

**POLICY NUMBER:**  
**RENEWAL OF:**

**ITEM 1.**  
**Named Insured**  
Address  
(Street,  
Town,  
State)

**ILLINOIS NATIONAL  
INSURANCE CO.**

**THE INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA**

**AMERICAN INTERNATIONAL SOUTH  
INSURANCE COMPANY**

**COMMERCIAL UMBRELLA POLICY DECLARATIONS**

This Declarations Page and attached schedule(s), and all terms and conditions complete this insurance Policy.

<b>ITEM 2.</b>	<b>POLICY PERIOD</b> FROM: _____ TO: _____ AT 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE <b>NAMED INSURED</b> SHOWN ABOVE.																
<b>ITEM 3.</b>	<b>LIMITS OF INSURANCE</b> The Limits of Insurance, subject to all the terms and conditions of this Policy are: A. \$ _____ Each <b>Occurrence</b> Limit B. \$ _____ Aggregate Limit(s) (Where applicable, in accordance with SECTION III. LIMITS OF INSURANCE.) C. \$ _____ Self-Insured Retention Each <b>Occurrence</b> Limit (Applicable if a Limit of Insurance is shown herein for the type of Self-Insured Retention as described in the Schedule of Underlying Self-Insured Retention(s).)																
<b>ITEM 4.</b>	<b>PREMIUM COMPUTATION</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><u>ESTIMATED EXPOSURE</u></th> <th style="text-align: center;"><u>RATE PER</u></th> <th style="text-align: center;"><u>ADVANCED PREMIUM</u></th> <th style="text-align: center;"><u>MINIMUM PREMIUM</u></th> <th style="text-align: center;"><u>MINIMUM EARNED PREMIUM</u></th> <th style="text-align: center;"><u>AUDIT PERIOD</u></th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>					<u>ESTIMATED EXPOSURE</u>	<u>RATE PER</u>	<u>ADVANCED PREMIUM</u>	<u>MINIMUM PREMIUM</u>	<u>MINIMUM EARNED PREMIUM</u>	<u>AUDIT PERIOD</u>						
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<b>ITEM 5.</b>	In the event of an <b>occurrence, claim</b> or <b>suit</b> send all pertinent facts to: <u>C.V. Starr Claims</u> <u>175 Water Street, 22nd Floor, New York, NY 10038</u>																

**Producer:  
(Name and  
Address)**

**Date of Issue:** \_\_\_\_\_ **Countersigned By:** \_\_\_\_\_ **Authorized Representative**

# COMMERCIAL UMBRELLA POLICY FORM

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## COMMERCIAL UMBRELLA POLICY FORM

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

Throughout this Policy the words **you** and **your** refer to the **Named Insured(s)** shown in the Declarations and any other person(s) or organizations(s) qualifying as an **insured** under this Policy. The words, **we**, **us**, and **our**, refer to the Company providing this insurance.

Other words and phrases that appear in boldface have special meaning. Refer to SECTION II. DEFINITIONS.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations, **we** agree to provide as follows:

### SECTION I. WHAT WE SHALL PAY ON YOUR BEHALF

#### A. Insuring Agreement

**We** will pay on behalf of the **insured** those sums in excess of the Retained Limit that the **insured** becomes legally obligated to pay by reason of liability imposed by law or assumed by the **insured** under an **insured contract** because of **bodily injury, property damage, personal injury or advertising injury** that takes place during the Policy Period and is caused by an **occurrence** happening anywhere in the **coverage territory**. The amount **we** will pay for damages is limited as described in SECTION III. LIMITS OF INSURANCE.

If **we** are prevented by law or statute from paying on behalf of the **insured**, then **we** will, where permitted by law or statute, indemnify the **insured** for those sums in excess of the Retained Limit.

#### B. Defense and Defense Expenses

1. **We** shall have the right and duty to defend any **claim** or **suit** seeking damages covered by the terms and conditions of this Policy when:
  - a) The applicable limits of insurance of the underlying policies listed in the Schedule of Underlying Insurance and the limits of insurance of any other underlying insurance providing coverage to the **insured** have been exhausted by payment of **claims** or **suits** to which this Policy applies; or
  - b) Damages are sought for **bodily injury, property damage, personal injury or advertising injury** covered by this Policy but not covered by any underlying insurance listed in the Schedule of Underlying Insurance or any other underlying insurance providing coverage to the **insured**.

However, solely as respect any Self-Insured Retention that may apply as stated in Item 3.C. of the Declarations and, if applicable, as listed in the Schedule of Self-Insured Retention(s), **we** will not be obligated to assume charge of the investigation, settlement

or defense of any **claim** made, **suit** brought or proceeding instituted against the **insured**. **We** will, however, have the right and shall be given the opportunity to participate in the defense and trial of any **claims, suits** or proceedings relative to any **occurrence** which, in **our** opinion, may create liability on **our** part under the terms and conditions of this Policy. If **we** exercise such right, **we** will do so at **our** own expense.

