



# ACE Umbrella Plus<sup>SM</sup>

## Commercial Umbrella Liability Policy

Various provisions in this policy restrict coverage. Please 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.

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

We, the Company named in the Declarations, relying upon the statements shown on the Declarations page and in the schedule of “underlying insurance” attached to this policy, and in return for the payment of premium and subject to its terms, conditions, and limits of insurance of this policy, agree with you as follows:

### I. INSURING AGREEMENT

- A. We will pay on behalf of the “insured” those sums in excess of the “retained limit” that the “insured” becomes legally obligated to pay as damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies.
  1. This insurance applies to “bodily injury” and “property damage” that takes place in the “coverage territory”, but only if:
    - a. The “bodily injury” or “property damage” is caused by an “occurrence”;
    - b. The “bodily injury” or “property damage” occurs during the “policy period”; and
    - c. Prior to the “policy period”, no “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 any “insured” listed under Paragraph A. of Section II – Who Is An Insured or any 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”.
  2. This insurance applies to “personal and advertising injury” that arises out of your business, but only if the offense causing the “personal and advertising injury” takes place in the “coverage territory” and during the “policy period”.
- B. “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 A. 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”.
- C. “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 A. 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.

- D. 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”.

The amount we will pay for damages is limited as described in Section IV - Limits of Insurance.

## II. WHO IS AN INSURED

- A. The following are “insureds”:

1. The Named Insured named in Item 1 of the Declarations of this policy is an “insured”.
2. Any subsidiary of the Named Insured named in Item 1 of the Declarations of this policy, and any other organization under your control and active management at the inception date of this policy is an “insured”, providing such subsidiary or organization is included as an insured in the “underlying insurance”, and was made known to us prior to or at the inception date of this policy;
3. 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.

- B. Each of the following is also an “insured”:

1. 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:
  - a. “Bodily injury” or “personal and advertising injury”:
    - (1) 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;
    - (2) To the spouse, child, parent, brother or sister of that co-“employee” or “volunteer worker” as a consequence of Paragraph a.(1) above;
    - (3) 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 a.(1) or (2) above; or
    - (4) Arising out of his or her providing or failing to provide professional health care services.
  - b. “Property damage” to property:
    - (1) Owned, occupied or used by you,
    - (2) 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).

2. Any person (other than your “employee” or “volunteer worker”), or any organization while acting as your real estate manager.
3. Any person or organization having proper temporary custody of your property if you die, but only:
  - a. With respect to liability arising out of the maintenance or use of that property; and
  - b. Until your legal representative has been appointed.
4. 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 policy.
5. 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 an “insured” if it also qualifies as an insured in “underlying insurance” and there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90<sup>th</sup> day after you acquire or form the organization or the end of the “policy period”, whichever is earlier;
  - b. This insurance does not apply to “bodily injury” or “property damage” that occurred before you acquired or formed the organization;
  - c. This insurance does not apply to “personal and advertising injury” arising out of an offense committed before you acquired or formed the organization; and
  - d. We reserve the right to charge an additional premium if such organization qualifies as an “insured.”
6. Any person or organization, if insured under “underlying insurance”, provided that coverage provided by this policy for any such insured will be no broader than coverage provided by “underlying insurance”.

Notwithstanding anything above, 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.

### III. DEFENSE AND SUPPLEMENTARY PAYMENTS

- A. We will have the right and duty to defend the “insured” against any “suit” seeking damages for “bodily injury”, “property damage” or “personal and advertising injury”, even if groundless, false or fraudulent, to which this insurance applies:
  1. When damages sought would be covered by “underlying insurance” but are not covered by that insurance because of the exhaustion of the applicable limits of “underlying insurance” by the payment of “loss” covered by this policy; or
  2. When damages sought would be covered under any “other insurance” but are not covered by that insurance because of the exhaustion of the applicable limits of “other insurance” by the payment of “loss” covered under such “other insurance”; or
  3. When damages sought for “bodily injury”, “property damage” or “personal and advertising injury” are not covered by “underlying insurance” or any “other insurance”, or any applicable self-insured retention has been exhausted by the payment of “loss” covered by this policy.
- B. We will have no duty to defend the “insured” against any “suit” seeking damages for “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance does not apply.
- C. We will have the right but not the duty to associate in the investigation of any claim and the defense of any “suit” which may, in our opinion, result in damages to which this insurance applies.
- D. If we assume the defense of any “suit” against the “insured”, we will pay in addition to the applicable Limit of Insurance:
  1. All expenses we incur.
  2. Up to \$250 for cost of bail bonds because of an “occurrence” that may result in “bodily injury” or “property damage” covered by this policy. We do not have to furnish these bonds.

