUDE **property damage**:

  - a) arising out of operations performed for the **named insured** by independent contractors;
  - b) included within the completed operations hazard or the **underground property damage hazard**; or
  - c) for which liability is assumed by the **insured** under an **insured contract**.
36. **"U" Underground property damage** means **property damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and an apparatus in connection with them, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling or pile driving. The **underground property damage hazard** DOES NOT INCLUDE **property damage**:
  - a) arising out of operations performed for the **named insured** by independent contractors;
  - b) included within the completed operations hazard; or
  - c) for which liability is assumed by the **insured** under an **insured contract**.
37. **Your Work** means:
  - a. **work** or operations performed by **you** or on **your** behalf;
  - b. materials, parts and equipment **you** supply for such **work** or operations;
  - c. written warranties or representations made at any time regarding quality, fitness, durability or performance of any of the foregoing ; and
  - d. the provision of or failure to provide instructions and/or warnings.

## B. PRINCIPAL COVERAGES

**Bodily Injury** and/or **Property Damage** Liability (Coverages L and N)

**We** will pay on behalf of the **insured** the **ultimate net loss** in excess of the **retained limit** because of **bodily injury** and/or **property damage** caused by an **occurrence** during the policy period and within the applicable **coverage territory**. **We** will have the right and duty to defend the **insured** against any **suit** seeking those damages when the **underlying insurance** does not provide coverage or it has been exhausted. **We** will have the right and duty to defend even if any of the allegations of the **suit** are groundless, false or fraudulent, provided the **suit** originates from **bodily**

*injury* and/or *property damage* not otherwise excluded. When *we* have no duty to defend, *we* reserve the right to defend or to participate in the defense of the *insured* against any other *suit* seeking damages to which this insurance may apply. However, *we* will have no duty to defend the *insured* against any *suit* seeking damages to which this insurance does not apply. If an *underlying insurer* elects not to appeal a judgment in excess of the *underlying insurance* limit, *we* reserve the right to make an appeal and *we* are liable for all expenses that *we* incur without regard to the applicable limits of liability. *We* may make any investigation and settle any claim or *suit* that *we* decide is appropriate. The amount *we* will pay for the *ultimate net loss* is limited as described on the Declarations page. *We* are not obligated to provide a defense, after *we* have paid, either by judgment or settlement, an amount equal to *our* limit of liability.

#### **Personal Injury and/or Advertising Injury Liability (Coverage P)**

*We* will pay on behalf of the *insured* the *ultimate net loss* in excess of the *retained limit* because of *personal injury* and/or *advertising injury* caused by an *offense* during the policy period and within the applicable *coverage territory*. The *personal injury* liability coverage is limited to *offenses* arising out of the conduct of *your business*, and it excludes advertising, publishing, broadcasting or telecasting done by or for *you*. The *advertising injury* liability coverage is applicable only to *offenses* committed in the course of advertising *your* goods, products or services. *We* will have the right and duty to defend the *insured* against any *suit* seeking damages when the *underlying insurance* does not provide coverage or it has been exhausted. *We* will have the right and duty to defend even if any of the allegations of the *suit* are groundless, false or fraudulent, provided the *suit* originates from *personal injury* and/or *advertising injury* not otherwise excluded. When *we* have no duty to defend, *we* reserve the right to defend or to participate in the defense of the *insured* against any other *suit* seeking damages to which this insurance may apply. However, *we* will have no duty to defend the *insured* against any *suit* seeking damages to which this insurance does not apply. If an *underlying insurer* elects not to appeal a judgment in excess of the *underlying insurance* limit, *we* reserve the right to make an appeal and *we* are liable for all expenses that *we* incur without regard to the applicable limits of liability. *We* may make any investigation and settle any claim or *suit* that *we* decide is appropriate. The amount *we* will pay for the *ultimate net loss* is limited as described on the Declarations page. *We* are not obligated to provide a defense, after *we* have paid, either by judgment or settlement, an amount equal to *our* limit of liability.

