

# General Liability (Including Products and Completed Operations Liability) Insurance Policy

THIS IS A CLAIMS MADE POLICY, PLEASE READ IT CAREFULLY.

In consideration of the premium paid, and in reliance upon the underwriting information submitted on behalf of the Insured, the Company and the Insured agree as follows:

## THE INSURED

The unqualified word "Insured", either in the singular or plural, means:

- A. the Named Insured named in Item 1. of the Declarations;
- B. if the Named Insured named in the Declarations is an individual, the person so named and his/her lawful spouse, but only with respect to his/her conduct of business as a sole proprietor;
- C. if the Named Insured named in the Declarations is a partnership or joint venture, the partnership or joint venture so named and any partner or member thereof or his/her lawful spouse, but only with respect to the conduct of the partnership or joint venture business;
- D. if the Named Insured named in the Declarations is a limited liability company, the limited liability company so named, any manager thereof, but only with respect to their duties as manager of the limited liability company and any member thereof, but only with respect to the conduct of the business of the limited liability company;
- E. if the Named Insured named in the Declarations is other than an individual, partnership, joint venture or limited liability company, the organization so designated and any executive officer or director thereof, but only with respect to his/her duties as an executive officer or director of such organization;
- F. any person (other than an employee of the Named Insured) or organization while acting as real estate manager for the Named Insured;
- G. any employee of the Named Insured, other than the executive officers of the Named Insured if the Named Insured is an organization other than a partnership, joint venture or limited liability company or managers of the Named Insured if the Named Insured is a limited liability company, solely while acting within the scope of his/her duties as such;

provided, however, that coverage afforded to such employee does not apply to:

1. Bodily Injury, Personal Injury or Advertising Injury:
  - (i) to the Named Insured, the Named Insured's partners, the Named Insured's members or to a co-employee while in the course of his/her employment or performing duties related to the conduct of the Named Insured's business;
  - (ii) to the spouse, child, parent, brother or sister of that co-employee as a consequence of subparagraph 1.(i) hereinabove;
  - (iii) for which there is any obligation to share Damages with or repay someone else who must pay Damages because of the injury described in subparagraphs 1.(i) and (ii) hereinabove; or
  - (iv) arising out of his/her providing or failure to provide professional health care services, if the Named Insured is engaged in the business or occupation of providing professional health care services;
2. Property Damage to property:
  - (i) owned, occupied or used by; or
  - (ii) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;the Named Insured, any employee of the Named Insured or any partner or member;

- H. with respect to the operation, for the purpose of locomotion upon a public highway, of Mobile Equipment registered in the name of the Named Insured under any motor vehicle registration law:
1. an employee of the Named Insured while operating any such equipment in the course of his/her employment by the Named Insured; or
  2. any other person while operating with the permission of the Named Insured any such equipment and any person or organization legally responsible for such person but only with respect to liability arising out of such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;
- provided, however, that no person or organization shall be an Insured under this paragraph H. with respect to:
- (i) Bodily Injury to any co-employee of such person operating any such equipment; or
  - (ii) Property Damage to property owned by, rented to, in the charge of or occupied by the Named Insured or the employer of any person described in subparagraph 2. hereinabove;
- I. any organization which is acquired or formed by the Named Insured, other than a partnership, joint venture or limited liability company, and over which the Named Insured maintains majority ownership, will qualify as a Named Insured if there is no other similar insurance available to that organization;
- provided, however that:
1. coverage under this provision is afforded only for ninety (90) days from the date the Named Insured acquires or forms such organization, or the end of the Policy Period, whichever is earlier;
  2. Coverage A. does not apply to Bodily Injury or Property Damage that occurred before the Named Insured acquired or formed the organization; and
  3. Coverage B. does not apply to Personal Injury or Advertising Injury arising out of an offense committed before the Named Insured acquired or formed the organization;
- J. the heirs, executors, administrators, assigns and legal representatives of each Insured in the event of death, incapacity or bankruptcy of such Insured, but only while acting within the scope of their duties as such on behalf of the Named Insured or of the Insured's estate.

This policy does not apply to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the conduct of any partnership, joint venture or limited liability company which is not named in the Declarations as a Named Insured.

