

# PROFESSIONAL LIABILITY COVERAGE FORM

**THIS IS A CLAIMS-MADE COVERAGE FORM. PLEASE READ THIS ENTIRE FORM CAREFULLY. WORDS AND PHRASES THAT APPEAR IN QUOTATION MARKS HAVE SPECIAL MEANING. REFER TO SECTION II. DEFINITIONS.**

The insurance company shown in the Declarations (hereinafter "the Company") in consideration of the payment of the premium and the undertaking of the "named insured" to pay the Self-Insured Retention described hereunder, in reliance upon all representations and warranties contained in the application made a part of this policy, including any addendum or addenda thereto, and subject to all provisions of this policy subsequently set forth, agrees with the "named insured" as follows:

## I. INSURING AGREEMENTS

### A. COVERAGE AND DEFENSE

The Company shall pay on behalf of the "insured" those "damages" in excess of the Self-Insured Retention that the "insured" becomes legally obligated to pay to others, but only:

1. if such "damages" result from a "wrongful act" committed by any "insured" in performing or failing to perform "professional services" anywhere in the world; and
2. if the "insured" committed the "wrongful act" on or after the retroactive date specified in the Declarations and prior to the end of this "policy period"; and
3. if "claim" for such "damages" is first made against the "insured" during this "policy period," or any applicable extended reporting period; and
4. if such "claim" is reported in writing directly to the Company and such reporting is received by the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this "policy period"; and
5. if on the effective date of this policy, no "insured" had knowledge of any circumstances, which could reasonably be expected to give, rise to a "claim."

The Company will pay all "claims expenses" in excess of the Self-Insured Retention for all "claims" covered under the terms of this policy.

The Company shall have both the right and duty to provide for the defense of the "insured" with respect to a "claim" made against any "insured" in the United States of America, its territories or possessions, or Canada, falling under the purview of all of the foregoing requirements. The Company shall also have the exclusive right to investigate such "claim," to designate and appoint all legal counsel to defend the "insured" and to otherwise control the defense thereof.

If a "claim" is made against any "insured" such as is described in the immediate foregoing, other than in the United States of America, its territories or possessions, or Canada, the Company shall have the right, but not the duty, to provide for the defense of such "claim." If the Company elects not to provide for the defense of such "claim," the "named insured," under the supervision of the Company, shall have the duty to make or cause to be made such investigation and defense as are necessary and, subject to prior authorization by the Company, effectuate settlement. In such eventuality, the Company shall indemnify the "named insured" for "claims expenses" incurred and "damages" and supplementary payments paid in excess of the Self-Insured Retention.

The Company shall have the exclusive right hereunder to negotiate and effectuate the settlement of all "claims," as it deems expedient, whether under or in excess of the Self-Insured Retention, but it shall not commit the "named insured" to any settlement without the "named insured's" consent. If, however, the "named insured" refuses to consent to a settlement recommended by the Company and elects to contest such "claim" or continue legal proceedings in connection therewith, the Company's liability shall be limited to the sum of the amount for which the "claim" could have been settled and all "claims expenses" incurred up to the time of such refusal, which is in excess of the Self-Insured Retention.

The Company's duty to provide for the defense of any "insured," to pay "damages" on behalf of any "insured," or to make any payment pursuant to Section I.B., Supplementary Coverages and Payments, shall immediately terminate:

1. if the Limits of Insurance of this policy become exhausted by payment of "damages" or "claims expenses"; or
2. if the "named insured" fails to fulfill its Self-Insured Retention obligation as imposed by Section IV. Self Insured Retention; or
3. if the application attached hereto and made a part of this policy, including any addendum or addenda thereto, contains any material misrepresentation of fact.

## **B. SUPPLEMENTARY COVERAGES AND PAYMENTS**

With respect to such insurance as is afforded by this policy, the Company shall pay, in addition to the applicable limit of liability, all of the following:

1. All premiums on bonds to release attachments and appeal bonds, limited to that portion of such bond that does not exceed the limit of liability of this policy but without any obligation of any kind upon the Company to apply for, secure, or furnish any such bonds.
2. Pre-judgment interest and post judgment interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is covered and within the applicable Per Claim or Aggregate Limit of Liability. However, the maximum amount of pre-judgment or post judgment interest the Company will pay under this policy will be the portion of pre-judgment or post judgment interest accrued on "damages" covered by this policy.
3. All reasonable expenses incurred by any "insured" at the Company's request in assisting the Company in the investigation and defense of any "claim," other than loss of earnings, salaries or other compensation paid to the "named insured's" officers or employees, except as provided in Paragraph 5, below.
4. Defendant's reimbursement - The Company will pay an amount of \$500 to each "insured" for each day or part of a day that any "insured" attends as a witness at any trial, deposition, or interrogatory at which the Company has requested any "insured's" attendance, or when such attendance is required by the court. This payment shall only apply to appearances involving "claims" against an "insured." The maximum amount payable for all such appearances made during the "policy period" shall not exceed \$5,000 as a total aggregate, regardless of how many appearances are actually made during the "policy period," or how many different "insureds" make appearances, and regardless of any other fact, circumstance, or situation.
5. Coverage for fines or penalties - The Company will reimburse the "named insured" for the amount of any fine or penalty which is levied against any "insured," and is paid by the "insured" during the "policy period," by the Environmental Protection Agency, any state or local environmental regulatory agency, or any other governmental official or regulatory agency, or any court. The maximum total amount the Company will pay for reimbursement for all fines or penalties combined which are levied and paid during the "policy period" will be \$50,000, regardless of the actual number of fines or penalties levied or paid, or the actual amount of any fine, and regardless of any other fact or circumstance. Reimbursement shall not

be available whenever the applicable law provides that a particular fine or penalty is uninsurable as a matter of law.

For Supplementary Coverages numbers 7., 8., 9., 10., and 11. below, it is agreed that any and all payments made for any of these shall be included within, and shall not be in addition to, the applicable limit of liability.

6. Administrative orders - The Company will reimburse the "named insured" in an amount up to, but not to exceed, \$100,000 for the costs expended by the "named insured" to comply with any administrative order made by any governmental regulatory agency to clean up, remediate or monitor any environmentally contaminated site.
7. Automatic coverage for newly formed or acquired entities - The coverage provided under this policy shall apply on behalf of any entity, which is newly formed or newly acquired by the "named insured" subsequent to the inception date of the "policy period." Coverage shall be provided only to those newly formed or newly acquired entities for which, as of the date of formation or acquisition, the "named insured" directly owns fifty percent (50%) or more of the outstanding stock or other equity or ownership interest.