#### **C. ORDERLY TRANSFER OF DUTIES:**

1. When *we* have paid an amount equal to the limits of liability shown, *we* will notify the first *named insured* in writing, as soon as practicable, that the applicable limit of liability has been exhausted. The notice will confirm that *our* duty to defend *suits* has terminated.
2. *We* will initiate and cooperate in the orderly transfer of control to any appropriate *insured*. *We* will take such steps as *we* deem appropriate to avoid a default in or to continue the defense of such *suits* until the transfer to a cooperating *insured* is complete. *We* will not defend any other *suits* subject to those limits of liability which have been exhausted.
3. The *insured* must take control of the *suit*, at their expense, within the agreed upon time or as soon as practicable in the absence of any agreement.
4. The first *named insured* is obliged to reimburse *our* expenses incurred in continuing the defense during the transition period referred to in 2. above. Reimbursement will be payable for all expenses *we* incur after providing the written notice referred to in 1. above.
5. The exhaustion of *our* limit of liability by payment of judgments or settlements, and the resulting termination of *our* duty to defend, will not be waived by *our* failure to comply with any of the provisions of 1. through 4. above.

#### **D. SUPPLEMENTARY PAYMENTS**

These supplementary payments are subject to the *terms* of the Principal Coverages and they do not increase the limit of liability stated for the principal coverages except: Claims and Defense Expense Coverage.

1. **Claims and Defense Expense Coverage**-*We* pay these expenses incurred in connection with a *suit* defended by *us* under the *bodily injury, property damage, personal injury* and/or *advertising injury* liability coverages:
  - a. costs charged to the *insured*;
  - b. expenses incurred by *us*;
  - c. proven loss of earnings by an *insured*, up to \$250. per day, for time away from *work* at *our* request;
  - d. other necessary expenses incurred at *our* request;
  - e. prejudgment interest awarded against the *insured* on that part of the judgment *we* pay. If *we* make an offer to pay the applicable limit of liability, *we* will not pay any prejudgment interest based on that period of time after the offer;
  - f. interest accruing after entry of a judgment but ending when *we* tender or pay up to the applicable limit of liability;



- g. premiums on appeal bonds or release of attachment bonds up to **our** limit of liability. **We** do not have any duty to apply for or furnish the bonds; and
  - h. premiums up to \$1,000 per bail bond required of any **insured** arising out of a covered **occurrence** or **offense**. **We** do not have any duty to apply for or furnish the bond.
2. When **we** elect to defend or participate in the defense of a person or entity that **we** are not legally obligated to defend, **we** will pay only those expenses **we** incur but not those expenses incurred by the **insured**, any **underlying insurer**, any other participating insurer or any other litigant.

## E. EXCLUSIONS

The following exclusions apply to this policy.

### EXCLUSIONS THAT APPLY TO **BODILY INJURY AND PROPERTY DAMAGE**:

**We** do not pay for any loss resulting directly or indirectly from one or more of the following excluded events without regard to other causes or events that contribute to or aggravate such loss whether such causes or events occur at the time of the excluded event, before or after it; unless specific coverage is added to **your** policy.

It is hereby understood and agreed that, notwithstanding anything in the policy to the contrary, with respect to such insurance as is afforded by the policy, the terms of the policy, as respects coverage for operations in the State of New York, shall conform to the coverage requirements of the applicable insurance laws of the State of New York, or the applicable regulations of the New York Insurance Department; provided, however, that the company's limit of liability, as set forth in the Declarations, shall be excess of the limits of liability of any underlying insurance, or self-insurance, as stated in the Declarations, or in any endorsement attached thereto.

### **WE DO NOT PAY FOR:**

1. **Bodily injury** and/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;
2. Liability assumed by the **insured** under any contract or agreement except an insured contract. This exclusion does not apply to liability for damages that the **insured** would have in the absence of the contract or agreement;
3. **Bodily injury** and/or **property damage** arising out of the ownership, maintenance, operation, use, entrusting, loading or unloading of:
  - a. any aircraft or any watercraft in excess of 50 feet in length:
    - 1) owned, operated by, rented or loaned to any **insured**; or
    - 2) any other aircraft or watercraft operated by any person in the course of his/her employment by any **insured**.