## INSURING AGREEMENTS

- A. **Coverage A. - Bodily Injury and Property Damage Liability:** The Company shall pay on behalf of the Insured all sums in excess of the Deductible amount stated in Item 5. of the Declarations, which the Insured shall become legally obligated to pay as Damages as a result of Claims first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision, for Bodily Injury or Property Damage to which this insurance applies caused by an Occurrence, provided:
1. the entirety of such Bodily Injury or Property Damage and Occurrence happens during the Policy Period or on or after the Retroactive Date stated in Item 7. of the Declarations; and
  2. such Bodily Injury or Property Damage arises out of only those products, goods, operations or premises specified in Item 6. of the Declarations.
- B. **Coverage B. - Personal Injury and Advertising Injury Liability:** The Company shall pay on behalf of the Insured all sums in excess of the Deductible amount stated in Item 5. of the Declarations, which the Insured shall become legally obligated to pay as Damages as a result of Claims first made against the Insured during the Policy Period or during the Extended Reporting Period, if exercised, and reported to the Company pursuant to Section Claims A., Claim

Reporting Provision, for Personal Injury or Advertising Injury to which this insurance applies caused by an offense, provided:

1. the entirety of such Personal Injury or Advertising Injury and offense happens during the Policy Period or on or after the Retroactive Date stated in Item 7. of the Declarations; and
2. such Personal Injury or Advertising Injury arises out of only those products, goods, operations or premises specified in Item 6. of the Declarations.

## DEFINITIONS

- A. **Advertisement** means a commercial communication, including communications that are published material placed on the Internet or on similar electronic means of communication, that is broadcast or published about the products, goods or operations of the Named Insured for the purpose of promoting the sale or use of such products, goods or operations; provided, however, only that part of a website that is about the products, goods or operations of the Named Insured for the purposes of promoting such products, goods or operations is considered an Advertisement.
- B. **Advertising Injury** means injury, including consequential Bodily Injury, arising out of oral or written publication of material that libels or slanders a person or organization or a person's or organization's products, goods or operations or other defamatory or disparaging material, occurring in the course of the Named Insured's Advertisement.
- C. **Aircraft Products** means any aircraft whether or not heavier than air (including spacecraft and missiles) and any ground support, guidance, control or communications equipment used in connection therewith, and also includes parts, supplies, or equipment installed in or on or used in connection with aircraft, including tools, training aids, instructions, manuals, blueprints and other data, engineering and other advice, services and labor used in the operation, maintenance or manufacture of aircraft products.
- D. **Automobile** means a land motor vehicle, trailer or semitrailer designed for travel on public roads (including any attached machinery or equipment); provided, however, it does not include Mobile Equipment.
- E. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

Bodily Injury shall also mean Incidental Medical Malpractice Injury, provided that the Named Insured is not engaged in the business or occupation of providing professional health care services.

- F. **Claim** means a notice received by the Insured of an intention to hold the Insured responsible for: (1) a Bodily Injury; (2) a Property Damage; (3) an Advertising Injury; or (4) a Personal Injury; involving this policy and shall include the service of suit or institution of arbitration proceedings against the Insured.
- G. **Claim Expenses** means reasonable and necessary amounts incurred by the Company or by the Insured with the prior written consent of the Company in the defense of that portion of any Claim for which coverage is afforded under this policy, including costs of investigation, court costs, costs of bonds to release attachments and similar bonds, but without any obligation of the Company to apply for or furnish any such bonds, and costs of appeals; provided, however, that Claim Expenses shall not include: (1) salary, wages, overhead, or benefit expenses of or associated with employees or officials of the Named Insured or employees or officials of the Company; or (2) salary, wages, administration, overhead, benefit expenses, or charges of any kind attributable to any in-house counsel or captive out-of-house counsel for the Named Insured or the Company.

Solely for the purposes of liability assumed in an Insured Contract, Claim Expenses incurred by or for a party other than an Insured are deemed to be Damages because of Bodily Injury or Property Damage; provided, however, that:

1. liability to such party for, or the cost of, that party's defense has also been assumed in the same Insured Contract; and

2. such Claim Expenses are for the defense of that party against a civil or alternative dispute resolution proceeding in which Damages to which this insurance applies are alleged.

H. **Completed Operations Hazard** means Bodily Injury and Property Damage arising out of only those operations specified in Item 6. of the Declarations, after such operations have been completed or abandoned by the Insured and occurs away from premises owned by or rented to the Named Insured. Operations includes materials, parts or equipment furnished in connection therewith, warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of those products, goods and operations specified in Item 6. of the Declarations and the providing or failure to provide instructions related thereto. Operations shall be deemed completed at the earliest of the following times:

1. when all operations to be performed by or on behalf of the Insured under a contract with the Insured have been completed;
2. when all operations to be performed by or on behalf of the Insured at the site of the operations have been completed; or
3. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement, but which are otherwise complete, shall be deemed complete.

The Completed Operations Hazard does not include Bodily Injury or Property Damage arising out of:

1. operations in connection with the transportation of property, unless the Bodily Injury or Property Damage arises out of a condition in or on a vehicle not owned or operated by the Named Insured created by the loading or unloading thereof; or
2. the existence of tools, uninstalled equipment or abandoned or unused materials.

I. **Damages** means the monetary portion of any judgment, award or settlement; provided, however, that Damages shall not include: (1) multiplied portions of damages in excess of actual damages, including trebling of damages; (2) taxes, criminal or civil fines, or penalties imposed by law; (3) sanctions; (4) matters which are uninsurable under the law pursuant to which this policy shall be construed; or (5) the return of or restitution of fees, profits or charges for services rendered.