In the event of a disagreement as to the interpretation of this Policy solely as respect to any Self-Insured Retention, the disagreement shall be submitted to binding arbitration before a panel of three (3) arbitrators. Within thirty (30) days of a written request for arbitration by either **you** or **us**, each party will choose an arbitrator. If the two (2) arbitrators are unable to agree within one (1) month upon the third arbitrator, such arbitrator shall at the request of either party be selected by the American Arbitration Association in accordance with its rules and procedures.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the third arbitrator. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the arbitrators. The award will be issued within thirty (30) days of the close of the hearings. Each party shall bear the expenses of its designated arbitrator and shall jointly and equally share with the other the expense of the third arbitrator and of the arbitration.

The arbitration proceedings shall take place in the state shown in Item 1 of the Declarations. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

2. When **we** assume the defense of any **claim** or **suit**:

- a) **We** will defend any **claim** or **suit** against the **insured** seeking damages on account of **bodily injury, property damage, personal injury** or **advertising injury**, even if such **claim** or **suit** is groundless, false or fraudulent, but **we** have the right to investigate, defend and settle the **claim** or **suit** as **we** deem expedient.
- b) **We** will pay the following to the extent that they are not included in the underlying policies listed in the Schedule of Underlying Insurance or in any other insurance providing coverage to the **insured**:
  - (i) Premiums on bonds to release attachments for amounts not exceeding **our** Limits of Insurance, but **we** are not obligated to apply for or furnish any such bond;
  - (ii) Premiums on appeal bonds required by law to appeal any **claims** or **suit** **we** defend, but **we** are not obligated to apply for or furnish any such bond;

- (iii) All costs taxed against the **insured** in any **claim** or **suit we** defend;
- (iv) Pre-judgment interest awarded against the **insured** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable Limit of Insurance, **we** will not pay any pre-judgment interest based on that period of time after the offer;
- (v) All interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court the part of the judgment that is within **our** applicable Limit of Insurance; or
- (vi) The **insured's** expense incurred at **our** request.

**We** will not defend any **claim** or **suit** after **our** applicable Limits of Insurance have been exhausted by payment of judgments or settlements, and/or defense expenses when SECTION I, B., 3.b) below is applicable.

3. For the defense described above:

- a) All expenses **we** incur in the defense of any **claim** or **suit** shall be in addition to **our** Limits of Insurance whenever such defense expenses are in addition to the limits of insurance of the underlying insurance as listed in the Schedule of Underlying Insurance.
- b) However, such defense expenses shall be included within **our** Limits of Insurance whenever such defense expenses are included within the limits of insurance of the applicable underlying insurance as listed in the Schedule of Underlying Insurance.

## SECTION II. DEFINITIONS

- A. **Advertising injury** means injury arising solely out of **your** advertising activities as a result of one or more of the following offenses:
  - 1. Oral written publication of organization's material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - 2. Oral or written publication of material that violates a person's right of privacy;
  - 3. Misappropriation of advertising ideas or style of doing business; or
  - 4. Infringement of copyright, title or slogan.
- B. **Automobile** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. However, **automobile** does not include **mobile equipment**.

- C. **Bodily injury** means bodily harm, sickness, disability or disease. **Bodily injury** shall also mean mental injury, mental anguish, humiliation, shock or death if directly resulting from **bodily injury**, sickness, disability or disease. **Bodily injury** shall include care and loss of services resulting at any time resulting from the **bodily injury** of any person or persons.
- D. **Claim** means a demand for money.
- E. **Coverage territory** means anywhere in the world in the event of damages covered by this Policy but not covered by any underlying policy listed in the Schedule of Underlying Insurance. For **claims** or **suits** not covered by any underlying policy listed in the Schedule of Underlying Insurance but covered by this Policy, such **claims** or **suits** for damages must be brought within the United States of America, its territories or possessions, or Canada.

However, if there is scheduled underlying insurance:

1. **Coverage territory** shall be given the same meaning as defined or described in the applicable policy as listed in the Schedule of Underlying Insurance; and
  2. **Our** Policy will not be broader than the insurance coverage provided by such policy listed in the Schedule of Underlying Insurance.
- F. **Employment practice liability** means any actual or alleged negligence resulting in damages to:
1. A person arising out of any:
    - a) Refusal to employ that person,
    - b) Termination of that person's employment; or
    - c) Employment related practices, acts or omissions, including, but not limited to coercion, demotion, evaluation, retaliation, reassignment, discipline, defamation, harassment, failure to promote, humiliation, discrimination, or acts or omissions as described in 1.c) herein directed at a **whistle-blower**; or
  2. The spouse, child, parent, brother or sister of that person as a consequence of loss to that person to whom any of the employment related practices described in paragraphs 1.a), 1.b), or 1.c), above apply.