It is agreed that there shall only be coverage for those "claims" that arise from "wrongful acts" which were committed subsequent to the date of formation or acquisition. The "named insured" agrees to advise the Company of any newly formed or acquired entity within ninety (90) days of the date of formation or acquisition. The "named insured" agrees to accept any coverage terms or reasonable additional premium, which the Company may require, relative to the newly formed or acquired entity.

8. Coverage for indemnification of clients - Whenever any written contract or written job specifications provide that the "named insured" shall indemnify the client for, or hold the client harmless or free from, any "damages" which are due to the "wrongful act" of any "insured," the Company will indemnify the "named insured" for those "damages" that must be paid to indemnify the client.
9. Vicarious liability coverage - The coverage provided under this policy shall apply on behalf of all "insureds" for "wrongful acts" committed by any entity or individual for whom any "insured" is legally liable, as long as the "wrongful act" was committed on or after the retroactive date shown on the Policy Declarations Page or on an endorsement to the policy.
10. Response costs coverage – The Company will reimburse the "named insured" in an amount up to, but not to exceed, \$100,000 for the costs expended by the "named insured" in accordance with, and in support of, the duties of the "named insured" to mitigate "damages," as described in Section VI., Conditions, Paragraph G., Mitigation, the Company will reimburse the "named insured" for all costs expended by the "named insured" in fulfilling the "named insured's" duties of mitigation, subject to the following limitations:
  - a. The only costs that will be reimbursed by the Company are those costs that are expended by the "named insured" in efforts to abate, stop, prevent, or reduce the "damages" emanating from a "pollution condition" caused directly or indirectly by any "wrongful act" committed by any "insured."
  - b. The only costs that will be reimbursed by the Company are those costs that are expended by the "named insured" on or after the date that the "named insured" first becomes aware of the "pollution condition" until that date that the "named insured" first has a reasonable opportunity to report the incident, circumstances, or "claim" to the Company.
  - c. Nothing in this provision shall in any way alter, modify, or change the duty of the "named insured" to give notice of "claims" to the Company pursuant to Section VI., Conditions, Paragraph A., Notice of "Claim."

## II. DEFINITIONS

- A. The term “claim” means an oral or written notice to the “named insured” from any party intending to hold any “insured” responsible for “damages” arising out of a “wrongful act” committed by any “insured” in performing or failing to perform “professional services.”
- B. The term “claims expenses” shall mean all costs, charges and expenses resulting from the adjustment, appraisal, investigation, defense, settlement, arbitration or appeal of any “claim” covered by the terms and conditions of this policy if such costs, charges and expenses are incurred by the Company, an attorney designated by the Company, or by any “insured” with the written consent of the Company; except that it shall not include the costs of investigating or administering any “claim” by employees of the Company or loss of earnings incurred by any “insured” in investigating, defending, settling, arbitrating or appealing any “claim” at the Company’s direction, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 4., Defendant’s Reimbursement.
- C. The term “damages” shall mean a judgment, award or settlement monetarily compensating a claimant for a “claim” covered by the terms and conditions of this policy, and shall include “damages” based upon emotional distress. “Damages” also includes any loss due to diminution in value or loss of use of land, property, or buildings. “Damages” does not include any of the following:
1. any administrative, civil or criminal fines, sanctions, taxes, or penalties, whether pursuant to law or statute, except to the extent coverage for reimbursement for fines or penalties is provided under Section I.B., Supplementary Coverages and Payments, Paragraph 6., Coverage for fines or penalties;
  2. restitution, reduction, disgorgement, set off, return, or payment of any form of any consulting fees or payments, or any other costs, expenses or charges;
  3. any loss of income or revenue to any “insured,” regardless of the cause or reason for the loss of income or revenue, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant’s reimbursement;
  4. any form of non-monetary judgments or relief, including, but not limited to, specific performance or any injunctive relief of any kind;
  5. any punitive or exemplary “damages”; or
  6. any amount of any civil judgment which is, or represents, any multiple of any kind of damage award, including, but not limited to, the two-thirds portion of any award of treble “damages.”
- D. The term “insured” shall mean:
1. the “named insured”; and
  2. a director or officer of the “named insured,” but only while acting in their respective capacity as such; and
  3. an employee of the “named insured,” but only with respect to “professional services” performed or failed to have been performed on behalf of the “named insured” in the employee’s capacity as such; and
  4. a former director, officer or employee of the “named insured,” but only with respect to “professional services” performed or failed to have been performed on behalf of the “named insured” prior to the termination of that respective capacity; and
  5. the current spouse of any current owner, director or officer of the “named insured”; and

6. the heirs, executors, administrators, and legal representatives of each "insured" in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each "insured" as otherwise covered by this policy; and
7. a limited liability company, if the "named insured" or any other "insured" exists as such, along with all past and present members of any such limited liability company, but only with respect to "professional services" performed or failed to have been performed on behalf of the "named insured."

No person or organization is an "insured" with respect to the conduct of any current or past partnership or joint venture that is not shown as a "named insured" in the Declarations.

- E. The term "named insured" shall mean the proprietor, partners or organization specified in the Declarations.
- F. The term "policy period" means the period set forth in the Declarations.
- G. The term "pollution condition" means the discharge, dispersal, release or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, "waste" materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.
- H. The term "professional services" shall mean the services specified by endorsement to this policy, but only if the services were performed by or on behalf of the "named insured" for clients for a fee.
- I. The term "waste" means any discarded materials of any kind, including those materials to be recycled, reconditioned, reclaimed, or disposed of.
- J. The term "wrongful act" means any of the following that any "insured" actually or allegedly commits, but only in the performance of "professional services" rendered by or on behalf of the "named insured":
  1. a negligent act, error, or omission;
  2. a conflict of interest in representing clients with adverse interests; or
  3. the unauthorized practice of law.

Additionally, in order to be defined to be a "wrongful act" under this definition, the particular "wrongful act" must have been committed on or after the retroactive date specified either in the Policy Declarations or in an endorsement to this policy, but prior to the end of the "policy period." If no retroactive date is specified, that means that all "wrongful acts" committed prior to the end of the "policy period" are included within this definition.

