



EXCESS INSURANCE POLICY

In consideration of the payment of the premium and in reliance on all statements made and information furnished to Continental Casualty Company (hereinafter called the "Insurer"), and/or to the insurers of the **Underlying Insurance**, including the statements made in the **Application** made a part hereof and subject to all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

I. INSURING AGREEMENT

The Insurer shall provide the **Insureds** with excess coverage over the **Underlying Insurance** as set forth in Item 4 of the Declarations during the **Policy Period** set forth in Item 2 of the Declarations. Coverage hereunder shall attach only after all such **Underlying Insurance** has been exhausted by payments for losses and shall then apply in conformance with the same provisions of the **Primary Policy** at its inception, except for premium, limit of liability and as otherwise specifically set forth in the provisions of this Policy.

II. POLICY DEFINITIONS

Application shall mean the written application for this Policy, including any materials submitted therewith, which together shall be on file with the Insurer and deemed a part of and attached hereto as if physically attached to this Policy.

Named Entity means the organization named in Item 1 of the Declarations.

Insureds means those persons or organization(s) insured under the **Primary Policy**, at its inception.

Policy Period means the period from the effective date and hour of this Policy as set forth in Item 2 of the Declarations, to the Policy expiration date and hour set forth in Item 2 of the Declarations, or its earlier cancellation date or termination date, if any.

Primary Policy means the Policy scheduled in Item 4 (a) of the Declarations.

Underlying Insurance means all those Policies scheduled in Item 4 of the Declarations and any Policies replacing them.

III. MAINTENANCE OF UNDERLYING INSURANCE

All of the **Underlying Insurance** scheduled in Item 4 of the Declarations shall be maintained during the Policy Period in full effect, except for any reduction of the aggregate limit(s) of liability available under the **Underlying Insurance** solely by reason of payment of losses thereunder. Failure to comply with the foregoing shall not invalidate this Policy but the **Insurer** shall not be liable to a greater extent than if this condition had been complied with. To the extent that any **Underlying Insurance** is not maintained in full effect during the currency of this **Policy Period**, then the **Insureds** shall be deemed to have retained any loss for the amount of the limit of liability of any **Underlying Insurance** which is not maintained as set forth above.

In the event of any actual or alleged (a) failure by the **Insureds** to give notice or to exercise any extensions under any **Underlying Insurance** or (b) misrepresentation or breach of warranties by any of the **Insureds** with respect to any **Underlying Insurance**, the Insurer shall not be liable hereunder to a greater extent than it would have been in the absence of such actual or alleged failure, misrepresentation or breach.

It is further a condition of this Policy that the **Insurer** shall be notified in writing, as soon as practicable of cancellation and/or alteration of any provisions of any of the policies of **Underlying Insurance**.

IV. LIMIT OF LIABILITY

The amount set forth in Item 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer for the **Policy Period**.

Costs of defense shall be part of and not in addition to the Limit of Liability in Item 3 of the Declarations, and such costs of defense shall reduce the Limit of Liability stated in Item 3 of the Declarations.

V. DEPLETION OF UNDERLYING LIMIT(S)

In the event of the depletion of the limit(s) of liability of the **Underlying Insurance** solely as the result of actual payment of losses thereunder by the applicable insurers, this Policy shall, subject to the **Insurer's** Limit of Liability and to the other terms of this Policy, continue to apply to losses as Excess Insurance over the amount of insurance remaining under such **Underlying Insurance**. In the event of the exhaustion of all of the limit(s) of liability of such **Underlying Insurance** solely as a result of payment of losses thereunder, the remaining limits available under this Policy shall, subject to the **Insurer's** Limit of Liability and to the other provisions of this Policy, continue for subsequent losses as primary insurance and any retention specified in the **Primary Policy** shall be imposed under this Policy as to each claim made; otherwise no retention shall be imposed under this Policy.

This Policy only provides coverage excess of the **Underlying Insurance**. This Policy does not provide coverage for any loss not covered by the **Underlying Insurance** except and to the extent that such loss is not paid under the **Underlying Insurance** solely by reason of the reduction or exhaustion of the available **Underlying Insurance** through payments of loss thereunder. In the event the insurer of one or more of the **Underlying Insurance** policies fails to pay loss in connection with any claim covered under the **Underlying Insurance** as a result of the insolvency, bankruptcy, or liquidation of said insurer, then the **Insureds** hereunder shall be deemed to have retained any loss for the amount of the limit of liability of said insurer which is not paid as a result of such insolvency, bankruptcy or liquidation.