This definition applies:

- a) Whether **you** may be liable as an employer or in any other capacity; and
  - b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- G. **First aid services** mean the immediate and emergency care given to an ill or injured person before regular medical aid can be obtained.

- H. **Gross payroll** (if designated in Item 4. of the Declarations/rate per) means the total remuneration for services rendered by all employees, whether paid in money or substituted for money. All such payroll shall be without modification.
- I. **Gross receipts** (if designated in Item 4. of the Declarations/rate per) mean the gross amount of money charged (other than sales or excise taxes) by the **Named Insured**, or by others trading under the **Named Insured's** name for **your products** sold or for **your work**. Such receipts shall not include sales between the **Named Insured**, and any subsidiary or any company **you** own or control.
- J. **Hostile fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- K. **Impaired property** means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:
1. It incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
  2. **You** have failed to fulfill the terms of a contract of agreement;
- If such property can be restored to use by:
1. The repair, replacement, adjustment or removal of **your product** or **your work**; or
  2. **Your** fulfilling the terms of the contract or agreement.
- L. **Insured contract** means any oral or written contract or agreement entered into by **you** and pertaining to **your** business under which **you** assume the **tort liability** of another party to pay for **bodily injury, property damage, personal injury** or **advertising injury** to a third person or organization. **Tort liability** means a liability that would be imposed by law in the absence of any contract or agreement.

However, the insurance provided by **our** Policy for any **insured contract** shall be as broad but not broader than the insurance coverage under any policy listed in the Schedule of Underlying Insurance for any coverage assumed under any oral or written contract or agreement.

- M. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises **you** own or rent;
  3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a) Power cranes, shovels loaders, diggers or drills; or
  - b) Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a) Air compressors, pumps and generators including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or
  - b) Cherry pickers and similar devices used to raise or lower workers;
6. Vehicles not described in 1., 2., 3., or 4. 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**:

- a) Equipment designed primarily for:
  - (i) Snow removal;
  - (ii) Road maintenance, but not construction or resurfacing; or
  - (iii) Street cleaning;
- b) Cherry pickers and similar devices mounted on **automobile** or truck chassis and used to raise or lower workers; and
- c) Air compressor, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.

**N. Occurrence** means:

1. As respect **bodily injury** or **property damage**, an accident including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **insured**. All such exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**;
2. As respect **personal injury**, an offense arising out of **your** business that results in **personal injury**. All damages that arise from the same or related injurious material or act shall be

considered as arising out of one **occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants;

3. As respect **advertising injury**, an offense committed in the course of advertising **your** goods, **products** and services that result in **advertising injury**. All damages that arise from the same or related injurious material or act shall be considered as arising out of one **occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants.

O. **Personal injury** means injury other than **bodily injury** or **advertising injury**, arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. The wrongful eviction from, wrongful entry into or invasion of the right to private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
5. Oral or written publication of material that violates a person's right of privacy.

P. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste material. Waste material includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

Q. **Power unit** (if designated in Item 4. of the Declarations/rate per) means an **automobile** other than a private passenger type used to transport goods of others.

R. **Products-completed operations hazard** includes all **bodily injury** and **property damage** occurring away from premises **you** own or rent and arising out of **your product** or **your work**;

1. Except:

- a) Products that are still in **your** physical possession; or
- b) Work that has not yet been completed or abandoned.

2. **Your work** will be deemed completed at the earliest of the following times:

- a) When all of the work called for in **your** contract has been completed;
- b) When all of the work to be done at the site has been completed if **your** contract calls for work at more than one site; or

- c) When that part of the work to be done at a job site has been put to its intended use by any person or organization, other than another contractor or subcontractor working on the same project.

**Your work** that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

3. This hazard does not include **bodily injury** or **property damage** arising out of:
  - a) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the loading or unloading of it; or
  - b) The existence of tools, uninstalled equipment or abandoned or unused materials.

S. **Property damage** means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the **occurrence** that caused it.

T. **Suit** means a civil proceeding in which damage because of **bodily injury, property damage, personal injury** or **advertising injury** to which this insurance applies is alleged. **Suit** includes:

1. An arbitration proceeding in which such damages are claimed and to which **you** must submit or do submit with **our** consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which **you** submit with **our** consent.

U. **Whistle-blower** means an employee, who discloses or threatens to disclose to a superior or any governmental agency, or who gives testimony relating to any action by **you** which may be a violation of public policy as reflected in legislation, administrative rules, regulations or decisions, judicial decisions, or professional codes of ethics.

V. **Your product** means:

1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - a) **You**;
  - b) Others trading under **your** name; or
  - c) A person or organization whose business or assets **you** have acquired; and

2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your product** includes:

1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
2. The providing of or failure to provide warnings or instructions.