### **This exclusion DOES NOT APPLY:**

- 1) to **bodily injury** and/or **property damage** arising out of the operations of **mobile equipment**. **Mobile equipment** includes devices mounted on **automobile** or truck chassis and used to raise or lower workers; and air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment;
- 2) to liability assumed under an **insured contract** with respect to ownership of **automobiles**, aircraft or watercraft;
- 3) to **bodily injury** and/or **property damage** arising out of the ownership, maintenance, operation, use, entrusting, loading or unloading of any **automobile** or watercraft if covered by **underlying insurance** at the time of the **occurrence**. However, **we** do not pay for any **bodily injury**, **property damage** or other benefit or expense payable under any Uninsured/Underinsured Motorist Protection agreement, any No-Fault or Personal Injury Protection law, any Supplemental Spousal Liability endorsements or any other similar law or agreement; or
- 4) to watercraft while ashore on the **insured** premises;
4. **Bodily injury** and/or **property damage** arising out of the ownership, maintenance, operation, use, entrusting, loading or unloading of any **automobile** or **mobile equipment** while being used in any prearranged or organized racing, speed, demolition contest, in any stunting activity, or in practice or preparation for any such contest or activity;
5. **Bodily injury** and/or **property damage** included within the **pollution** definition. **We** do not pay for any loss, cost or expense resulting from any request or demand that a **named insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants or any defense and/or indemnity of any **suit** or other action resulting from such **pollution**.

This exclusion does not apply:

- a. to ***bodily injury*** and/or ***property damage*** caused by heat, smoke or fumes from a hostile fire. For the purpose of this exclusion, hostile fire means a fire which becomes uncontrollable or breaks out from its intended confines;
  - b. to ***bodily injury*** sustained within a covered building caused by the release or escape of smoke, soot, vapor or fumes from faulty operation of heating equipment in such building; and
  - c. to ***bodily injury*** and/or ***property damage*** resulting from the accidental escape of fuels, lubricants or other operating fluids from their intended confines within vehicles or ***mobile equipment*** operated on the covered premises.
  - d. if valid and collectible ***underlying insurance*** exists that would cover such loss but for exhaustion of its limits of liability pertaining to the covered pollution ***occurrence***. The coverage that is provided would follow the same ***terms*** and conditions shown in the ***underlying insurance***;
6. ***Bodily injury*** and/or ***property damage*** caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to the foregoing;
7. ***Bodily injury*** and/or ***property damage*** for which the ***named insured*** or others for whom coverage is included in this policy may be held liable:
- a. as a person or organization engaged in the manufacture, distribution, sale or serving of alcoholic beverages; and
    - 1) when an ***insured*** serves or provides alcoholic beverages at a fee; whether for profit or otherwise and whether a license is required or not; or
    - 2) when an ***insured*** serves or provides alcoholic beverages free; if a license is required for such activities.
  - b. if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
    - 1) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage; or
    - 2) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

But, part b.2) of this exclusion does not apply with respect to liability of an ***insured*** as owner or lessor described in b. above;

8. Any obligation of the ***insured*** under a workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
9. ***Bodily injury***:
- a. to any ***employee*** of the ***insured*** arising out of and in the course of his/her employment by the ***insured*** for which the ***insured*** may be liable as an employer or in any other capacity;
  - b. sustained by a spouse, child, parent, or sibling of an employee of the ***insured*** as a consequence of ***bodily injury*** to such ***employee*** arising out of and in the course of his/her employment by the ***insured***; or
  - c. resulting from any obligation of the ***insured*** to indemnify or contribute with another because of damages arising out of such injury.

This exclusion applies to all claims and ***suits*** by any person or organization for damages because of ***bodily injury*** including damages for care and loss of services.

This exclusion DOES NOT APPLY to liability assumed by the ***insured*** under an ***insured contract***.