3. 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.
  4. The cost of appeal bonds required by law to appeal any suit we defend but only for bond amounts within the applicable Limit of Insurance. We do not have to apply for or furnish such bond.
  5. All reasonable expenses incurred by the "insured" at our request to assist us in the investigation of any claim or the defense of any "suit" covered under this policy, including actual loss of earnings because of time off from work.
  6. All costs taxed against the "insured" in the "suit".
  7. Pre-judgment interest awarded against the "insured" on that part of the judgment, within the applicable Limit of Insurance, that we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest accruing after the offer.
  8. Post-judgment interest on that part of any judgment that we become obligated to pay, which accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that we have become obligated to pay, which is within the applicable Limit of Insurance.
- E. Our right and duty to defend ends when the applicable Limit of Insurance of this policy has been exhausted by the payment of "loss".

#### **IV. LIMITS OF INSURANCE**

- A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. "Insureds";
  2. Claims made or "suits" brought; or
  3. Persons or organizations making claims or bringing "suits".
- B. The General Aggregate Limit shown in the Declarations is the most we will pay for all damages, except:
1. Damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  2. Damages because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a covered "auto".
- C. The Products-Completed Operations Aggregate Limit shown in the Declarations is the most we will pay for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- D. Subject to Paragraphs B and C above, the Each Occurrence Limit shown in the Declarations is the most we will pay for the sum of all damages because of "bodily injury", "property damage", and "personal and advertising injury" arising out of any one "occurrence".
- E. If the applicable limits of "underlying insurance" have been:
1. Reduced by the payment of "loss" covered by this policy, then this policy will be excess of the reduced limit of "underlying insurance".
  2. Exhausted by the payment of "loss" covered by this policy, then this policy will continue in force as "underlying insurance".
- F. The Limits of Insurance of this policy 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.

## V. EXCLUSIONS

This insurance does not apply to:

### A. Aircraft or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft 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 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; or
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.

This exclusion does not apply to the extent that such coverage is provided by "underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "underlying insurance" by the payment of "loss" covered by this policy; provided, however, that coverage provided by this policy will be no broader than coverage provided by "underlying insurance."

### B. Asbestos

Any "loss", demand, claim or "suit" arising out of or related in any way to asbestos or asbestos-containing materials.

### C. 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.

### D. 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.

## **E. 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 seven (7) or fewer consecutive days.

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 sidetrack agreement.

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

## **F. Damage to Your Product**

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

## **G. 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.

## **H. Electronic Chat Rooms or Bulletin Boards**

“Personal and advertising injury” arising out of an electronic chat room or bulletin board the “insured” hosts, owns, or over which the “insured” exercises control.

## **I. 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:

1. To liability assumed by the "insured" under an "insured contract".
2. To the extent that such coverage is provided by "underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "underlying insurance" by the payment of "loss" covered by this policy; provided, however, that coverage provided by this policy will be no broader than coverage provided by "underlying insurance".

#### **J. Employment Practices**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, failure to promote, retaliation, violation of civil rights, invasion of privacy, discrimination or other acts or omissions arising out of employment related practices, or other employment related practices, policies, acts or omissions; or
4. Any consequential liability, damages, "loss", cost or expense as a result of 1, 2 or 3 above.

This exclusion applies whether or not the "insured" may be held liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of such injury or damages.

#### **K. 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" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### **L. 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.

#### **M. "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 web-sites for others; or
3. An Internet search, access, content or service provider.

However, this exclusion does not apply to Section VI - Definitions, R. "Personal and advertising injury", Paragraphs 1, 2 and 3.

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.

#### **N. 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.

This exclusion does not apply to the extent that such coverage is provided by "underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "underlying insurance" by the payment of "loss" covered by this policy; provided, however, that coverage provided by this policy will be no broader than coverage provided by "underlying insurance."

#### **O. Miscellaneous Laws**

Any "loss", demand, claim, or "suit" under:

1. The Employee Retirement Income Security Act of 1974 including any amendment thereto or any similar law.
2. Any workers' compensation, disability benefits or unemployment compensation laws or any similar laws.
3. Any "auto" no-fault law, any uninsured or underinsured motorist law, any personal injury protection law or similar law.