**Your product** does not include vending machines or other property rented to or located for the use of others but not sold.

W. **Your work** means:

1. Work or operations performed by **you** or on **your** behalf; and
2. Materials, parts or equipment furnished in connection with such work or operations.

**Your work** includes:

1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**; and
2. The providing of or failure to provide warnings or instructions.

### SECTION III. LIMITS OF INSURANCE

- A. The Limits of Insurance shown in Item 3. of the Declarations and the rules below state the most **we** will pay regardless of the number of:
  1. **Insureds**;
  2. **Claims** made or **suits** brought; or
  3. Persons or organizations making **claims** or bringing **suits**.
- B. The Aggregate Limit(s) are the most **we** will pay for all damages covered under SECTION I., A. Insuring Agreement for each annual Policy Period which applies separately to each coverage whenever any applicable underlying insurance as listed in the Schedule of Underlying Insurance carries an aggregate limit for such coverage.
- C. Subject to B. above, the Each **Occurrence** Limit is the most **we** will pay for the sum of damages covered under SECTION I., A. Insuring Agreement because of all **bodily injury, property damage, personal injury and advertising injury** arising out of any one **occurrence**; including, if applicable, such defense expense that may apply in accordance with

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SECTION I., B., 3. above. If the applicable limits of insurance of the policies listed in the Schedule of Underlying Insurance or of other insurance providing coverage to the **insured** or any applicable Self- Insured Retention are reduced or exhausted by payment of one or more **claims** or **suits** that would be insured by **our** Policy **we** will:

1. In the event of reduction, pay in excess of the reduced underlying limits of insurance or any applicable Self-Insured Retention; or
2. In the event of exhaustion of the underlying limits of insurance or any applicable Self-Insured Retention, continue in force as underlying insurance.

The Limits of Insurance of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining **our** Limits of Insurance.

#### D. Retained Limit

**We** will be liable subject to an amount not exceeding the Each **Occurrence** Limit as stated in the Declarations:

1. Only for that portion of damages in excess of the total of the applicable limits of insurance of the underlying policies listed in the Schedule of Underlying Insurance and the applicable limits of insurance of any other underlying insurance providing coverage to the **insured**; or
2. In the event of damages covered by this Policy but not covered by any underlying insurance, **we** will be liable for the total of all damages covered by this Policy;

However, in the event that a Self-Insured Retention applies as stated in Item 3.C. of the Declarations and as described in the Schedule of Underlying Self-Insured Retention(s), **we** will be liable for that portion of damages in excess of such Self-Insured Retention Each **Occurrence** Limit. **Your** defense costs shall be included within any applicable Self-Insured Retention.

## SECTION IV. WHO IS AN INSURED

**Insured** means each of the following:

#### A. The **Named Insured** means:

1. Any person or organization listed in Item 1. of the Declarations, and any company that is **your** subsidiary as of the effective date of this Policy and any company **you** own or control as of the effective date of this Policy; and

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2. Any organization newly acquired, controlled or formed by **you** during the Policy Period, but only:
  - a) As respect to **occurrences** taking place after **you** acquire, take control or form such organization;
  - b) If such organization is included under the coverage provided by the policies listed in the Schedule of Underlying Insurance; and
  - c) If **you** give **us** written notice after **you** acquire, take control or form such organization, within thirty (30) days after the expiration date of each annual Policy Period.

**We** may make an additional premium charge for any additional organization(s) **you** acquire, form or take control of during the period of this Policy.

- B. If **you** are an individual, **you** and **your** spouse, but only with respect to the conduct of a business of which **you** are the sole owner and which is designated in the Declarations at the original date of Policy issue; or if not so designated in the Declarations, only if such business is new and if **you** give **us** written notice within thirty (30) days after the expiration date of each annual Policy Period. **We** may make an additional premium charge for any such additional business.
- C. If **you** are a partnership or joint venture, the partners or members and their spouses but only as respect the conduct of **your** business.
- D. No person or organization is an **insured** with respect to the conduct of any current or past partnership, co-venture, joint operating agreement or joint venture that is not shown as a **Named Insured** in the Declarations.

However, as respect any partnership, co-venture, joint operating agreement, or joint venture (all hereinafter called joint venture) which is not a **Named Insured** under this Policy in which the **insured** has an interest, **our** liability under this Policy shall be limited to the lesser of:

1. The percentage interest **you** have in the said joint venture; or
2. The total Limit of Insurance afforded **you** by this Policy.

Where **your** percentage interest in said joint venture is not set forth in writing, the percentage interest to be applied shall be that which would be determined by law. Such percentage shall not be increased by the insolvency of others which has an interest in the said joint venture.

**We** may make an additional premium charge for any such additional joint venture formed during the period of this Policy. **You** must give **us** written notice of all such joint ventures within thirty (30) days after the expiration date of each annual Policy Period.