This exclusion does not apply to ***bodily injury*** and/or ***property damage*** covered by the ***underlying insurance*** at the time of the ***occurrence***;

10. ***Property damage*** to:

- a. property ***you*** own, rent, or occupy including costs ***you*** incur to remediate, replace or restore such property. This includes expenses ***you*** incur in efforts to avoid injury or to mitigate damage to the property of others;
- b. premises ***you*** sell, give away or abandon, if the ***property damage*** arises out of any part of those premises. However, this exclusion does not apply if the premises are ***your work*** and were never occupied, rented or held for rental by ***you***.
- c. property loaned to ***you*** and property in ***your*** care, custody or control;
- d. the part(s) of real property on which ***you***, or contractors working on ***your*** behalf, are conducting on-going operations and such ***property damage*** results from those operations; and
- e. the part(s) of any property requiring repair or restoration because of the improper performance of ***your work*** on that property. However, this exclusion does not apply to ***property damage*** included in the ***products/completed operations hazard***.

Paragraphs c., d., and e. of this exclusion do not apply to liability assumed under a sidetrack agreement or with respect to ***property damage*** (other than to ***elevators***) arising out of the use of an ***elevator*** at the ***insured's premises***;

11. **Property damage** to **impaired property** or tangible property that has not been physically injured or destroyed resulting from:
  - a. a delay in or lack of performance by or on behalf of the **named insured**, of any contract or agreement;
  - b. the failure of the **named insured's products** or **work** to meet the level of performance, quality, fitness or durability warranted or represented by the **named insured**; or
  - c. a production deficiency resulting in inadequacies or defects in **your product** or **your work**.

This exclusion DOES NOT APPLY to loss of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **named insured's products** or **work** performed by or on behalf of the **named insured**, after such **products** or **work** have been put to use by any person or organization other than an **insured**;
12. **Property damage** to the **named insured's products** arising out of such products or any part of such products including packaging, instructions and warnings;
13. **Property damage** to **work** performed by or on behalf of the **named insured** arising out of the **work**, any portion of the **work**, out of materials, parts or equipment furnished in connection with the **work**;
14. **Property damage** included within:
  - a. "X" the **explosion** definition;
  - b. "C" the **collapse** definition; or
  - c. "U" the **underground property damage** definition;
15. **Bodily injury** and/or **property damage**:
  - a. resulting directly or indirectly from the transmission of a communicable disease by an **insured** or **employee** of an **insured**. This exclusion does not apply to professional liability of health care providers and/or other individuals who come into physical contact with the public on an ongoing basis;
  - b. arising directly or indirectly out of instances, **occurrences** or allegations of sexual abuse or sexual harassment of any person by an **insured** or **employees** of an **insured**;
  - c. arising directly or indirectly out of instances, **occurrences** or allegations of criminal activity by an **insured** or by **employees** of an **insured**; or
  - d. **bodily injury** and/or **personal injury** arising directly or indirectly out of instances, **occurrences** or allegations of child abuse and/or corporal punishment;
16. 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:
  - a. **your** product;
  - b. **your work**; or
  - c. **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;
17. Punitive damages, exemplary damages or damages other than compensatory damages;
18. Any fire legal liability loss in excess of the policy limits of the **underlying insurance**;
19. Any obligation of the **insured** under the Employees Retirement Income Security Act (ERISA), the Pension Reform Act of 1974 and any amendments thereto, and any similar federal, state or local statutes or ordinances;
20. **Bodily injury** and/or **property damage** arising out of:
  - a. asbestos removal from any good, product or structure unless the asbestos is itself damaged by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective systems;
  - b. demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos; or
  - c. any governmental direction or request that such asbestos present in or part of or utilized in any undamaged portion of the **insured's** property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

Nor do **we** pay for any investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or **suit** related to any of the above.
21. **Bodily injury** and/or **property damage** arising out of any assault, battery, fight, altercation, misconduct or other similar incident or act of violence, whether caused by or at the instigation of, or at the direction of the **insured**, his/her **employees**, customers, patrons, guests or any cause whatsoever, including, but not limited to claims of negligent or improper hiring practices, negligent, improper or non-existent supervision of **employees**, patrons or guests and negligence in failing to protect customers, patrons or guests.