If any **Underlying Insurance** bears an effective date which is prior to the effective date of this Policy and if any such insurance becomes exhausted or impaired by payment of loss with respect to any claim which, shall be deemed to be made prior to the effective date of this Policy, then with respect to any claim made after the effective date of this Policy, the **Insureds** shall be deemed to have retained any loss for the amount of any such **Underlying Insurance** which is exhausted or impaired by payment of loss with respect to such claim made prior to the effective date of this Policy.

VI. CLAIM PARTICIPATION

The **Insured** shall not admit liability, consent to any judgment against them, or agree to any settlement which is reasonably likely to involve the Limit of Liability of this Policy without the **Insurer's** consent, such consent not to be unreasonably withheld.

The Insurer may, at its sole discretion, elect to participate in the investigation, settlement or defense of any claim against any of the **Insureds** for matters covered by this Policy even if the **Underlying Insurance** has not been exhausted.

All provisions of the **Underlying Insurance** are considered as part of this Policy except that it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any claims against any of the **Insureds**.

VII. SUBROGATION - RECOVERIES

In that this Policy is "Excess Coverage", the **Insureds** and the **Insurer's** right of recovery against any person or other entity may not be exclusively subrogated. Despite the foregoing, in the event of any payment under this Policy, the **Insurer** shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insureds** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

Any amounts recovered after payment of loss hereunder shall be apportioned in the inverse order of payment to the extent of actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

VIII. NOTICE

The **Insurer** shall be given notice in writing as soon as is practicable in the event of (a) the cancellation of any **Underlying Insurance** and (b) any additional or return premiums charged or allowed in connection with any **Underlying Insurance**. Notice regarding (a) and (b) above shall be given to Manager, Directors and Officers Liability Underwriting, CNA Insurance Companies, CNA Plaza, Chicago, Illinois 60685.

The **Insurer** shall be given notice as soon as practicable of any notice of claim or any situation that could give rise to a claim under any **Underlying Insurance**. Notice of any claim to the **Insurer** shall be given in writing to Manager, Professional Liability Claims, CNA Insurance Companies, CNA Plaza, Chicago, Illinois 60685.

IX. COMPANY AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Named Entity** named in Item 1 of the Declarations agrees to act on behalf of all the **Insureds** with respect to the giving and receiving of notice of claim or cancellations, the payment of premiums and the receiving of any return premiums that may become due under this Policy; and the **Insureds** agree that the **Named Entity** shall in all cases be authorized to act on their behalf.

X. ALTERATION

No change in or modification of this Policy shall be effective except when made by endorsement signed by an authorized employee of the **Insurer** or any of its agents relating to this Policy.

XI. POLICY CANCELLATION

This Policy may be cancelled by the **Named Entity** at any time by written notice or by surrender of this Policy to the **Insurer**. This Policy may also be cancelled by or on behalf of the **Insurer** by delivery to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall become effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall cancel at the date and hour specified in such notice.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The **Insurer** shall refund the unearned premium computed at less than pro-rata if the Policy is cancelled in its entirety by the **Named Entity**. Under any other circumstances the refund shall be computed pro-rata.

XII. EXCLUSIONS

Notwithstanding any provisions of the **Underlying Insurance**, the **Insurer** shall not be liable to make payment for loss in connection with any claim based upon, arising out of, relating to, directly or indirectly resulting from, or in consequence of, or in any way involving:

1. nuclear reaction, radiation, or contamination regardless of causes;
2. pollutants, including but not limited to loss arising out of any:
 - a. request, demand or order that any of the **Insureds** 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 by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

XIII. CONDITIONS

No action shall be taken against the **Insurer** unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy, nor until the amount of the **Insureds** obligation to pay shall have been finally determined either by final and nonappealable judgement against the **Insureds** after trial, or by written agreement of the **Insureds**, the claimant and the **Insurer**.



Secretary



Chairman of the Board



PRIOR OR PENDING LITIGATION EXCLUSION

In consideration of the premium paid for this policy, it is agreed that Section **XII.** is amended with the addition of the following:

- 3. Any fact, circumstance, situation, transaction or event underlying or alleged in any prior and/or pending litigation as of 8/23/1997, regardless of the legal theory upon which such litigation is predicated.

All other provisions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative _____
(No signature is required issued with the Policy or if it is effective on the Policy Effective Date)



**STATE PROVISIONS - TEXAS
OTHER THAN MEDICAL PROFESSIONAL LIABILITY**

Any cancellation or non-renewal provisions contained in the policy to which this endorsement is attached are deleted and replaced by the following:

I. Cancellation

A. This policy can be cancelled by either the first named insured of the insurer.

1. The named insured can cancel this policy at any time. To do so, the named insured must:

- a. return the policy to the insurer or any of the insurer's authorized representatives; or
- b. mail a written notice to the insurer;

stating when the cancellation is to be effective. The insurer must receive the policy or written notice before the cancellation date.