J. **Gross Receipts** means Sales and other income, exclusive of deductions, from any other source, insofar as the Sales or other income relate to or emanate from sale of products or goods or operations specified in Item 6. of the Declarations performed during the Policy Period by or on behalf of the Insured.

K. **Grounding** means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft because of the existence of or alleged existence of a defect, fault or condition in any Aircraft Products.

L. **Incidental Medical Malpractice Injury** means Bodily Injury arising out of the rendering of or failure to render, during the Policy Period or on or after the Retroactive Date stated in Item 7. of the Declarations, the following services:

1. medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
2. the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

M. **Insured Contract** means:

1. a contract for lease of premises; provided, however, that the portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the Insured or temporarily occupied by the Insured with the permission of the owner shall not be an Insured Contract;

2. any easement or license, except in connection with construction or demolition operations on or within fifty (50) feet of a railroad;
3. an obligation, as required by municipal ordinance, to indemnify a municipality, except in connection with work for the municipality;
4. a sidetrack agreement;
5. an elevator maintenance agreement; or
6. that part of any other contract or agreement pertaining to the Named Insured's business under which the Named Insured assumes the tort liability of another party to pay for Bodily Injury or Property Damage to a third party; provided, however, Insured Contact shall not include that part of any contract or agreement:
  - (i) that indemnifies a railroad for Bodily Injury or Property Damage arising out of construction or demolition operations, within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - (ii) 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 designs or specifications; or
    - (b) supervision, inspection, failure to supervise or inspect or architectural, engineering or surveying services; or
  - (iii) 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 subparagraph (ii) hereinabove or any supervision, inspection, failure to supervise or inspect or architectural, engineering or survey services.

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

1. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. vehicles maintained for use solely on or next to premises the Named Insured owns or rents;
3. vehicles that travel on crawler treads;
4. vehicles, whether self-propelled or not, on which are permanently mounted:
  - (i) power cranes, shovels, loaders, diggers, or drills; or
  - (ii) road construction or resurfacing equipment such as graders, scrapers or rollers;
5. vehicles not described in 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (i) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (ii) cherry pickers and similar devices used to raise or lower workers;
6. vehicles not described in 1., 2., 3., or 4. above maintained primarily for purposes other than the transportation of persons or cargo; provided, however, that self-propelled vehicles with the following types of permanently attached equipment are not Mobile Equipment but will be considered Automobiles:
  - (i) equipment designed primarily for:
    - (a) snow removal;
    - (b) road maintenance, but not construction or resurfacing; or
    - (c) street cleaning;

- (ii) cherry pickers and similar devices mounted on Automobile or truck chassis and used to raise or lower workers; and
  - (iii) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- O. **Named Insured's Products** means goods or products, other than real property, manufactured, sold, handled or distributed by the Named Insured or by others trading under the Named Insured's name, including any container thereof (other than a vehicle); provided, however, that Named Insured's Products shall not include a vending machine or any other property rented to or located for use of others but not sold.
- P. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- Q. **Personal Injury** means injury, including consequential Bodily Injury, arising out of one or more of the following offenses:
  - 1. false arrest, detention or imprisonment or malicious prosecution;
  - 2. 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; or
  - 3. oral or written publication of material that violates a person's right of privacy.
- R. **Policy Period** means the period from the inception date of this policy to the policy expiration date as stated in Item 3. of the Declarations, or its earlier cancellation or termination date.
- S. **Products Hazard** means Bodily Injury or Property Damage arising out of only those products or goods specified in Item 6. of the Declarations which are the Named Insured's Products, including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of those products or goods specified in Item 6. of the Declarations and the providing or failure to provide instructions related thereto, occurring away from premises owned by or rented to the Named Insured and after physical possession of such products has been relinquished to others.
- T. **Property Damage** means:
  - 1. physical injury to or destruction of tangible property, including consequential loss of use thereof; or
  - 2. loss of use of tangible property which has not been physically injured or destroyed; provided, however, such loss of use is caused by an Occurrence.
- U. **Sales** means the gross amount of money charged by the Named Insured or by others trading under such Named Insured's name for all goods and products sold or distributed during the Policy Period and charged during the Policy Period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

## THE EXCLUSIONS

- A. With respect to all Coverages, this policy does not apply to:
  - 1. any Claim based upon or arising out of:
    - (i) the actual, alleged or threatened discharge, disposal, migration, dispersal, seepage, release or escape of Pollutants; provided, however, this subparagraph shall not apply with respect to:
      - (a) the Products Hazard or Completed Operations Hazard;
      - (b) damage, arising out of heat, smoke or fumes from hostile fire 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.