- E. If you are a limited liability company, **you** are an **insured**. **Your** members are also **insureds**, but only with respect to the conduct of **your** business. **Your** managers are **insureds**, but only with respect to their duties as **your** managers.
- F. Any person or organization, other than the **Named Insured**, included as an additional **insured** in the policies listed in the Schedule of Underlying Insurance but not for broader coverage than is available to such person or organization under such underlying policies.
- G. Any of **your** partners, executive officers, directors, stockholders or employees but only while acting within their duties.

However, this paragraph G. does not apply to the ownership, maintenance, use, loading or unloading of any **automobile**, aircraft or watercraft, unless such coverage is included under the policies listed in the Schedule of Underlying Insurance and then for coverage not broader than is provided under such underlying policies.

- H. Any person, other than one of **your** employees, or organization while acting as **your** real estate manager.
- I. Any person, organization, trustee or estate to whom **you** are obligated by a written **insured contract** to provide insurance such as is afforded by this Policy but only with respect to:
  - 1. Liability arising out of operations conducted by **you** or on **your** behalf; or
  - 2. Facilities owned or used by **you**.
- J. Any person (other than **your** partners, executive officers, directors, stockholders or employees) or organizations with respect to any **automobile** owned by **you**, loaned to **you** or hired by **you** or on **your** behalf and used with **your** permission.

However, this paragraph J. does not apply to any person using an **automobile** while working in a business that sells, services, repairs or parks **automobiles**, unless **you** are in that business.

## SECTION V. EXCLUSIONS

This insurance does not apply to:

- A. Any obligation of the **insured** under a Worker's Compensation, Unemployment Compensation or Disability Benefits Law, or under any similar law;
- B. Any obligation of the **insured** under the Employees' Retirement Income Security Act of 1974 or any amendments to that act;
- C. Any obligation of the **insured** under a No Fault or Uninsured Motorist Law.

However, the above exclusion for the Uninsured Motorist Law does not apply when Uninsured Motorist coverage is included under the policies listed in the Schedule of Underlying Insurance and then for no broader coverage than is provided under such underlying policies; and

1. The **bodily injury** limit of insurance for Uninsured Motorist coverage and **automobile liability bodily injury** limits of insurance of the policies listed in the Schedule of Underlying Insurance are equal; and (if applicable)
2. The **property damage** limit of insurance for Uninsured Motorist coverage and **automobile liability property damage** limits of insurance, which may be included under state law, if applicable, of the policies listed in the Schedule of Underlying Insurance are equal.

The term Uninsured Motorist Law includes Underinsured Motorist Law when and to the same extent as provided in the policies listed in the Schedule of Underlying Insurance for such Underinsured Motorist coverage;

D. **Property damage** to:

1. Property **you** own, rent or occupy;
2. Premises **you** sell, give away or abandon, if the **property damage** arises out of any part of those premises;
3. Property loaned to **you**;
4. Personal property in the care, custody or control of the **insured**;
5. That particular part of real property on which **you** or any contractors or subcontractors working **directly** or indirectly on **your** behalf are performing operations, if the **property damage** arises out of those operations; or
6. That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

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

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

Paragraph 6 of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**;

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

1. A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or

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2. A delay or failure by **you** or anyone acting on **your** behalf to perform a contract or agreement in accordance with its terms.

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

F. **Property damage to your product** arising out of it or any part of it;

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

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

H. Damages claimed for any loss, cost or expense incurred by **you** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. **Your product;**
2. **Your work;** or
3. **Impaired property,**

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

However, if insurance for:

1. Any expenses incurred in removing concrete or concrete products or from any structure or building due to defective concrete or due to improperly mixed, manufactured, poured, formed, cured or installed concrete;
2. Any expenses for replacing forms, reinforcements, piping or wiring that are destroyed during the course of removing defective concrete products; or
3. Any expenses for returning the structure or building to the condition that existed prior to the installation of concrete products,

is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by **our** Policy will not be broader than the insurance coverage provided for such expenses listed immediately above by the policy listed in the Schedule of Underlying Insurance;

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- I. Liability of any employee with respect to **bodily injury** or **personal injury** to another employee of the same employer injured in the course of such employment.

However, if insurance for such liability is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by **our** Policy will not be broader than the insurance coverage provided to the employee by the policy listed in the Schedule of Underlying Insurance;

- J. **Bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft or any aircraft owned by the **insured** or rented to the **insured**.

However, if insurance for such **bodily injury** or **property damage** is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by **our** Policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance;

- K. **Personal injury** or **advertising injury**:

1. Arising out of oral or written publication of material, if done by or at the direction of the **insured** with knowledge of its falsity;
2. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period;
3. Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the **insured**;
4. 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; or
5. Arising out of infringement of trade mark or trade name; or
6. Arising out of any offense regarded as a patent infringement;

- L. **Advertising injury** arising out of:

1. Breach of contract, other than misappropriation of advertising ideas under an implied contract;

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2. The failure of goods, products or services to conform with advertised quality or performance;
3. The wrong description of the price of goods, products or services; or
4. An offense committed by an **insured** whose business is advertising, broadcasting, publishing or telecasting.