### **III. LIMITS OF INSURANCE**

#### **A. MAXIMUM LIMITS OF LIABILITY**

The Company's maximum limit of liability hereunder shall not exceed the limits for "damages" and "claims expenses" specified in the Declarations, irrespective of any of the following:

1. the number of "claims" made; or
2. the number of persons or organizations making "claims"; or
3. the number of persons covered hereunder; or
4. the number of "wrongful acts" actually or allegedly committed; or
5. the types of "damages" awarded.

## **B. LIMITS OF LIABILITY**

As specified in the Declarations:

1. the "Limit for Each Claim" amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Forms combined that form a part of this policy for "damages" and "claims expense" that arise out of any one "claim";
2. the "General Aggregate Limit" amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Forms combined that form a part of this policy, for all "damages" and "claims expense" arising from covered "claims";

If this policy and any other policy providing coverage by the Company or any affiliate company apply to the same "wrongful act" or series of related "wrongful acts," the aggregate maximum Limit of Liability payable under all of the policies combined shall be limited to the amount of the highest applicable Limit of Liability payable under any one of the policies. Related "wrongful acts" are those "wrongful acts" that arise out of, are based on, relate to or are in consequence of, the same facts, circumstances or situations.

The Limits of Insurance shown in the Declarations shall apply in excess of the Self Insured Retention amount shown in the Declarations.

## **IV. SELF-INSURED RETENTION**

As respects each "claim" first made against any "insured," the "named insured" shall be responsible for payment for that amount of "damages" or "claims expenses" indicated in the Declarations as the Self-Insured Retention amount. The Company shall not be responsible to make any payments for either "damages," "claims expenses," or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, unless and until the full amount of the Self-Insured Retention has been paid by the "named insured."

Should the Company, for any reason, pay any amount of "damages," "claims expenses" or supplementary payments without regard to the Self-Insured Retention amount, the "named insured" will reimburse the Company within 30 days of the Company's request for such reimbursement, for that part of the Self-Insured Retention Amount, which has been paid.

## **V. EXCLUSIONS**

The Company shall have no obligation whatsoever under this policy to make any payment of any kind for either "damages," "claims expense," or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, or to arrange for, provide, or pay, for any defense, for:

- A. any "claim" of any kind or nature made by any past or present "insured" against any other past or present "insured"; or
- B. any "claim" arising from any actual or alleged discrimination on the basis of race, color, creed, national origin, marital status, medical condition, sexual orientation or preference, religion, age, gender, pregnancy, or physical or mental impairments, disabilities, or handicaps; or
- C. any "claim" made by or on behalf of any business enterprise not shown on the Declarations:
  - a. which is, was, or will be owned in whole or in part by any past or present "insured"; or
  - b. which owned in whole or in part at any time the "named insured"; or
- D. any "claim" arising from any nuclear reaction, radiation or radioactive contamination; or

- E. any "claim" arising from any advice rendered or which allegedly should have been rendered with respect to any bond, suretyship or insurance requirement; or
- F. any "claim" arising from any "insured's" intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint or notice of violation, notice letter, executive order, or instruction of any governmental agency or body; or
- G. any "claim" arising from any illegal, dishonest, fraudulent, criminal, or malicious act actually or allegedly committed by any "insured"; or
- H. any "claim" arising out of any faulty workmanship attributed to any "insured" or a directly or indirectly related person, firm or organization. For the purpose of this exclusion, the term "faulty workmanship" shall mean defective, inadequate or incomplete construction or construction not conforming to or otherwise not in accordance with the contract drawings, specifications or shop drawings, including any revisions thereto. For the purpose of this exclusion, the word "construction" shall mean all on-site operations relative to building or altering structures, including all demolition, erection, excavation and the assembly or installation of components or equipment; or
- I. any "claim" either in whole or in part, directly or indirectly, out of or resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

This exclusion does not apply to legal liability that arises out of a negligent act, error or omission in the performance of the "insured's" "professional services" provided the "insured's" "professional services" were rendered on or after the retroactive date to this policy or 1<sup>st</sup> January 1990 (whichever is the later).

- J. any "claim" which arises from, or is in any way related to, any collision or accident of any kind involving any kind or type of automobile, truck, boat, watercraft, airplane, helicopter, or other aircraft or vehicle of any kind or type; or
- K. any "claim" in any way related to any dispute or any other kind of issue or right involving any copyright, patent, or trademark; or
- L. any "claim" arising out of the liability of others assumed by the "insured" under any contract or agreement, including a hold harmless agreement, either oral or written, except and to the extent the "insured" would have been liable in the absence of such contract or agreement.
- M. any "claim" for bodily injury or death to any person, whether or not an employee of the "named insured," if benefits from the bodily injury or death are collectible or compensable under any workers compensation law or disability benefits law.
- N. any "claim" arising out of projects where project specific professional liability insurance has been purchased and is in force, unless specifically endorsed hereon.
- O. any "claim" arising out of express warranties and guarantees.
- P. any "claim" arising out of the design or manufacture of any goods or products, which are sold or supplied by the "insured" or by others under license from the "insured."
- Q. any "claim" arising out of any actual or alleged violations of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated there under or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law.
- R. any "claim" arising out of any "insured's" activities and/or capacity as a Fiduciary under the Employee Retirement Income Security Act of 1974 and its amendment or any regulation or order issued pursuant thereto.

- S. any “claim” arising out of “professional services” performed for any entity which:
  - a. is operated, managed or controlled by the “insured” or any individual “insured;”
  - b. the “insured” or any individual “insured” has an ownership interest;
  - c. the “insured” or any individual “insured” is an officer or director; or
  - d. wholly or partly owns, operates, controls or manages the “insured.”

## **VI. CONDITIONS**

### **A. NOTICE OF “CLAIM”**

In the event of a “claim,” or any “insured’s” knowledge of circumstances which could reasonably be expected to give rise to a “claim,” the “named insured” shall have the duty to provide written notice to the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this “policy period.”

This written notice shall be given whether or not the “named insured” believes that the “claim,” or incident giving rise to the “insured’s” knowledge, will result in a demand that falls under, or in excess of, the Self-Insured Retention. Written notice shall be given to the representative shown in the Declarations.

Such written notice must contain complete details, including, but not limited to, the exact date the “claim” was made, location, circumstances giving rise to such “claim,” the name of all claimants and a full description of the nature and scope of the allegations. These duties of the “insured” hereunder shall be non-delegable.