- (ii) Bodily Injury or Property Damage arising out the actual, alleged or threatened discharge, disposal, migration, dispersal, seepage, release or escape of Pollutants:
  - (a) 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;
  - (b) which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any Insured or any person or organization for whom the Insured may be legally responsible; or
- (iii) any demand, request, direction, order or statutory or regulatory requirement to test for, monitor, remediate, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or in any way respond to or assess the effects of Pollutants or to pay for or contribute to the costs of undertaking such actions; provided, however, this subparagraph shall not apply to liability for Damages because of Property Damage that the Insured would have in the absence of such demand, request, direction, order or statutory or regulatory requirement.

Pollutants means any solid, liquid, gaseous or thermal irritants or contaminants including, smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;

- 2. any Claim based upon or arising out of the rendering of or failure to render professional services by the Insured or by any person or organization for whose acts, errors or omissions the Insured is legally responsible; provided, however, this exclusion shall not apply to Incidental Medical Malpractice Injury;
- 3. any Claim based upon or arising out of the Insured's activities as a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto; or
- 4. any Claim based upon or arising out of any unlawful discrimination by any Insured.

B. With respect to Coverage A., this policy does not apply to:

- 1. any Claim based upon or arising out of Bodily Injury or Property Damage expected or intended from the standpoint of the Insured; provided, however, this exclusion does not apply to Bodily Injury resulting from the use of reasonable force to protect persons or property;
- 2. any Claim based upon or arising out of Bodily Injury or Property Damage for which the Insured is obligated to pay Damages because of the assumption of liability in any contract or agreement; provided, however, this exclusion shall not apply to liability for damages:
  - (i) that the Insured would have in the absence of the contract or agreement; or
  - (ii) assumed in a contract or agreement that is an Insured Contract, provided, the Bodily Injury and Property Damage occurs subsequent to the execution of the Insured Contract;
- 3. any Claim based upon or arising out of loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (i) a delay in or lack of performance by or on behalf of the Named Insured of any contract or agreement; or
  - (ii) a defect, deficiency, inadequacy or dangerous condition in the products, goods or operations of the Named Insured;

provided, however, this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Named Insured's Products or work performed by or on behalf of the Named Insured after such products or work have been put to use by any person or organization other than an Insured;

- 4. any Claim based upon or arising out of Property Damage to the Named Insured's Products arising out of it or any part of it, or for the cost of inspecting, repairing or replacing any defective or allegedly defective product or part thereof or for loss of use of any defective or allegedly defective product;

5. any Claim for Damages for any loss, cost or expense incurred by the Named Insured or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the Named Insured's Products or work completed by or for the Named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition therein;
6. any Claim based upon or arising out of Bodily Injury or Property Damage arising out of ownership, maintenance, operation, use or entrustment to others or loading or unloading of:
  - (i) any Automobile, aircraft or watercraft owned or operated by or rented or loaned to any Insured; or
  - (ii) any other Automobile, aircraft or watercraft operated by any person in the course of his/her employment by the Named Insured;provided, however, this exclusion shall not apply to:
  - (a) the parking of an Automobile on premises owned by, rented to or controlled by the Named Insured or on ways next to such premises, if such Automobile is not owned by or rented or loaned to any Insured;
  - (b) a watercraft while ashore on premises owned by, rented to or controlled by the Named Insured; or
  - (c) a watercraft that is less than twenty-six (26) feet in length, that is not owned by the Named Insured and that is not being used to carry persons or property for a charge;
7. any Claim based upon or arising out of Bodily Injury or Property Damage arising out of:
  - (i) the ownership, maintenance, operation, use, loading or unloading of any Mobile Equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for such contest or activity; or
  - (ii) the operation or use of any snowmobile, moped or motorized bicycle, or trailer designed for use therewith;
8. any Claim based upon or arising out of Bodily Injury or Property Damage arising out of the transportation of Mobile Equipment by an Automobile owned or operated by or rented or loaned to any Insured;
9. any Claim based upon or arising out of Property Damage to:
  - (i) property owned, occupied or rented to the Insured;
  - (ii) property loaned to the Insured;
  - (iii) personal property in the care, custody or control of the Insured;
  - (iv) that particular part of any property,
    - (a) upon which operations are being performed by or on behalf of the Insured if the Property Damage arises out of those operations; or
    - (b) the restoration, repair or replacement of which has been made or is necessary because of faulty workmanship thereon by or on behalf of the Insured; provided, however, this subparagraph shall not apply with respect to Property Damage included in the Completed Operations Hazard or the Products Hazard;
  - (v) premises that the Named Insured sells, gives away or abandons, if the Property Damage arises out of any part of those premises; provided, however, this subparagraph shall not apply if the premises are included in the Completed Operations Hazard and were never occupied, rented or held for rental by the Named Insured; or