#### **P. Nuclear**

1. To any injury or damage:
  - a. With respect to which an "insured" under the policy is also an "insured" under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an "insured" under any such policy but for its termination upon exhaustion of its limit of insurance; or
  - b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. To any injury or damage resulting from the "hazardous properties" of "nuclear material", if:
  - a. The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (2) has been discharged or dispersed therefrom;
  - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
  - c. The injury or damage arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any "nuclear facility".

As used in this exclusion:

- a. "Hazardous properties" include radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material", "special nuclear material" or "by-product material";
- c. "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy act of 1954 or in any law amendatory thereof;
- d. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

- e. "Waste" means any waste material (a) containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
- f. "Nuclear facility" means:
  - (1) Any "nuclear reactor";
  - (2) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
  - (3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
  - (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- g. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- h. Injury or damage includes all forms of radioactive contamination of property.

**Q. Other "Personal and Advertising Injury"**

- 1. "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".
- 2. "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.
- 3. "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".
- 4. "Personal and advertising injury" arising out of a criminal act committed by or at the direction of the "insured".
- 5. "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:
  - a. That the "insured" would have in the absence of the contract or agreement; or
  - b. Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" offense takes place 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 "personal and advertising injury", provided:
    - i. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
    - ii. 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.
- 6. "Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

7. "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".
8. "Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

#### R. Pollution

1. "Bodily injury", "property damage" or "personal and advertising injury" 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";
  - 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:
    - (1) Any "insured"; or
    - (2) Any person or organization for whom you may be legally responsible;
  - 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;
  - 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";
  - f. That are, or that are contained in any property that is:
    - (1) Being transported or towed by, handled, or handled for movement into, onto or from, a covered "auto";
    - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
    - (3) Being stored, disposed of, treated or processed in or upon a covered "auto";
  - g. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
  - h. After the "pollutants" or any property in which the "pollutants" are contained are moved from a covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

However, the following exceptions to this exclusion apply to the extent that such coverage is provided by "underlying insurance" or would have been provided but for the exhaustion of the applicable limits of "underlying insurance" by the payment of "loss" covered by this policy; provided, however, that coverage provided by this policy will be no broader than coverage provided by "underlying insurance":

1. Paragraph 1.a. of this exclusion does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.
2. Paragraph 1.a. of this exclusion does not apply to "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.

3. Paragraph 1.d. of this exclusion does not apply to “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.
  4. Paragraph 1.d. of this exclusion does not apply to “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.
  5. Paragraph 1.d. of this exclusion does not apply to “bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”.
  6. Paragraph 1.f. of this exclusion does not apply to fuels, lubricants, fluids, exhaust gases or other similar “pollutants” that are needed for or result from the normal electrical, hydraulic or mechanical functioning of a covered “auto” or its parts, if:
    - a. The “pollutants” escape, seep, migrate, or are discharged, dispersed or released directly from an “auto” part designed by its manufacturer to hold, store, receive or dispose of such “pollutants”; and
    - b. The “bodily injury”, “property damage” or any covered pollution cost or expense does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of “mobile equipment”.
  7. Paragraphs 1.g. and 1.h. of this exclusion do not apply to “occurrences” that take place away from premises owned by or rented to an “insured” with respect to “pollutants” not in or upon a “covered auto” if:
    - a. The “pollutants” or any property in which the “pollutants” are contained are upset, overturned or damaged as a result of the maintenance or use of a covered “auto”; and
    - b. The discharge, dispersal, seepage, migration, release or escape of the “pollutants” is caused directly by such upset, overturn or damage.
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 2. 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.

#### **S. Recall of Products, Work or Impaired Property**

“Bodily injury”, “property damage” or “personal and advertising injury” or any other “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.

#### **T. Trade or Economic Sanctions**

To the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

#### **U. 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 meta-tag, or any other similar tactics to mislead another's potential customers.

#### **V. Unsolicited Communications**

"Bodily injury", "property damage" or "personal and advertising injury" arising out any form of communication, including but not limited to facsimile, electronic mail, posted mail or telephone, in which the recipient has not specifically requested the communication. This exclusion also applies to communications which are made or allegedly made in violation of the:

1. Telephone Consumer Protection Act (TCPA) including any Amendment of or addition to such law; or
2. The CAN-SPAM Act of 2003, including any amendment of Or addition to such law; or
3. Any statute, ordinance or regulation, other than the TCPA Or CAN-SPAM Act of 2003, which prohibits or limits the sending, transmitting, communicating or distribution of material or information.

#### **W. War**

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, civil commotion, rebellion or revolution.