However, with respect to item L. 4. above, if insurance for such **advertising injury** is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply;
2. The insurance provided by **our** Policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance;

**M. Bodily injury, property damage, personal injury or advertising injury:**

1. Arising out of the actual or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** anywhere in the world;
2. Any loss, cost or expense arising out of any governmental direction or request that **we**, the **insured** or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize or assess the effects of **pollutants**; or
3. Any loss, cost, or expense, including, but not limited to, costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **pollutants**.

This exclusion M. shall not apply to **bodily injury, property damage, personal injury or advertising injury** arising out of:

1. Heat, smoke or fumes from a **hostile fire**;
2. The upset, overturn or collision of an **automobile** or of **mobile equipment**; or
3. The **products-completed operations hazard**,

if insurance for such **bodily injury, property damage, personal injury or advertising injury** is provided by a policy listed in the Schedule of Underlying Insurance. However, the insurance provided by **our** Policy for such **bodily injury, property damage, personal injury or advertising injury** will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance;

**N. Bodily injury or property damage** due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement;

O. **Bodily injury** or **property damage** expected or intended from the standpoint of the **insured**.

However, this exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property;

P. **Bodily injury, property damage, personal injury** or **advertising injury** arising out of:

1. The manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
2. Any obligation of the **insured** to indemnify any party because of damages arising out of such **bodily injury, property damage, personal injury** or **advertising injury** as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
3. Any obligation to defend any **claim** or **suit** against the **insured** alleging **bodily injury, property damage, personal injury** or **advertising injury** and seeking damages, if such **claim** or **suit** arises from **bodily injury, property damage, personal injury** or **advertising injury** as a result of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
4. To any loss, cost, expense, fine, penalty arising out of any of the foregoing paragraphs P.1., 2., or 3.;

Q. **Bodily injury, property damage, personal injury** or **advertising injury** arising out of **employment practice liability**;

R. **Bodily injury, property damage, personal injury** or **advertising injury** arising out of or by reason of:

1. The purchase, or sale or offer of sale, or solicitation of any security, debt, bank deposit or financial interest or instrument;
2. Any representations made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument; or
3. Any depreciation or decline in price or value of any security, debt, bank deposit or financial interest or instrument;

S. **Bodily injury** or **property damage** for which any **insured** may be held liable by reason of:

1. Causing or contributing to the intoxication of any person;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

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3. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

However, if insurance for such **bodily injury** or **property damage** is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by **our** Policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance;

T. 1. **Bodily injury or property damage:**

- a) With respect to which the **insured** is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Property Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b) Resulting from the hazardous properties of **nuclear material** and with respect to which (1) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, (2) the **insured** is, or had this Policy not been available would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.
2. **Bodily injury or property damage** resulting from the hazardous properties of **nuclear material**, if:
- a) The **nuclear material** (1) is at any **nuclear facility** owned by the **insured** or operated by the **insured** or on the **insured's** behalf, or (2) has been discharged or dispensed therefrom;
  - b) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by the **insured** or on the **insured's** behalf; or
  - c) The **bodily injury or property damage** arises out of the furnishing by the **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, T.2(c), applies only to **property damage** to such **nuclear facility** and any property thereat.

3. As used in this exclusion:

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- a) Hazardous properties includes 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 meaning given them in the Atomic Energy Act of 1954 or 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 and (2) resulting from the operation by any person or organization of a **nuclear facility** included within the definition of **nuclear facility** below;
- f) **Nuclear facility** means:
  - (1) Any **nuclear reactor**;
  - (2) Any equipment or device designed or used for (i) separating the isotopes or uranium or plutonium, (ii) processing or utilizing **spent fuel**, or (iii) handling, processing or packaging **wastes**;
  - (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 **insured's** custody 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; or
  - (4) Any structure, basin, excavation, premises or place prepared or used for storage or disposal of **waste**, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- g) **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain critical mass of fissionable material;
- h) **Property damage** includes all form of radioactive contamination of property;

U. **Bodily injury, property damage, personal injury or advertising injury** for which any **insured** may be held liable for providing or failing to provide professional health care services;

However, if insurance for **first aid services** is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance for such **first aid services** provided by **our** Policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance;

- V. **Bodily injury, property damage, personal injury or advertising injury** arising out of any actual or alleged discrimination in violation of law.

However, if insurance for such discrimination, other than when arising out of **employment practice liability**, is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by **our** Policy shall cover any and all damages covered by such insurance described above, but will not be broader than the insurance coverage provided by such underlying insurance;

- W. **Bodily injury, property damage, personal injury or advertising injury** arising out of any injuries initiated, alleged or caused to be brought about by a **Named Insured** covered by this Policy against any other **Named Insured** covered by this Policy; or

- X. Any damages for employee benefits liability.