(vi) to work performed by the Insured arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith with respect to the Completed Operations Hazard;

provided, however, Items (ii), (iii), and (iv) of this exclusion shall not apply with respect to liability under a written sidetrack agreement;

10. any Claim based upon or arising out of any obligation of the Insured under any workers' compensation, unemployment compensation or disability benefits law or under any similar law;
11. any Claim based upon or arising out of Bodily Injury to any employee of the Insured arising out of and in the course of employment by the Insured or performing duties related to conduct of the Insured's business or any such Claim brought by or on behalf of the spouse, child, parent, brother, sister or partner of the employee;

this exclusion shall apply:

- (i) whether the Insured may be liable as an employer or in any other capacity; and
- (ii) to any obligation to share damages with or repay someone else who must pay damages because of injury;

provided, however, that this exclusion shall not apply with respect to liability assumed by the Insured under an Insured Contract;

12. any Claim based upon or arising out of Bodily Injury or Property Damage for which the Insured may be held liable because of:
  - (i) causing or contributing to the intoxication of any person;
  - (ii) the furnishing of alcoholic beverages to a person under legal drinking age or under the influence of alcohol; or
  - (iii) any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages;

provided, however, this exclusion shall apply only if the Named Insured:

- (a) manufactures or distributes alcoholic beverages;
- (b) serves or furnishes alcoholic beverages for a charge whether or not such activity requires a license, is for financial gain or livelihood; or
- (c) serves or furnishes alcoholic beverages without a charge if a license is required for such activity;

13. any Claim based upon or arising out of Bodily Injury or Property Damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing with respect to liability assumed by the Insured under an Insured Contract;
14. any Claim based upon or arising out of Aircraft Products including consequential loss of use thereof resulting from Grounding;
15. any Claim based upon or arising out of any products or goods manufactured, sold, handled, or distributed or work completed by the Insured or by others operating under the direction or control of the Insured in violation of any law, statute, ordinance, or regulation, Federal, State or Municipal government, or agencies thereof;
16. any Claim for Bodily Injury arising out of Personal Injury or Advertising Injury;
17. any Claim for Incidental Medical Malpractice Injury for any expenses incurred by the Insured for first aid to others at the time of an accident; or
18. any Claim for Incidental Medical Malpractice Injury caused by an indemnitee if such indemnitee is engaged in the business or occupation of providing any of the following services:
  - (a) medical, surgical, dental x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or

(b) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

Exclusions 3. through 16. shall not apply to damage by fire to premises while rented by the Named Insured or temporarily occupied by the Named Insured with the permission of the owner of the premises. A Limit of Liability applies to this coverage as described in Section Limits of Liability, Coverage A. - Limit of Liability - Damage to Premises.

C. With respect to Coverage B., this policy does not apply to:

1. any Claim based upon or arising out of Personal Injury or 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 Injury or Advertising Injury;
2. any Claim based upon or arising out of Personal Injury or Advertising Injury arising out of the oral or written publication of material, if done by or at the direction of the Insured with the knowledge of its falsity;
3. any Claim based upon or arising out of Personal Injury or Advertising Injury arising out of oral or written publication of material whose first publication took place before the Retroactive Date stated in Item 7. of the Declarations;
4. any Claim based upon or arising out of Personal Injury or Advertising Injury arising out of any criminal act committed by or at the direction of the Insured;
5. any Claim based upon or arising out of Advertising Injury arising out of a mistake in advertised price or incorrect description of any product, good or operation;
6. any Claim based upon or arising out of any liability assumed by the Insured in a contract or agreement; provided, however, this exclusion shall not apply to liability an Insured would have in the absence of the contract or agreement;
7. any Claim based upon or arising out of Personal Injury or Advertising Injury arising out of piracy, unfair competition, the infringement of copyright, title, trade dress, slogan, service mark, service name or trademark, trade name, patent, trade secret or other intellectual property right;
8. any Claim based upon or arising out of Personal Injury or Advertising Injury arising out of an electronic chatroom or bulletin board the Insured hosts, owns, or over which the Insured exercises control;
9. any Advertising Injury committed by any Insured whose business is:
  - (i) advertising, broadcasting, publishing, or telecasting;
  - (ii) designing or determining content for websites for others; or
  - (iii) an Internet access, content search or service provider;
10. any Claim based upon or arising out of a breach of contract; provided, however, this exclusion shall not apply to an implied contract to use another's advertising idea in the Named Insured's Advertisement; or
11. any Claim based upon or arising out of the failure of products, goods or services to conform with any statement of quality or performance made in the Named Insured's Advertisement.

## TERRITORY

The insurance afforded by this policy applies worldwide, provided the Claim is made in the United States of America, its territories or possessions, Puerto Rico or Canada.