### **B. COOPERATION AND ASSISTANCE OF THE “INSURED”**

Each “insured” shall have the duty to fully cooperate with and assist the Company, with respect to the investigation, defense, settlement, arbitration or appeal of any “claim.” No “insured” shall be indemnified hereunder for loss of earnings incurred in such cooperation or assistance, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant’s Reimbursement, nor shall such loss of earnings apply towards the satisfaction of the Self-Insured Retention.

### **C. ACTIONS PREJUDICIAL TO THE COMPANY**

In the event of a “claim,” no “insured” shall undertake any of the following actions, without the Company’s prior, written consent:

1. engage counsel to provide legal representation; or
2. assume any obligation, other than the reasonable efforts required to satisfy the duty to mitigate “damages” as provided in Section VI., Conditions, Paragraph G., Mitigation; or
3. forgive, reduce in amount or otherwise compromise any compensation owed or allegedly owed to the “named insured”; or
4. admit, or in any manner acknowledge liability; or
5. effectuate or attempt to effectuate settlement, including, but not limited to, entering into a consent decree involving the assignment of any “insured’s” interest under this policy.

Any of the foregoing actions by any “insured” shall be deemed to materially prejudice the Company’s rights.



#### **D. SUBROGATION**

If the Company pays an amount hereunder as “damages,” “claims expense,” or as any payment under Section I.B., Supplementary Coverages and Payments, or any combination thereof, the Company shall be subrogated to all of each “insured’s” rights of recovery against any person, firm or organization. All “insureds” shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. No “insured” shall waive or prejudice any such rights either prior to or subsequent to any “claim.”

#### **E. “NAMED INSURED” AS AGENT**

The “named insured” specified in the Declarations shall be deemed agent of each “insured” with respect to all matters involving this policy, however, the Company shall have the right to seek indemnification from any “insured” or any other person who may be legally liable for the debts of the “named insured.”

#### **F. ACCEPTANCE**

By acceptance of this policy, the “named insured” hereby confirms that all provisions hereof, including all endorsements and the application attached hereto and made a part of this policy, embody all agreements existing between the “named insured” and the Company and supersede any prior agreements, whether expressed or implied.

#### **G. MITIGATION**

The “named insured” shall make all reasonable efforts to abate, stop, prevent, or reduce the “damages” emanating from any “pollution condition” resulting directly or indirectly from any “wrongful act” committed by any “insured.” It is agreed that these efforts shall commence immediately upon discovery or notice of the “pollution condition” by any “insured.” These efforts must include mitigating, alleviating or otherwise limiting the “damages” which could result from the “pollution condition.” Such efforts must be undertaken even in the absence of a “claim.”

#### **H. NO ACTION AGAINST COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, each “insured” has fully complied with all the provisions of the policy, or until the amount of the “named insured’s” obligation to pay has been finally determined either by written agreement of the “named insured,” the claimant and the Company or by final judgment against the “named insured” after the actual trial of the issues and the period of time to appeal has elapsed without an appeal having been taken or, if an appeal has been taken, then until after such appeal has been determined.

#### **I. CHANGES**

No provision of this policy may be amended, waived or otherwise changed, except by endorsement hereto.

#### **J. CANCELLATION**

The “named insured” may cancel this policy by mailing to the Company written notice stating when thereafter such cancellation shall become effective. The Company may cancel this Policy by mailing to the “named insured,” at the mailing address specified in the Declarations, written notice stating when not less than thirty (30) days thereafter such cancellation shall become effective, except in the event of the “named insured’s” nonpayment of premium, not less than ten (10) days advance notice of cancellation shall be given. The mailing of notice as aforesaid, shall be sufficient proof of either party’s intent to cancel. The effective date of cancellation specified in such notice shall terminate this “policy period.” Delivery of such notice shall be equivalent to mailing.

If the "named insured" cancels, the earned premium shall be computed in accordance with the customary short rate table. If the Company cancels, the earned premium shall be computed pro rata. The Company will tender any return premium subject to retaining a minimum earned premium equal to 25% of the amount specified in the Declarations.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but tender of the unearned premium or return of this policy, shall not be conditions precedent to cancellation hereunder.

#### **K. AUDIT**

The Company shall have the right to examine or audit all financial records of the "named insured," for the purpose of ascertaining the accuracy of the income or revenue stated in the application.

#### **L. ADDITIONAL PREMIUMS**

If, during this "policy period," an increase in the risk or hazards covered hereunder occurs, the Company shall have the right to charge the appropriate additional premium.

#### **M. SEPARATION OF INSURED**

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

1. As if each "Named Insured" were the only "named Insured"; and
2. Separately to each "insured" against whom "claim" is made.

#### **N. APPLICATION IS INCORPORATED INTO, AND IS PART OF POLICY**

The "named insured" acknowledges and agrees that:

1. the warranties and representations contained in the Application for this Policy are true, correct and complete; and
2. the Company issued this Policy in specific reliance upon the warranties and representations contained in the Application; and
3. the Application, along with the Policy Declarations Page, is incorporated into, and is part of, this Policy.

#### **O. OTHER INSURANCE**

If any part of either "damages" or "claims expenses" is insured under this Policy and any other current, prior or subsequent Policy, this policy shall provide coverage for such "damages" or "claims expenses" on a pro rata basis with such other Policy according to the applicable Limits of Liability of this Policy and such other Policy.

# CONTRACTORS POLLUTION LIABILITY COVERAGE FORM

**THIS IS A CLAIMS-MADE COVERAGE FORM. PLEASE READ THIS ENTIRE FORM CAREFULLY. WORDS AND PHRASES THAT APPEAR IN QUOTATION MARKS HAVE SPECIAL MEANING. REFER TO SECTION II. DEFINITIONS.**

The insurance company shown in the Declarations (hereinafter "the Company") in consideration of the payment of the premium and the undertaking of the "named insured" to pay the Self-Insured Retention described hereunder, in reliance upon all representations and warranties contained in the application made a part of this policy, including any addendum or addenda thereto, and subject to all provisions of this policy subsequently set forth, agrees with the "named insured" as follows:

## I. INSURING AGREEMENTS

### A. COVERAGE AND DEFENSE

The Company shall pay on behalf of the "insured" those "damages" for "bodily injury" and "property damage" in excess of the Self-Insured Retention that the "insured" becomes legally obligated to pay:

1. if the "damages" result from a "pollution condition" at any site where any "insured" is performing, or has performed, any contracting or remediation operations anywhere in the world; and
2. if the "insured" performed the operations on or after the retroactive date specified in the Declarations and prior to the end of this "policy period"; and
3. if "claim" for such "damages" is first made against the "insured" during this "policy period," or any applicable extended reporting period; and
4. if such "claim" is reported in writing directly to the Company and such reporting is received by the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this "policy period"; and
5. if on the effective date of this policy, no "insured" had knowledge of any circumstances which could reasonably be expected to give rise to a "claim"; and
6. if the "pollution condition" was unexpected and unintended from the standpoint of the "insured."