However, in the event that insurance for employee benefits liability is provided by underlying insurance, then the insurance provided by **our** Policy shall cover any and all damages covered by such employee benefits liability coverage, notwithstanding that such damages may be of a kind not otherwise covered by **our** Policy, but shall not be broader than such underlying insurance.

## SECTION VI. GENERAL CONDITIONS

### A. Appeals

If the **insured** or the **insured's** underlying insurers do not appeal a judgment in excess of the Retained Limit, **we** have the right to make such an appeal. If **we** elect to appeal, **our** liability on such an award or judgment shall not exceed **our** Limits of Insurance as stated in Item 3. of the Declarations, plus the cost and expense of such appeal.

### B. Audit

**We** may audit and examine **your** books and records as they relate to this Policy at any time during the period of the Policy and for up to three (3) years after the expiration or termination of this Policy.

### C. Bankruptcy or Insolvency

**Your** bankruptcy, insolvency or inability to pay or the bankruptcy, insolvency or inability to pay of any of **your** underlying insurers will not relieve **us** from the payment of any **claim** or **suit** covered by this Policy.

But under no circumstances will such bankruptcy, insolvency or inability to pay require **us** to drop down and replace the Retained Limit or assume any obligation within the Retained Limit area or within any applicable Self-Insured Retention.

### D. Cancellation

1. **You** may cancel this Policy. **You** must mail or deliver advance written notice to **us** stating when the cancellation is to take effect.
2. **We** may cancel this Policy. If **we** cancel because of nonpayment of premium, **we** must mail or deliver to **you** not less than ten (10) days advance written notice stating when the cancellation is to take effect. If **we** cancel for any other reason, **we** must mail or deliver to **you** not less than ninety (90) days advance written notice stating when the cancellation is to take effect. Mailing that notice to **you** at **your** mailing address shown in Item 1. of the Declarations will be sufficient to prove notice.
3. The Policy Period will end on the day and hour stated in the cancellation notice.
4. If **we** cancel, final premium will be calculated pro rata based on the time this Policy was in force. Final premium will not be less than the pro rata share of the Minimum Premium as shown in Item 4. of the Declarations.
5. If **you** cancel, final premium will be more than pro rata; it will be based on the time this Policy was in force and increased by **our** short rate cancellation table and procedure. Final premium will not be less than the short rate share of the Minimum Premium as shown in Item 4. of the Declarations. This premium shall also be subject to a Minimum Earned Premium as shown in Item 4. of the Declarations.
6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter but the cancellation will be effective even if **we** have not made or offered any refund due **you**. **Our** check or **our** representative's check, mailed or delivered, shall be sufficient tender of any refund due **you**.
7. The first **Named Insured** in Item 1. of the Declarations shall act on behalf of all other **insureds** with respect to the giving and receiving of notice of cancellation and the receipt of any refund that may become payable under this Policy.
8. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this Policy is changed by this statement to comply with that law.

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#### E. Changes

Notice to any agent or broker or knowledge possessed by any agent or broker or any other person will not effect a waiver or a change in any part of this Policy. This Policy can only be changed by a written endorsement that becomes a part of this Policy and that is signed by one of **our** authorized representatives.

#### F. Currency Exchange Rate Determination

In the event that payment is made for any **claim** or **suit** in non-United States Dollars in a foreign jurisdiction, then **our** Policy will respond with an applicable exchange rate of currency (for that jurisdiction), that was effective as of the inception date of this Policy, as stated in the Wall Street Journal on such date.

#### G. Duties in the Event of an **Occurrence, Claim** or **Suit**

1. **You** must see to it that **we** are notified as soon as practicable of an **occurrence** which may result in a **claim** or **suit** under this Policy. To the extent possible, notice should include:
  - a) How, when and where the **occurrence** took place;
  - b) The names and addresses of any injured persons and witnesses; and
  - c) The nature and location of any injury or damage arising out of the **occurrence**;
2. If a **claim** is made or **suit** is brought against any **insured** that is reasonably likely to involve this Policy, **you** must notify **us** in writing as soon as practicable.
3. **You** and any other involved **insured** must:
  - a) Immediately send **us** copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
  - b) Authorize **us** to obtain records and other information;
  - c) Cooperate with **us** in the investigation, settlement or defense of the **claim** or **suit**; and
  - d) Assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or damage to which this Policy may also apply.
4. No **insureds** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for **first aid services** without **our** consent.