2. The insurer can cancel this policy by giving written notice to the named insured at least 10 days, if cancellation is for:

- a. non-payment of premium. However, the named insured may continue the coverage by payment in full at any time prior to the effective date of cancellation; or
- b. if cancellation is for any other reason;

before the effective date of termination.

B. The insurer will mail or deliver notice to the first named insured at the last mailing address known to us.

C. Notice of cancellation will state the effective date of cancellation. The policy will end on that date. The grounds for such cancellation shall also be stated.

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

E. If this policy is cancelled, the insurer will send the first named insured any premium refund due. If the insurer cancels, the refund will be pro-rata. If the named insured cancels, the refund shall be computed with 90% returned.

The cancellation will be effective even if the insurer has not made or offered a refund.

F. If this policy has been in effect for more than 60 days, the insurer shall not terminate this policy except for one or more of the following conditions:

- 1. non-payment of premium;
- 2. fraud in obtaining this policy;



3. an increase in hazard within the insured's control which would produce an increase in rate;
4. loss of reinsurance by the insurer affecting all or part of this particular type of insurance;
5. the insurer is placed in supervision, conservatorship, or receivership provided the cancellation or non-renewal is approved or directed by the supervisor, conservator or receiver.

II. Non-Renewal

If we decide not to renew this policy, 60 days advance written notice shall be mailed or delivered to the first of you named at the address shown in this policy. The notice shall include the reason for such non-renewal.

If we fail to provide the required renewal notice, coverage shall remain in effect until the 61st day after the date on which notice is delivered or mailed. The earned premium for any period of coverage that extends beyond the expiration date of this policy shall be computed pro-rata based on the previous year's rate.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown above.

By Authorized Representative _____
(No signature is required if this endorsement is issued with the Policy or if it is effective on the Policy Effective Date)



PRIOR NOTICE EXCLUSION

In consideration of the premium paid for this policy, it is agreed that Section **XII. EXCLUSIONS**, is amended with the addition of the following:

Any fact, circumstance, situation, transaction or event which constitutes the basis of notice of claim to the Insurer or any insurance carriers designated in Item 4 of the Declarations, prior to the inception date of this policy.

All other provisions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown above.

By Authorized Representative _____
(No signature is required if this endorsement is issued with the Policy or if it is effective on the Policy Effective Date)



**IMPORTANT INFORMATION
POLICYHOLDER DISCLOSURE**

**NOTICE OF INSURANCE COVERAGE
FOR ACTS OF TERRORISM**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, effective November 26, 2002, you have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that coverage provided by this policy for losses caused by certified acts of terrorism is partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The premium charged for this coverage is provided below and does not include any charges for the portion of loss covered by the federal government under the Act.

If you want to purchase this coverage, you must pay \$ 0 Premium.

If you do not want to purchase this coverage, you must sign below and return this form to us at the address indicated below.

BY SIGNING BELOW, I AGREE THAT I AM REJECTING COVERAGE FOR LOSSES ARISING OUT OF CERTIFIED ACTS OF TERRORISM, AS DEFINED IN THE ACT. I UNDERSTAND THAT LOSSES ARISING FROM ACTS OF TERRORISM WILL BE EXCLUDED.

Continental Casualty Company

Applicant/Named Insured

Insurance Company

By: _____
Authorized Representative's Signature

Authorized Representative's Title

Date

Policy Number

Return the original form to us at the address below no later than 10 days of binding.

We recommend that you keep a copy of this notice for your records.

405 Howard Street, Suite 600, San Francisco, CA, 94105

AMENDMENT OF SECTION XI. POLICY CANCELLATION

In consideration of the premium paid for this policy, it is agreed that Section **XI. Policy Cancellation** is deleted in its entirety.

It is further understood and agreed that coverage under this policy shall be subject to the provisions of the **Primary Policy** in lieu of Section **XI. Policy Cancellation** of this policy.

All other provisions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the following described Policy issued by the designated Insurers takes effect on the effective date of said Policy, unless another effective date is shown below, at the hour stated in said Policy and expires concurrently with said Policy.

Must be Completed	
ENDT. NO.	POLICY NO.

Complete Only When This Endorsement Is Not Prepared with the Policy <u>or is Not to be Effective with the Policy</u>	
ISSUED TO	EFFECTIVE DATE OF THIS ENDORSEMENT



Countersigned by SPECIMEN
Authorized Representative



TRADE AND ECONOMIC SANCTIONS ENDORSEMENT

In consideration of the premium paid, a new condition is added to the policy as follows:

This policy does not provide coverage for **Insureds**, transactions or that part of **Loss** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative _____
(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)