The Company will pay all "claims expenses" in excess of the Self-Insured Retention for all "claims" covered under the terms of this policy.

The Company shall have both the right and duty to provide for the defense of the "insured" with respect to a "claim" made against the "insured" in the United States of America, its territories or possessions, or Canada, falling under the purview of all of the foregoing requirements. The Company shall also have the exclusive right to investigate such "claim," to designate and appoint all legal counsel to defend the "insured" and to otherwise control the defense thereof.

If a "claim" is made against any "insured" such as is described in the immediate foregoing, other than in the United States of America, its territories or possessions, or Canada, the Company shall have the right, but not the duty, to provide for the defense of such "claim." If the Company elects not to provide for the defense of such "claim," the "named insured," under the supervision of the Company, shall have the duty to make or cause to be made such investigation and defense as are necessary and, subject to prior authorization by the Company, effectuate settlement. In such eventuality, the Company shall indemnify the "named insured" for "claims expenses" incurred and "damages" and supplementary payments paid in excess of the Self-Insured Retention.

The Company shall have the exclusive right hereunder to negotiate and effectuate the settlement of all "claims," as it deems expedient, whether under or in excess of the Self-Insured Retention, but it shall not commit the "named insured" to any settlement without the "named insured's" consent. If, however, the "named insured" refuses to consent to a settlement recommended by the Company and elects to contest such "claim" or continue legal proceedings in connection therewith, the Company's liability shall be limited to the sum of the amount for which the "claim" could have been settled and all "claims expenses" incurred up to the time of such refusal, which is in excess of the Self-Insured Retention.

The Company's duty to provide for the defense of any "insured," to pay "damages" on behalf of any "insured," or to make any payment pursuant to Section I.B., Supplementary Coverages and Payments, shall immediately terminate:

1. if the Limits of Insurance of this policy become exhausted by payment of "damages" or "claims expenses"; or
2. if the "named insured" fails to fulfill its Self-Insured Retention obligation as imposed by Section IV. Self-Insured Retention; or
3. if the application attached hereto and made a part of this policy, including any addendum or addenda thereto, contains any material misrepresentation of fact.

## **B. SUPPLEMENTARY COVERAGES AND PAYMENTS**

With respect to such insurance as is afforded by this policy, the Company shall pay, in addition to the applicable limit of liability, all of the following:

1. All premiums on bonds to release attachments and appeal bonds, limited to that portion of such bond that does not exceed the limit of liability of this policy but without any obligation of any kind upon the Company to apply for, secure, or furnish any such bonds.
2. Pre-judgment interest and post judgment interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is covered and within the applicable Per Claim or Aggregate Limit of Liability. However, the maximum amount of pre-judgment or post judgment interest the Company will pay under this policy will be the portion of pre-judgment or post judgment interest accrued on "damages" covered by this policy.
3. All reasonable expenses incurred by any "insured" at the Company's request in assisting the Company in the investigation and defense of any "claim," other than loss of earnings, salaries or other compensation paid to the "named insured's" officers or employees, except as provided in Paragraph 5, below.
4. Defendant's Reimbursement - The Company will pay an amount of \$500 to each "insured" for each day or part of a day that any "insured" attends as a witness at any trial, deposition, or interrogatory at which the Company has requested the "insured's" attendance, or when such attendance is required by the court. This payment shall only

apply to appearances involving "claims" against an "insured." The maximum amount payable for all such appearances made during the "policy period" shall not exceed \$5,000 as a total aggregate, regardless of how many appearances are actually made during the "policy period," or how many different "insureds" make appearances, and regardless of any other fact, circumstance, or situation.

5. Coverage for fines or penalties - The Company will reimburse the "named insured" for the amount of any fine or penalty which is levied against any "insured," and is paid by the "insured" during the "policy period," by the Environmental Protection Agency, any state or local environmental regulatory agency, or any other governmental official or regulatory agency, or any court. The maximum total amount the Company will pay for reimbursement for all fines or penalties combined which are levied and paid during the "policy period" will be \$50,000, regardless of the actual number of fines or penalties levied or paid, or the actual amount of any fine, and regardless of any other fact or circumstance. Reimbursement shall not be available whenever the applicable law provides that a particular fine or penalty is uninsurable as a matter of law.

For Supplementary Coverages numbers 7., 8., 9., and 10., below, it is agreed that any and all payments made for any of these shall be included within, and shall not be in addition to, the applicable limit of liability.

6. Automatic coverage for newly formed or acquired entities - The coverage provided under this policy shall apply on behalf of any entity, which is newly formed or newly acquired by the "named insured" subsequent to the inception date of the "policy period." Coverage shall be provided only to those newly formed or newly acquired entities for which, as of the date of formation or acquisition, the "named insured" directly owns fifty percent (50%) or more of the outstanding stock or other equity or ownership interest.

It is agreed that there shall only be coverage for those "claims" that arise from "pollution conditions" which arise subsequent to the date of formation or acquisition. The "named insured" agrees to advise the Company of any newly formed or acquired entity within ninety (90) days of the date of formation or acquisition. The "named insured" agrees to accept any coverage terms or reasonable additional premium, which the Company may require, relative to the newly formed or acquired entity.