## EXCLUSIONS THAT APPLY TO *BODILY INJURY AND/OR PERSONAL INJURY*:

We do not pay for any loss resulting directly or indirectly from the following, unless specific coverage is added to *your* policy.

### WE DO NOT PAY FOR:

#### 22. *Bodily injury/personal injury/advertising injury* to:

- a. a person arising out of any refusal to employ that person;
- b. a person arising out of any termination of that person's employment;
- c. a person arising out of any employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- d. the spouse, child, parent or sibling of that person as a consequence of *bodily injury* or *property damage* to that person at whom any of the employment related practices described in paragraphs a., b., or c., above are directed.

This exclusion applies whether the *insured* may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### 23. *Bodily injury* and/or *property damage* due to the rendering of or failure to render any *professional service*.

This exclusion does not apply to injury defined in Incidental Medical Malpractice Injury in *underlying insurance*.

## EXCLUSIONS APPLYING TO *PERSONAL INJURY AND/OR ADVERTISING INJURY*:

We do not pay for any loss resulting directly or indirectly from the following, unless specific coverage is added to *your* policy.

### WE DO NOT PAY FOR:

#### 24. *Personal injury* and/or *advertising injury*:

- a. arising out of oral or written publication of material, by or at the direction of an *insured* who has knowledge of its falsity;
- b. arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- c. arising out of the violation of a penal statute or ordinance committed by an *insured* or with his/her knowledge; or
- d. for which the *insured* has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the *insured* would have in the absence of the contract or agreement;

#### 25. *Advertising injury* arising out of:

- a. breach of contract, other than misappropriation of advertising ideas under an implied contract;
- b. the failure of goods, *products* or services to conform with advertised quality or performance;
- c. the wrong description of the price of goods, products or services; or
- d. an *offense* committed by an *insured* whose *business* is advertising, broadcasting, publishing or telecasting.

## F. WHAT YOU MUST DO IN CASE OF LOSS

### 1. Notice.

- a. In case of an *occurrence, offense*, claim or *suit* or if *you* become aware of anything that indicates there might be a claim under this policy, *you* must give notice in writing if requested, as soon as reasonably practicable. Notice given by or on behalf of the *insured*, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the insurer in this state, with particulars sufficient to identify the *insured*, shall be deemed notice to the insurer.

- b. The notice to *us* must state:

- 1) *your* name, policy number and the time, place and circumstances of the *occurrence*; and
- 2) names and addresses of any potential claimants and witnesses.

### 2. Cooperation-*You* must cooperate with *us* in performing all acts required by this policy.

### 3. Volunteer Payments-*You* must not, except at *your* own cost, voluntarily make any payments, assume any obligations, or incur any other expenses.

### 4. Additional Duties *Bodily Injury and/or Property Damage Coverages*-In the event of an *occurrence* and/or *offense* which might result in a claim for *bodily injury, property damage, personal injury* and/or *advertising injury* liability under this policy, *you* must also do the following:

- a. promptly forward to *us* copies of all notices, demands or legal papers received in connection with the *occurrence* and/or *offense*; and
- b. at *our* request, assist in:

- 1) making settlements;
- 2) the conduct of *suits* including attending trials and hearings;
- 3) enforcing any right of contribution or indemnification against any party who may be liable to any *insured* for the injury or damage;
- 4) securing and giving evidence; and
- 5) obtaining the attendance of witnesses.

#### 5. Medical Reports; Proof and Payment of Claim.

As soon as practicable, the injured person or someone on his/her behalf shall give to *us* written proof of claim, under oath if required, and shall, after each request from *us*, execute authorization to enable *us* to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by *us* when and as often as *we* may reasonably require. *We* may pay the injured person or any person or organization rendering the services and to the extent *we* make these payments, *we* are no longer obligated to pay this amount to *you* or another party seeking recovery of these amounts. Payment shall not constitute an admission of liability by any person or by *us*.