## H. Inspection

**We** have the right, but are not obligated, to inspect **your** premises and operations at any time. **Our** inspections are not safety inspections. They relate only to the insurability of **your** premises and operations and the premiums to be charged. **We** may give **you** reports on the conditions **we** find. **We** may also recommend changes. While they may help reduce **claims** or **suits**, **we** do not undertake to perform the duty of any person or organization to provide for the health or safety of **your** employees or the public. **We** do not warrant that **your** premises or operations are safe or healthful or that they comply with laws, regulations, codes or standards.

## I. Legal Actions Against Us

There will be no right of action against **us** under this Policy unless:

1. **You** have complied with all the terms and conditions of this Policy; and
2. The amount **you** owe has been determined with **our** consent or by actual trial and final judgment.

This Policy does not give anyone the right to add **us** as a defendant in an action against **you** to determine **your** liability.

## J. Maintenance of Underlying Insurance and Self-Insured Retention(s)

During the period of this Policy, **you** agree:

1. To keep the policies listed in the Schedule of Underlying Insurance in full force and effect;
2. To continue to maintain the Self-Insured Retention(s), if applicable, as listed in the Schedule of Self-Insured Retention(s);
3. That any renewals or replacements of the policies listed in the Schedule of Underlying Insurance will not be more restrictive in coverage.
4. That the limits of insurance of the policies listed in the Schedule of Underlying Insurance are in full effect as of the inception date of this Policy and shall not change except for any reduction or exhaustion of aggregate limits by payment of **claims** or **suits** for **occurrences** covered by this Policy; and
5. That the terms and conditions of the policies listed in the Schedule of Underlying Insurance will not materially change during the period of this Policy.

If **you** fail to comply with these requirements, **we** will only be liable to the same extent that **we** would had **you** fully complied with these requirements.

#### K. Other Insurance

If other valid and collectible insurance applies to a **claim** or **suit** that is also covered by this Policy, this Policy will apply excess of the other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this Policy.

#### L. Premium

The first **Named Insured** designated in Item 1. of the Declarations shall be responsible for payment of all premiums when due.

The premium for this Policy shall be computed in the basis set forth in Item 4. of the Declarations. At the beginning of the Policy Period, **you** must pay **us** the Advanced Premium shown in Item 4. of the Declarations.

When this Policy expires or if it is canceled, **we** will compute the earned premium for the time this Policy was in force. If this Policy is subject to audit adjustment, the actual exposure basis will be used to compute the earned premium. If the earned premium is greater than the Advanced Premium, **you** will promptly pay **us** the difference. If the earned premium is less than the Advanced Premium, **we** will return the difference to **you**. But in any event, **we** shall retain the Minimum Premium as shown in Item 4. of the Declarations for each twelve (12) months of **our** Policy Period, which is subject to a Minimum Earned Premium for periods of less than twelve (12) months also as shown in Item 4. of the Declarations.

#### M. Prior Insurance

If a **claim** or **suit** covered by this Policy is also covered in whole or in part under any other excess policy issued to the **insured** prior to the effective date of the Policy, **our** Limits of Insurance as stated in Item 3. of the Declarations will be reduced by any amounts due the **insured** under such prior insurance.

#### N. Separation of **Insureds**

Except with respect to **our** Limits of Insurance and any rights or duties specifically assigned to the first **Named Insured** designated in Item 1. of the Declarations, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each **insured** against whom **claim** is made or **suit** brought.

#### O. Subrogation

If any **insured** has rights to recover all or part of any payment **we** have made under this Policy, those rights are transferred to **us**. The **insured** must do nothing after such payment to impair these rights and must help **us** enforce them.

Any recoveries shall be applied as follows:

1. Any interests, including the **insured**, that have paid an amount in excess of **our** payment under this Policy will be reimbursed first;
2. **We** then will be reimbursed up to the amount **we** have paid; and
3. Any interests, including the **insured**, over which **our** Policy is excess, are entitled to claim the residue.

Expenses incurred in the exercise of rights of recovery shall be apportioned between the interests, including the **insured**, in the ratio of their respective recoveries as finally settled.

P. Transfer of **Your** Rights and Duties

**Your** rights and duties under this Policy may not be transferred without **our** written consent.

If **you** die or are legally declared bankrupt, **your** rights and duties will be transferred to **your** legal representative but only while acting within the scope of duties as **your** legal representative. However, notice of cancellation sent to the first **Named Insured** designated in Item 1. of the Declarations and mailed to the address shown in this Policy will be sufficient notice to effect cancellation of this Policy.

Q. When **Claim** or **Suit** is Payable

Coverage under this Policy will not apply unless and until the **insured** or the **insured's** underlying insurer is obligated to pay the Retained Limit.

When the amount of loss arising out of the **claim** or **suit** has finally been determined, **we** will promptly pay on behalf of the **insured** the amount of loss falling within the terms and conditions of this Policy.

In Witness Whereof, **we** have caused this Policy to be executed and attested, but this Policy shall not be valid unless countersigned by one of **our** duly authorized representatives.

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Secretary

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President