7. Coverage for indemnification of clients - Whenever any written contract or written job specifications provide that the "named insured" shall indemnify the client for, or hold the client harmless or free from, any "damages" which are due to a "pollution condition" which arises out of the "named insured's" operations, the Company will indemnify the "named insured" for those "damages" that must be paid to indemnify the client.
8. Vicarious liability coverage - The coverage provided under this policy shall apply on behalf of all "insureds" for "pollution conditions" arising out of operations performed by any entity or individual for whom any "insured" is legally liable, as long as the operations were performed on or after the retroactive date shown on the Policy Declarations Page or on an endorsement to the policy, but prior to the end of the "policy period."
9. Response costs coverage - The Company will reimburse the "named insured" in an amount up to, but not to exceed, \$100,000 for the costs expended by the "named insured" in accordance with, and in support of, the duties of the "named insured" to mitigate "damages," as described in Section VI., Conditions, Paragraph G., Mitigation, the Company will reimburse the "named insured" for all costs expended by the "named insured" in fulfilling the "named insured's" duties of mitigation, subject to the following limitations:

- a. The only costs that will be reimbursed by the Company are those costs that are expended by the "named insured" in efforts to abate, stop, prevent, or reduce the "damages" emanating from a "pollution condition" caused directly or indirectly by any "insured."

- b. The only costs that will be reimbursed by the Company are those costs that are expended by the “named insured” on or after the date that the “named insured” first becomes aware of the “pollution condition” until that date that the “named insured” first has a reasonable opportunity to report the incident, circumstances, or “claim” to the Company.
- c. Nothing in this provision shall in any way alter, modify, or change the duty of the “named insured” to give notice of “claims” to the Company pursuant to Section VI., Conditions, Paragraph A., Notice of “Claim.”

## II. DEFINITIONS

- A. The term “bodily injury” means bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death resulting therefrom caused by a “pollution condition” arising out of the performance by any “insured” of operations covered by this policy.
- B. The term “claim” means an oral or written notice to the “named insured” from any party intending to hold any “insured” responsible for “damages” arising out of a “pollution condition.”
- C. The term “claims expenses” shall mean all costs, charges and expenses resulting from the adjustment, appraisal, investigation, defense, settlement, arbitration or appeal of any “claim” covered by the terms and conditions of this policy if such costs, charges and expenses are incurred by the Company, an attorney designated by the Company, or by any “insured” with the written consent of the Company; except that it shall not include the costs of investigating or administering any “claim” by employees of the Company or loss of earnings incurred by any “insured” in investigating, defending, settling, arbitrating or appealing any “claim” at the Company's direction, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 4., Defendant's Reimbursement.
- D. The term “damages” shall mean a judgment, award or settlement monetarily compensating a claimant for a “claim” covered by the terms and conditions of this policy, and shall include “damages” based upon emotional distress. “Damages” also includes any loss due to diminution in value or loss of use of land, property, or buildings. “Damages” does not include any of the following:
  - 1. any administrative, civil or criminal fines, sanctions, taxes, or penalties, whether pursuant to law or statute, except to the extent coverage for reimbursement for fines or penalties is provided under Section I.B., Supplementary Coverages and Payments, Paragraph 6, Coverage for fines or penalties;
  - 2. restitution, reduction, disgorgement, set off, return, or payment of any form of any consulting fees or payments, or any other costs, expenses or charges;
  - 3. any loss of income or revenue to the “named insured,” regardless of the cause or reason for the loss of income or revenue, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant's reimbursement;
  - 4. any form of non-monetary judgments or relief, including, but not limited to, specific performance or any injunctive relief of any kind;
  - 5. any punitive or exemplary “damages”; or
  - 6. any amount of any civil judgment which is, or represents, any multiple of any kind of damage award, including, but not limited to, the two-thirds portion of any award of treble “damages.”

E. The term "insured" shall mean:

1. the "named insured"; and
2. a director or officer of the "named insured," but only while acting in their respective capacity as such; and
3. an employee of the "named insured," but only with respect to services performed or failed to have been performed on behalf of the "named insured" in the employee's capacity as such; and
4. a former director, officer or employee of the "named insured," but only with respect to services performed or failed to have been performed on behalf of the "named insured" prior to the termination of that respective capacity; and
5. the current spouse of any current owner, director or officer of the "named insured"; and
6. the heirs, executors, administrators, and legal representatives of each "insured" in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each "insured" as otherwise covered by this policy; and
7. a limited liability company, if the "named insured" or any other "insured" exists as such, along with all past and present members of any such limited liability company, but only with respect to "professional services" performed or failed to have been performed on behalf of the "named insured."

No person or organization is an "insured" with respect to the conduct of any current or past partnership or joint venture that is not shown as a "named insured" in the Declarations.

F. The term "named insured" shall mean the proprietor, partners or organization specified in the Declarations.

G. The term "policy period" means the period set forth in the Declarations.

H. The term "pollution condition" means the discharge, dispersal, release or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, "waste" materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in "bodily injury" or "property damage."

I. The term "professional services" shall mean the services specified by endorsement to this policy, but only if the services were performed by or on behalf of the "named insured" for clients for a fee.

J. The term "property damage" means:

1. physical injury to or destruction of tangible property including the resulting loss of use thereof; and
2. costs expended by the "named insured" to evaluate, investigate, clean up, remediate or monitor any environmentally contaminated site.
3. loss of use of tangible property that has not been physically injured or destroyed; provided that such physical injury or destruction, clean up costs and/or loss of use are caused by a "pollution condition" arising out of the performance by the "named insured" of operations insured by this policy.

K. The term "waste" means any discarded materials of any kind, including all of those materials to be recycled, reconditioned, reclaimed, or disposed of.

### **III. LIMITS OF INSURANCE**

#### **A. MAXIMUM LIMITS OF LIABILITY**

The Company's maximum limit of liability hereunder shall not exceed the for "damages" and "claims expenses" specified in the Declarations, irrespective of any of the following:

1. the number of "claims" made; or
2. the number of persons or organizations making "claims"; or
3. the number of persons covered hereunder; or
4. the number of "pollution conditions" which arise; or
5. the types of "damages" awarded.

#### **B. LIMITS OF LIABILITY**

As specified in the Declarations:

1. the "Limit for Each Claim" amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Forms combined that form a part of this policy for "damages" and "claims expense" that arise out of any one "claim";
2. the "General Aggregate Limit" amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Forms combined that form a part of this policy, for all "damages" and "claims expense" arising from covered "claims";

If this policy and any other policy providing coverage by the Company or any affiliate company apply to the same "pollution condition" or series of related "pollution conditions," the aggregate maximum Limit of Liability payable under all of the policies combined shall be limited to the amount of the highest applicable Limit of Liability payable under any one of the policies. Related "pollution conditions" are those "pollution conditions" that arise out of, are based on, relate to or are in consequence of, the same facts, circumstances or situations.