## LIMITS OF LIABILITY

A. **Coverage A. - Limit of Liability-Each Occurrence:** The total liability of the Company for the combined total of Damages and Claim Expenses for all Claims insured herein because of all Bodily Injury or Property Damage sustained by one or more persons or entities as the result of

any one Occurrence shall not exceed the Limit of Liability stated in Item 4.A.(i) of the Declarations as applicable to Each Occurrence.

- B. Coverage A. - Limit of Liability-Damage to Premises:** The total liability of the Company for the combined total of Damages and Claim Expenses for all Claims, including those subject to the above provision regarding the Coverage A - Limit of Liability – Each Occurrence, insured herein because of Property Damage to any one premises while rented by the Named Insured or in the case of damage by fire, while rented by the Named Insured or temporarily occupied by the Named Insured with the permission of the owner of the premises, shall not exceed the Limit of Liability stated in Item 4.A.(ii) of the Declarations as applicable to Damage to Premises – Any One Premises.
- C. Coverage B. - Limit of Liability-Each Person or Organization:** The total liability of the Company for the combined total of Damages and Claim Expenses for all Claims insured herein because of all Personal Injury and all Advertising Injury sustained by any one person or organization shall not exceed the Limit of Liability stated in Item 4.B. of the Declarations as applicable to Each Person or Organization.
- D. Limit of Liability - Policy Aggregate:** Subject to the above Limits of Liability A, B and C, the total liability of the Company shall not exceed the Aggregate Limit of Liability as stated in Item 4.C. of the Declarations for all Damages and Claim Expenses arising out of all Claims first made during the Policy Period and the Extended Reporting Period, if exercised.
- E. Deductible:** The applicable Deductible amount stated in Item 5. of the Declarations shall be paid by the Named Insured and shall be applicable to each Occurrence and to each person or organization and shall include Damages and Claim Expenses, whether or not Damages payments are made.
- Such amounts shall, upon written demand by the Company, be paid by the Named Insured within ten (10) days. The total payments requested from the Named Insured in respect of each Occurrence or each person or organization shall not exceed the applicable Deductible amount stated in Item 5. of the Declarations. Solely for the purpose of determining the Company's limit of liability, the applicable Deductible amount shall be deemed to be applied first to the Damages.
- The determination of the Company as to the reasonableness of the Claim Expenses shall be conclusive on the Named Insured.
- F. Multiple Insureds, Claims and Claimants:** The inclusion herein of more than one Insured in any Claim or suit or the making of Claims or the bringing of suits by more than one person or organization shall not operate to increase the Limits of Liability stated in Item 4. of the Declarations. More than one Claim arising out of a single Occurrence or offense shall be considered a single Claim. All such Claims, whenever made, shall be treated as a single Claim. Such single Claim, whenever made, shall be deemed to be first made on the date on which the earliest Claim arising out of such Occurrence or offense is made or with regard to notice given to and accepted by the Company pursuant to Section Claims B., Discovery Clause, on the date within the Policy Period on which such notice of potential Claim is first received by the Company.

## **DEFENSE, SETTLEMENTS AND CLAIM EXPENSES**

The Company shall have the right and duty to defend and investigate any Claim to which coverage under this policy applies. The Company may make such investigation and settlement of any Claim as it deems expedient. Claim Expenses incurred in defending and investigating a Claim shall be a part of and shall not be in addition to the applicable Limits of Liability stated in Item 4. of the Declarations. Such Claim Expenses shall reduce the Limits of Liability and shall be applied against the applicable Deductible. The Company shall have no obligation to pay any Damages or to defend or to continue to defend any Claim or to pay Claim Expenses for Claims after the applicable Limit or Limits of Liability stated in Item 4. of the Declarations have been exhausted.

## **CLAIMS**

- A. Claim Reporting Provision:** The Insured shall give to the Company written notice as soon as practicable of any Claim first made against the Insured during the Policy Period or the Extended Reporting Period, if exercised.

In the event suit is brought against the Insured, the Insured shall immediately forward to Shand Morahan & Company, Inc., on behalf of the Company, every demand, notice, summons or other process received by him/her or by his/her representatives.

- B. Discovery Clause:** If during the Policy Period, the Insured first becomes aware of a specific Occurrence or offense which is reasonably expected to result in a Claim within the scope of coverage of this policy, then the Insured may provide written notice to the Company containing the information listed below. If such written notice is received by the Company during the Policy Period, then any Claim subsequently made against the Insured arising out of such Occurrence or offense shall be deemed for the purpose of this insurance to have been made on the date on which such written notice is received by the Company.

It is a condition precedent to the coverage afforded by this Discovery Clause that written notice be given to the Company containing the following information:

1. the description of the specific Occurrence or offense;
2. the date on which such Occurrence or offense took place;
3. the injury or damage which has or may result from such Occurrence or offense;
4. the identity of any injured persons; and
5. the circumstances by which the Insured first became aware of such Occurrence or offense.