### G. HOW MUCH WE PAY FOR LOSS OR CLAIM

For the purpose of determining *our* limit of liability, all *bodily injury* and/or *property damage* arising out of continuous or repeated exposure to substantially the same general condition(s) shall be considered as arising out of one *occurrence*. With respect to *our* limit of liability for *personal injury* and/or *advertising injury*, repeated exposure to substantially the same general condition(s) arising from any listed *offense* shall constitute one *offense*. The most *we* will pay for any covered *occurrence* and/or a covered *offense* is one limit of liability.

1. The limit of liability stated on the Declarations page, the Supplemental Declarations page or attached endorsements and the conditions set forth below fix the maximum amounts *we* will pay for loss regardless of the number of:
  - a. persons insured under this policy;
  - b. persons or organizations who sustain *bodily injury, property damage, personal injury* and/or *advertising injury*; or
  - c. claims made or *suits* brought.
2. The Each *Occurrence/Offense* Limit, subject to the aggregate limit of liability, is the most *we* pay for the total of damages under the *bodily injury, property damage, personal injury* and *advertising injury* coverages.
3. The policy period shown on the Declarations page, the Supplemental Declarations page or other endorsements added to this policy may be for a period of one year or longer. HOWEVER, for the purpose of determining any or all aggregate limits of liability described in this section, or in endorsements attached to this policy, policy period means a one year period beginning with the inception date of the policy (and for each subsequent one year period if applicable).
4. These agreements are extended to include an increase in the aggregate limit of liability in proportion to any policy extension whether required by the issuance of a late or incomplete conditional renewal notice, late non-renewal notice or other reason. The aggregate limit of liability is the most *we* will pay during a policy period for the sum of all damages under the *bodily injury, property damage, personal injury* and *advertising injury* coverages.
5. Insurance Under More Than One Policy.
  - a. Insurance under this *Business* Umbrella Insurance is excess over any other primary insurance including any *retained limits* shown on the declarations.
    - 1) if the other insurance, whether primary, excess, contingent or on any basis, provides:
      - a) fire, extended coverage, builders' risk, installation risk or similar coverage for *your work*; or
      - b) fire insurance for the premises rented to *you* or temporarily occupied by *you* with permission of the *insured*;
    - 2) if the other insurance applies to any loss arising out of the maintenance or use of aircraft, *automobiles* or watercraft which may be covered by this policy; or
    - 3) when two or more valid and collectible umbrella policies apply to a loss, this policy will respond in accordance with its other insurance clause.

The amount of *our* liability is not reduced by other insurance which applies to the loss solely on an excess basis.

- b. This *Business* Umbrella Insurance is excess over all other valid and collectible insurance. In the event that other insurance responds to losses to which this policy is applicable, *we* will share on the limited basis shown in subsections c. and d. that follow.
- c. If the other insurance is also primary, *we* will share in the loss as follows:

- 1) if the other insurance provides for contribution by equal shares, **we** will pay equal amounts with other insurers until:
    - a) the lowest applicable limit under any one policy is reached; or
    - b) the full amount of the loss is paid. If part of the loss remains unpaid, **we** will pay an equal share with the other insurers until the full amount of the loss is paid, or until **we** have paid **our** limit of liability in full.
  - 2) if the other insurance does not provide for contribution by equal shares, **we** will pay that proportion of the loss to which **our** applicable limit under this policy bears to the total applicable limit for all insurance covering the loss.
- d. When this insurance is excess over any other insurance:
- 1) **we** will have no duty to defend any claim or *suit* that any other insurer has a duty to defend. If no other insurer defends, **we** will do so. However, **we** will be entitled to the **insured's** rights against all those other insurers.
  - 2) **we** will pay **our** share of the amount of 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 deductibles and self-insured amounts required by such other insurance.

**We** will share the remaining loss with any other insurance that is not described in this excess insurance provision and that does not specifically apply in excess of the limits of insurance shown on the Declarations page, the Supplemental Declarations page or attached endorsements of this **Business** Umbrella Insurance.