The Limits of Insurance shown in the Declarations shall apply in excess of the Self Insured Retention amount shown in the Declarations.

### **IV. SELF-INSURED RETENTION**

As respects each "claim" first made against the "insured," the "named insured" shall be responsible for payment for that amount of "damages" or "claims expenses" indicated in the Declarations as the Self-Insured Retention amount. The Company shall not be responsible to make any payments for either "damages" or "claims expenses," or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, unless and until the full amount of the Self-Insured Retention has been paid by the "named insured."

Should the Company, for any reason, pay the entire amount of "damages," "claims expenses" or supplementary payments without regard to the Self-Insured Retention amount, the "insured" will reimburse the Company, within 30 days of the Company's request for such reimbursement, for that part of the Self-Insured Retention Amount, which has been paid.



## V. EXCLUSIONS

The Company shall have no obligation whatsoever under this policy to make any payment of any kind for either "damages," "claims expense," or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, or to arrange for, provide, or pay, for any defense, for:

- A. any "claim" of any kind or nature by any past or present "insured" against any other past or present "insured"; or
- B. any "claim" made by or on behalf of any business enterprise not shown on the Declarations:
  - a. which is, was, or will be owned in whole or in part by any past or present "insured"; or
  - b. which owned in whole or in part at any time the "named insured"; or
- C. any "claim" arising from any nuclear reaction, radiation or radioactive contamination; or
- D. any "claim" arising from any "insured's" intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint or notice of violation, notice letter, executive order, or instruction of any governmental agency or body; or
- E. any "claim" arising from any actually or allegedly committed illegal, dishonest, fraudulent, criminal, or malicious act by any "insured"; or
- F. any "claim" which arises from the ownership, entrustment, maintenance, operation or use of any aircraft, watercraft, motor vehicle or rolling stock of any kind, which is owned, operated or rented by or loaned to the "insured." This exclusion does not apply to the loading or unloading of any aircraft, watercraft, motor vehicle or rolling stock of any kind, whether owned, operated or rented by or loaned to the "insured" or not; or
- G. any "claim" arising from any of the following relative to any contract any "insured" has entered into with a client:
  - a. any assumption of the client's sole negligence or legal liability by any "insured"; or
  - b. any failure by any "insured" to perform or provide any good or service by any date stipulated in a contract with any client; or
  - c. any liquidated or stipulated "damages" under any contract with any client of any "insured," unless the same type of "damages" would attach without the existence of the contract; or
- H. any "claim" for "bodily injury" or death to any person, whether or not an employee of the "named insured" if benefits from the "bodily injury" or death are collectible or compensable under any workers compensation law or disability benefits law.
- I. any "claim" either in whole or in part, directly or indirectly, out of or resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.
- J. any "claim" arising out of any "waste" or any other kind of products or materials transported, shipped or delivered via any automobile, aircraft, watercraft, or rolling stock to any location located anywhere beyond the boundaries of a site at which any "insured" has performed any contracting or site remediation services.
- K. any "claim" for any "property damage" to any real or personal property that was owned in whole or in part, or was rented, occupied or in the care, custody or control of any "insured" at any time.

- L. any "claim" arising out of projects where project specific professional liability and/or contractors pollution liability insurance has been purchased and is in force, unless specifically endorsed hereon.
- M. any "claim" arising out of express warranties and guarantees.
- N. any "claim" arising out of the design or manufacture of any goods or products, which are sold or supplied by the "insured" or by others under license from the "insured."
- O. any "claim" arising out of any actual or alleged violations of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated there under or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law.
- P. any "claim" arising out of any "insured's" activities and/or capacity as a Fiduciary under the Employee Retirement Income Security Act of 1974 and its amendment or any regulation or order issued pursuant thereto.
- Q. any "claim" arising out of the liability of others assumed by the "insured" under any contract or agreement, including a hold harmless agreement, either oral or written, except and to the extent the "insured" would have been liable in the absence of such contract or agreement.
- R. any "claim" arising out of services performed for any entity which:
  - a. is operated, managed or controlled by the "insured" or any individual "insured;"
  - b. the "insured" or any individual "insured" has an ownership interest;
  - c. the "insured" or any individual "insured" is an officer or director; or
  - d. wholly or partly owns, operates, controls or manages the "insured."

## **VI. CONDITIONS**

### **A. NOTICE OF "CLAIM"**

In the event of a "claim," or any "insured's" knowledge of circumstances which could reasonably be expected to give rise to a "claim," the "named insured" shall have the duty to provide written notice to the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this "policy period."

This written notice shall be given whether or not the "named insured" believes that the "claim," or incident giving rise to the "insured's" knowledge, will result in a demand that falls under, or in excess of, the Self-Insured Retention. Written notice shall be given to the representative shown in the Declarations.

Such written notice must contain complete details, including, but not limited to, the exact date the "claim" was made, location, circumstances giving rise to such "claim," the name of all claimants and a full description of the nature and scope of the allegations. These duties of the "insured" hereunder shall be non-delegable.

### **B. COOPERATION AND ASSISTANCE OF THE "INSURED"**

Each "insured" shall have the duty to fully cooperate with and assist the Company, with respect to the investigation, defense, settlement, arbitration or appeal of any "claim." No "insured" shall be indemnified hereunder for loss of earnings incurred in such cooperation or assistance, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant's Reimbursement, nor shall such loss of earnings apply towards the satisfaction of the Self-Insured Retention.

#### C. ACTIONS PREJUDICIAL TO THE COMPANY

In the event of a "claim," no "insured" shall undertake any of the following actions, without the Company's prior, written consent:

1. engage counsel to provide legal representation; or
2. assume any obligation, other than the reasonable efforts required to satisfy the duty to mitigate "damages" as provided in Section VI., Conditions, Paragraph G., Mitigation; or
3. forgive, reduce in amount or otherwise compromise any compensation owed or allegedly owed the "named insured"; or
4. admit, or in any manner acknowledge liability; or
5. effectuate or attempt to effectuate settlement, including, but not limited to, entering into a consent decree involving the assignment of any "insured's" interest under this policy.

Any of the foregoing actions by any "insured" shall be deemed to materially prejudice the Company's rights.