- C. Assistance and Cooperation of the Insured:** The Insured shall cooperate with the Company and upon the Company's request, the Insured shall: (1) submit to examination and interview by a representative of the Company, under oath if required; (2) attend hearings, depositions and trials; (3) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits; (4) give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of determining coverage and investigating and/or defending any Claim, all without cost to the Company. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any right of indemnity, contribution or apportionment which the Insured may have. The Insured shall not, except at his/her own cost, make any payment, admit any liability, settle any Claims, assume any obligation or incur any expense without the written consent of the Company.

- D. False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any Claim, this insurance shall become void as to such Insured from the date such fraudulent Claim is proffered.

## EXTENDED REPORTING PERIOD

- A.** If the Named Insured nonrenews this policy or cancels this policy pursuant to Section Other Conditions A., or if the Company nonrenews this policy or cancels this policy pursuant to Section Other Conditions A., for reasons other than nonpayment of premium or Deductible or non-compliance with the terms and conditions of this policy, then the Named Insured shall have the right upon payment of an additional premium calculated at that percentage stated in Item 10. of the Declarations of the adjusted annual premium for the Policy Period, but in no event less than the percentage set forth in Item 10. of the Declarations of the minimum and deposit premium stated in the Declarations, to extend the coverage granted under this policy, to Claims first made against the Insureds during: (1) twelve (12) months; (2) twenty-four (24) months; or (3) thirty-six (36) months; as elected by the Named Insured, and reported to the Company pursuant to Section Claims A., Claim Reporting Provision, following immediately upon the effective date of such cancellation or nonrenewal, for:
1. Bodily Injury or Property Damage which happened on or after the Retroactive Date and prior to the effective date of such cancellation or nonrenewal, caused by an Occurrence which happened on or after the Retroactive Date and prior to the effective date of such cancellation or nonrenewal and arising from those products, goods, operations or premises specified in Item 6. of the Declarations and which is otherwise covered by this policy; or
  2. Personal Injury or Advertising Injury which happened on or after the Retroactive Date and prior to the effective date of such cancellation or nonrenewal, caused by an offense which happened on or after the Retroactive Date and prior to the effective date of such cancellation or

nonrenewal and arising from those products, goods, operations or premises specified in Item 6. of the Declarations and which is otherwise covered by this policy.

This period of months as elected by the Named Insured and described in this paragraph shall be referred to in this policy as the Extended Reporting Period.

If, however, this policy is immediately succeeded by similar claims made insurance coverage on which the Retroactive Date is the same as or earlier than that stated in the Item 7. of the Declarations, the succeeding insurance shall be deemed to be a renewal hereof and, in consequence, the Named Insured shall have no right to purchase an Extended Reporting Period.

The quotation of a different premium and/or Deductible and/or Limit of Liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

- B. As a condition precedent to the right to purchase the Extended Reporting Period, the Named Insured must have paid: 1) all Deductibles when due; (2) all premiums due for the Policy Period in accordance with Section Other Conditions I., Premium and Audit; and (3) all premium due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies of which this policy is a renewal or replacement must have been paid. The right to purchase the Extended Reporting Period shall terminate unless a written request for the Extended Reporting Period is received by the Company within thirty (30) days after the effective date of cancellation or nonrenewal together with full payment for the Extended Reporting Period. If such written request and premium payment are not so received by the Company, there shall be no right to purchase the Extended Reporting Period at a later date.
- C. In the event of the purchase of the Extended Reporting Period the entire premium therefor shall be fully earned at its commencement.
- D. The Extended Reporting Period shall not in any way increase the Limits of Liability stated in Item 4. of the Declarations.

## OTHER CONDITIONS

- A. **Cancellation:** This policy may be cancelled by the Named Insured on behalf of all Insureds by mailing to the Company written notice stating when thereafter such cancellation shall be effective. If cancelled by the Named Insured, the earned premium shall be computed at the customary short rate. Payment or tender of unearned premium shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

This policy may be cancelled by the Company or by Shand Morahan & Company, Inc., on behalf of the Company, by mailing to the Named Insured, at the address stated in Item 2. of the Declarations, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Named Insured has failed to pay a premium or Deductible when due, including premium due on any other policy(ies) issued by the Company or any of its affiliated companies in an uninterrupted series of policies of which this policy is a renewal or replacement, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Named Insured stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the Policy Period. Such notice shall be conclusive on all Insureds. Delivery of such written notice by the Named Insured, the Company or Shand Morahan & Company, Inc. shall be equivalent to mailing. If cancelled by the Company or Shand Morahan & Company, Inc., earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

- B. **Representations:** By acceptance of this policy, the Insureds agree as follows:
  - 1. that the information and statements contained in the application(s) are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy; and
  - 2. that the information and statements contained in the application(s) are their representations, that they shall be deemed material to the acceptance of the risk or hazard assumed by the Company under this policy, and that this policy is issued in reliance upon the truth of such representations.