## H. POLICY CONDITIONS

In addition to the policy **terms** which are contained in other sections of this policy, the following conditions also apply:

1. **Assignment**-Assignment of this policy is not valid without **our** written consent. The **terms** of this insurance can be altered or waived only by endorsement issued by **us** and made a part of this policy. This policy contains all of the agreements between **you** and **us** concerning the insurance provided.
2. **Cancellation/Non-renewal**-Conclusion of insurance will be conducted in accordance with the provisions established by each jurisdiction. Please refer to the State Specific endorsement for further details.
3. **Conformity with Statute-Terms** of this policy, in conflict with the statutes of the state where the premises described in the Declarations are located, is amended to conform to such statutes.
4. **Misrepresentation, Concealment or Fraud**-There is no coverage, whether before or after a loss;
  - a. if an **insured** has willfully concealed or misrepresented:
    - 1) any material fact or circumstance concerning this insurance; or
    - 2) an **insured's** interest.
  - b. if there has been fraud or false swearing by an **insured** regarding any matter relating to this insurance or the subject of this insurance.
5. **Inspection and Audit**-**We** are permitted but not obligated to inspect **your** property and operations. **Our** inspection or any resulting advice or report does not warrant that **your** property or operations are safe, healthful or in compliance with any law, rule or regulation.

**We** may examine and audit the **named insured's** books and records at any time during the policy period, and extensions of the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

These conditions apply:

- a. An audit to determine final premium under which the initial premium is based on an estimate of the **insured's** exposure base shall be conducted within one hundred eighty (180) days after expiration of **your** policy, and may not be waived except in the following circumstances:
  - 1) the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1500; or
  - 2) the policy requires notification to **us** with specific identification of any additional exposure units for which coverage is requested;
- b. **We** shall, as soon as practicable following an audit, refund or credit **your** account for any return premium due or bill **you** and make a good faith effort to collect any additional premium due **us** as a result of the audit.
- c. If **you** fail to cooperate with **us** in **our** attempt to conduct such audit, including **your** failure to return any questionnaires or self-audit worksheets, **we** shall non-renew **your** policy upon completion of the current policy term, in accordance with applicable insurance law, due to **our** inability to establish the proper premium for **your** account.

## 6. Subrogation.

- a. if *we* make a payment under this policy, *we* may require that the *insured* assign to *us* his/her right of recovery against any person for the loss to the extent of the payment. The *insured* must do everything necessary to make this assignment and to secure *our* rights.
- b. *we* are not liable for any loss if an *insured* does anything after the loss occurs to impair *our* right to recover.
- c. If *we* pay a loss to or on behalf of an *insured* and the *insured* recovers damages from another person for the same loss, the *insured* shall hold the amount recovered in trust for *us* and shall reimburse *us*.

## 7. Suit Against Us-No suit may be brought against *us* to recover amounts due for *bodily injury* and/or *property damage* liability unless:

- a. the *terms* of this policy have been fully complied with; and
- b. the amount of any *insured's* liability has been conclusively fixed:
  - 1) by a final judgment against the *insured*; or
  - 2) by written agreement of the *insured*, the claimant and *us*.

No person shall have any right under this policy to join or implead *us* in any action brought to determine an *insured's* liability.

A provision that in case judgment against the *insured* or his personal representative in an action brought to recover damages for injury sustained or loss or damage occasioned during the life of the policy or contract shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the *insured*, or upon the *insured*, and upon the insurer, then an action may, except during a stay or limited stay of execution against the insured on such judgment, be maintained against the insurer under the terms of the policy or contract for the amount of such judgment not exceeding the amount of the applicable limit of coverage under such policy or contract.