#### D. SUBROGATION

If the Company pays an amount hereunder as "damages," "claims expense," or as any payment under Section I.B., Supplementary Coverages and Payments, or any combination thereof, it shall be subrogated to all of each "insured's" rights of recovery against any person, firm or organization. All "insureds" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. No "insured" shall waive or prejudice such rights either prior to or subsequent to any "claim."

#### E. "NAMED INSURED" AS AGENT

The "named insured" specified in the Declarations shall be deemed agent of each "insured" with respect to all matters involving this policy, however, the Company shall have the right to seek indemnification from any "insured" or any other person who may be legally liable for the debts of the "named insured."

#### F. ACCEPTANCE

By acceptance of this policy, the "named insured" hereby confirms that all provisions hereof, including all endorsements and the application attached hereto and made a part of this policy, embody all agreements existing between the "named insured" and the Company and supersede any prior agreements, whether expressed or implied.

#### G. MITIGATION

The "named insured" shall make all reasonable efforts to abate, stop, prevent, or reduce the "damages" emanating from any "pollution condition" resulting directly or indirectly from any operations performed by any "insured." It is agreed that these efforts shall commence immediately upon discovery or notice of the "pollution condition" by any "insured." These efforts must include mitigating, alleviating or otherwise limiting the "damages" which could result from the "pollution condition." Such efforts must be undertaken even in the absence of a "claim."

#### H. NO ACTION AGAINST COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, each "insured" has fully complied with all the provisions of the policy, or until the amount of the "named insured's" obligation to pay has been finally determined either by written agreement of

the "named insured," the claimant and the Company or by final judgment against the "named insured" after the actual trial of the issues and the period of time to appeal has elapsed without an appeal having been taken or, if an appeal has been taken, then until after such appeal has been determined.

I. CHANGES

No provision of this policy may be amended, waived or otherwise changed, except by endorsement hereto.

J. CANCELLATION

The "named insured" may cancel this policy by mailing to the Company written notice stating when thereafter such cancellation shall become effective. The Company may cancel this policy by mailing to the "named insured," at the mailing address specified the Declarations, written notice stating when not less than thirty (30) days thereafter such cancellation shall become effective, except in the event of the "named insured's" nonpayment of premium, not less than ten (10) days advance notice of cancellation shall be given. The mailing of notice as aforesaid, shall be sufficient proof of either party's intent to cancel. The effective date of cancellation specified in such notice shall terminate this "policy period." Delivery of such notice shall be equivalent to mailing.

If the "named insured" cancels, the earned premium shall be computed in accordance with the customary short rate table. If the Company cancels, the earned premium shall be computed pro rata. The Company will tender any return premium subject to retaining a minimum earned premium equal to 25% of the amount specified in the Declarations.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but tender of the unearned premium or return of this policy, shall not be conditions precedent to cancellation hereunder.

K. AUDIT

The Company shall have the right to examine or audit all financial records of the "named insured," for the purpose of ascertaining the accuracy of the income or revenue stated in the application.

L. ADDITIONAL PREMIUMS

If, during this "policy period," an increase in the risk or hazards covered hereunder occurs, the Company shall have the right to charge the appropriate additional premium.

M. SEPARATION OF INSUREDS

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

1. As if each "Named Insured" were the only "named Insured"; and
2. Separately to each "insured" against whom "claim" is made.

N. APPLICATION IS INCORPORATED INTO, AND IS PART OF POLICY

The "named insured" acknowledges and agrees that:

1. the warranties and representations contained in the Application for this Policy are true, correct and complete; and
2. the Company issued this Policy in specific reliance upon the representations contained in the Application; and
3. the Application, along with the Policy Declarations Page, is incorporated into, and is part of, this Policy.

O. OTHER INSURANCE

If any part of either "damages" or "claims expenses" is insured under this Policy and any other current, prior or subsequent Policy, this policy shall provide coverage for such "damages" or "claims expenses" on a pro rata basis with such other Policy according to the applicable Limits of Liability of this Policy and such other Policy.

# COMMERCIAL GENERAL LIABILITY COVERAGE 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 shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

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

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

## SECTION I – COVERAGES

### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

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

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

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

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

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

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

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

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

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

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

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

### b. Contractual Liability

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

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

### c. Liquor Liability

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

This exclusion does not apply to liability assumed by the insured under an "insured contract".

## **f. Pollution**

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



(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in 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.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

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

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

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

**k. Damage To Your Product**

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

**l. Damage To Your Work**

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

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

**m. Damage To Impaired Property Or Property Not Physically Injured**

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

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

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

**n. Recall Of Products, Work Or Impaired Property**

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.

**o. Personal And Advertising Injury**

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

**p. Electronic Data**

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

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

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

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

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

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

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

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation Of Rights Of Another

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

### b. Material Published With Knowledge Of Falsity

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

### c. Material Published Prior To Policy Period

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

### d. Criminal Acts

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

### e. Contractual Liability

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

### f. Breach Of Contract

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

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

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

### h. Wrong Description Of Prices

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

### i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

### j. Insureds In Media And Internet Type Businesses

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

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

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions Section.

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

### k. Electronic Chatrooms Or Bulletin Boards

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

### l. Unauthorized Use Of Another's Name Or Product

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

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**COVERAGE C MEDICAL PAYMENTS**

**1. Insuring Agreement**

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

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations; provided that:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

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

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

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

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. 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 insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

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

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

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

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

## SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by,
        - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
      - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
      - c. Any person or organization having proper temporary custody of your property if you die, but only:
        - (1) With respect to liability arising out of the maintenance or use of that property; and
        - (2) Until your legal representative has been appointed.
      - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
  - 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
    - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage **C**;
  - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage **B**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**; and
  - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

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

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

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

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

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

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

##### **3. Legal Action Against Us**

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

#### 4. Other Insurance

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

##### a. Primary Insurance

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

##### b. Excess Insurance

This insurance is excess over:

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

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

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

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

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

##### c. Method Of Sharing

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

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

#### 5. Premium Audit

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



## 6. Representations

By accepting this policy, you agree:

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

## 7. Separation Of Insureds

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

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

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

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

## 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communicationprovided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" 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.
- Paragraph f. does not include that part of any contract or agreement:
- (1) 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 or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "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. or d. 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 "autos":

- (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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16. "Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "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 job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**17. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

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

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

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**21. "Your product":**

**a. Means:**

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes**

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

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**22. "Your work":**

**a. Means:**

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

**b. Includes**

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