- C. **Entire Agreement:** This policy, the Declarations, the application(s) and any written endorsements attached hereto shall be deemed to be a single unitary contract.
- D. **Prevention of Loss:** In the event of an Occurrence or an offense involving the products, goods, operations or premises covered by this policy, the Insured shall promptly, at his/her expense, take all reasonable steps to prevent other Bodily Injury, Property Damage, Personal Injury or Advertising Injury from arising out of the same or similar conditions.
- E. **Other Insurance:** This insurance shall be in excess of the applicable Deductible stated in Item 5. of the Declarations and any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limits of Liability provided in this policy.
- F. **Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or a change in any part of this policy and shall not estop the Company from asserting any right under the terms of the policy. The terms of this policy shall not be waived or changed, except by written endorsement issued to form a part of this policy, and this policy embodies all agreements existing between the Insureds and the Company or any of its agents relating to this insurance.
- G. **Assignment of Interest:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
- H. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to the right of recovery of all Insureds to the extent of such payment. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the Claim to prejudice such rights.

The Company shall not exercise any such rights against any person, firms or corporations included in the definition of Insured. Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured in respect of any Claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

Any amount so recovered shall be apportioned as follows:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to any loss and expense payment by the Insured in excess of any Deductible(s); third, to any loss and expense payments by any excess carrier on behalf of the Insured; fourth, to any loss and expense payments by any primary carrier on behalf of the Insured; and, last, to repayment of the Insured's Deductible.

- I. **Premium and Audit:** Upon expiration of this policy, the Named Insured shall furnish to, Shand Morahan & Company, Inc., on behalf of the Company, a statement of the Named Insured's actual Gross Receipts or other premium base as stated in Item 8. of the Declarations for the Policy Period. The actual earned premium shall be computed thereon at the premium rate stated in Item 8. of the Declarations. If the actual earned premium is more than the deposit premium stated in Item 9. of the Declarations, the Named Insured shall pay the difference to the Company; if less, the Company shall refund the difference to the Named Insured except that the Company shall be entitled to the minimum premium as stated in Item 9. of the Declarations. The Company or Shand Morahan & Company, Inc., on behalf of the Company shall have the right to require of the Named Insured, at any time within the said Policy Period or one year thereafter, a sworn statement of the entire amount (or number) of such Gross Receipts or other premium base during the whole or any specified part of the said period, and the Named Insured shall furnish said statement within ten (10) days after request. The statement referred to shall be subject to verification and audit by a duly authorized representative of the Company, who shall have the right and opportunity to examine the books and records of the Named Insured as respects such Gross Receipts or other premium base, and such examination may be made at any time during the said period and within three (3) years thereafter. The rendering of any estimate or statement or the making of any previous settlement shall not bar the examination herein provided for, nor the Company's right to additional premium.

J. **Inspection:** Any of the Company's authorized representatives shall have the right and opportunity, whenever the Company so desires, to inspect at any reasonable time the Insured's products, goods, operations and premises, but the Company assumes no responsibility or duty by reason of such inspection or the omission thereof. The Insured agrees to provide appropriate personnel to assist the Company's representatives during such inspection without cost to the Company.

K. **Action Against the Company:** No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

L. **Authorization:** By acceptance of this policy, the first person or organization named in Item 1. of the Declarations shall act on behalf of all Insureds with respect to the giving and receiving of all notices to and from the Company as provided herein: the exercising of the Extended Reporting Period; the cancellation of this policy in whole or part; the payment of premiums and Deductibles when due; the receiving of any return premiums that may become due under this policy; and the Insureds agree that such person or organization shall act on their behalf.

M. **Reporting of Changes in Products, Goods, Operations and Premises:** The premium charged for this policy is based on those products, goods, operations and premises identified in the underwriting information submitted to the Company on behalf of the Insured at the time of policy inception. The Insured shall report promptly to the Company any changes in those products, goods, operations or premises as described below, and the Company shall have the right to adjust the premium and/or Deductible(s) for such changes, based on its sole assessment of the additional exposure(s) presented.

Changes to report:

1. any changes to manufacturing or servicing premises requiring structural alterations, or acquisition of additional manufacturing or servicing premises;
2. any changes in manufacturing or servicing operations which is likely to result in an annual increase in payrolls of twenty-five percent (25%) or more;
3. any change in operations which are not accurately described by the description as specified in Item 6. of the Declarations.

This policy shall apply to only those products, goods, operations and premises specified in Item 6. of the Declarations, irrespective of any changes reported.


N. **Service of Suit:** Except with respect to any policy issued in any state in which the Company is licensed as an admitted insurer to transact business, it is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, or Director

of Insurance or other official specified for that purpose in the statute, or his/her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**IN WITNESS WHEREOF**, the Company has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations page by a duly authorized representative of the Company.

  
Secretary

  
President