8. **Bankruptcy of an Insured**-Bankruptcy or insolvency of any *insured* or his/her estate does not relieve *us* of any obligations under this policy.
9. **Maintenance of Underlying Insurance-You** must maintain each and every type of insurance policy shown on the schedule of *underlying insurance* attached to this policy. *You* must maintain those policies for the full term of this insurance contract and for no lesser limits than those shown on the schedule; except for reductions in aggregate limit(s) due to payment of covered claims for *bodily injury*, *property damage*, *personal injury* and *advertising injury*. *You* must give *us* written notice of any change in the *underlying insurance* with respect to coverage, limits of insurance or liability, termination of any coverage or exhaustion of any aggregate limit(s). In the event that *you* fail to comply with these *terms*, *we* will pay any covered loss only to the extent that *we* would be legally obliged to had *you* been in full compliance with this agreement.
10. **Premium**-All premium for this insurance shall be computed in accordance with *our* rules, rates, rating plans, premiums and minimum premiums applicable to the insurance. Premium designated in this policy as "provisional premium" is a deposit premium only, which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each policy period, the earned premium shall be computed and upon notice to the first *named insured* the earned premium shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, *we* shall return the unearned portion to the first *named insured*. The first *named insured* shall maintain records of such information for premium computation and shall send copies of such records to *us* at the end of the policy period and at such times during the policy period as *we* may request.
11. **Representations-You** agree that the statements or representations *you* made in the process of obtaining this insurance from *us* are accurate and complete and that the issuance of this policy is in reliance on those statements or representations.
12. **Financial Responsibility Laws**-When this policy is certified as proof of financial responsibility under the provisions of any motor vehicle financial responsibility law, the insurance afforded by this policy for *bodily injury* and/or *property damage* liability shall comply with the provisions of the law to the extent of the coverage and limits of liability required by the law. The *insured* agrees to reimburse *us* for any payment which *we* would not have been obligated to make under the policy except for the agreement contained in this paragraph.
13. **Severability of Interest**-This insurance applies separately to each *insured* against whom claim is made or *suit* is brought, however, this agreement does not increase the applicable limit of insurance or exempt any *insured* from any rights and duties specifically assigned to them in this policy.

## I. NUCLEAR EXCLUSION:

1. This policy does not apply:
  - a. Under any Liability Coverage, to *bodily injury* and/or *property damage*

- 1) with respect to which an **insured** under this policy is also an **insured** under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, The Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or any of their successors, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
  - 2) resulting from the **hazardous properties** of **nuclear material** and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amending law, or (b) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any U.S. agency, under any agreement entered into by the United States of America, or any U.S. agency, with any person or organization.
- b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.
  - c. Under any Liability Coverage, to **bodily injury** and/or **property damage** resulting from the **hazardous properties** of **nuclear material**, if
    - 1) the **nuclear material** (a) is at any **nuclear facility** owned by, or operated by or on behalf of an **insured**, or (b) has been discharged or dispersed;
    - 2) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
    - 3) the **bodily injury** and/or **property damage** arises out of 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** but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.
2. Definitions Applicable to the Nuclear Energy Liability Exclusion
- a. **Hazardous Properties**-include radioactive, toxic or explosive properties.
  - b. **Nuclear Material**-means **source material**, **special nuclear material** or **by-product material**.
  - c. **Source Material**, **Special Nuclear Material** and **By-product Material**-have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.
  - d. **Spent Fuel**-means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.
  - e. **Waste**-means any **waste** material:
    - 1) containing **by-product material** other than the tailings or wastes produced by the extraction of concentration of uranium or thorium from any ore processed primarily for its **source material** content; and
    - 2) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.
  - f. **Nuclear Facility**-means:
    - 1) any **nuclear reactor**.
    - 2) any equipment or device designed or used for:
      - a) separating the isotopes of uranium or plutonium;
      - b) processing or utilizing **spent fuel**; or
      - c) handling, processing or packaging **waste**.
    - 3) any equipment or device used for the processing, fabricating or alloying of **special nuclear material** 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.
    - 4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**; and includes the site on which any of the foregoing is located, all operations conducted on such sites, and all premises used for such operations.
  - g. **Nuclear Reactor**-means any apparatus designed or used:
    - 1) to sustain nuclear fission in a self-supporting chain reaction; or
    - 2) to contain a critical mass of fissionable material.
  - h. **Property Damage**-includes all forms of radioactive contamination of property.