### **VI. CONDITIONS**

#### **A. Appeals**

In the event you or any underlying insurer elects not to appeal a judgment in excess of the amount of the "underlying insurance" or "other insurance", we may elect to appeal. If we elect to appeal, we will be liable for, in addition to the applicable Limits of Insurance of this policy, all court costs, expenses incurred and interest on that amount of any judgment that does not exceed the applicable Limits of Insurance shown in the Declarations related to such an appeal, subject to the limitations set forth in Section III - Defense And Supplementary Payments.

#### **B. Assignment of Your Rights and Duties**

Your rights and duties under this policy may not be transferred, except by an endorsement to this policy issued by us. If you die or are legally declared bankrupt, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having temporary custody of your property will have your rights and duties, but only with respect to that property.

### C. **Bankruptcy**

Your bankruptcy, insolvency, refusal or inability to pay will not relieve us of our obligations under this policy. In the event of bankruptcy, insolvency, refusal or inability to pay of any underlying insurer, the insurance afforded by this policy will not drop down or replace "underlying insurance", but will apply as if the limits of such "underlying insurance" are fully available and collectible and we will not assume any obligation under "underlying insurance".

### D. **Cancellation**

1. You may cancel this policy. You must mail or deliver to us advance written notice stating when cancellation is to take effect.
2. We may cancel this policy. If we cancel because of non-payment of premium, we must mail or deliver to you not less than ten (10) days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than sixty (60) days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice.
3. The "policy period" will end on the day and hour stated in the cancellation notice.
4. If we cancel, final premium will be calculated pro rata based upon the time this policy was in force. Final premium will not be less than the pro rata share of the Minimum Premium as shown in the Declarations.
5. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium will not be less than the short rate share of the Minimum Premium as shown in the Declarations.
6. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund due you. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due you.
7. The first Named Insured shown in the Declarations will act on behalf of all other "insureds" with respect to the giving and receiving of notice of cancellation and the receipt of any refund that may become payable under this policy.

### E. **Changes**

This policy may be changed only by a written endorsement to this policy issued by us.

### F. **Duties in the Event of "Occurrence", Claim or "Suit"**

1. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim for damages under this policy. To the extent possible, notice should include:
  - a. How, when and where the "occurrence" took place;
  - b. The names and addresses of any injured persons and witnesses; and
  - c. The nature and location of any injury or damage arising out of the "occurrence".
2. If a claim is made or "suit" is brought against any "insured" that is reasonably likely to involve this policy, you must:
  - a. Immediately record the specifics of the claim or "suit" and the date received; and
  - b. Notify us in writing as soon as practicable.
3. You and any other involved "insured" must:
  - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the “insured” because of injury or damage to which this insurance may also apply.
4. 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 written consent.

**G. Inspection and Audit**

1. We will be permitted, but not obligated to inspect the “insured’s” property and operations. Neither our right to make inspections nor the making thereof nor any report thereon will constitute an undertaking, on behalf of or for the benefit of the “insured” or others, to determine or warrant that such property or operations are safe.
2. We may examine and audit the “insured’s” books and records during the “policy period” and any extensions thereof within three (3) years after the termination date of this policy.

**H. Legal Action Against Us**

1. No person or organization has a right under this policy to join us as a party or otherwise bring us into a “suit” asking for damages from an “insured”.
2. You will have no right of action against us under this policy unless all of its terms have been fully complied with; and the amount that you seek to recover has been determined by settlement with our consent or by final judgment against an “insured”.

**I. Maintenance of “Underlying Insurance”**

During the “policy period”, you agree:

1. To keep “underlying insurance” and renewals or replacements thereof in full force and effect.
2. That the limits of “underlying insurance” will be maintained except for any reduction or exhaustion of such limits by the payment of “loss” that would be covered by this policy.
3. That the terms and conditions of “underlying insurance” will not materially change during the “policy period”.
4. That any renewal or replacement of “underlying insurance” will not be more restrictive in coverage.
5. That “underlying insurance” may not be canceled or non-renewed by you without notifying us, and you agree to notify us in the event an insurance company cancels or declines to renew any “underlying insurance”.

Failure to maintain the “underlying insurance” as provided by this condition will not invalidate this policy. This policy will apply as if the “underlying insurance” were maintained as required by this policy.

**J. Other Insurance**

If valid and collectible “other insurance” applies to damages that are also covered by this policy, this policy will apply excess of the “other insurance” and will not contribute with such “other insurance”. This provision will not apply if the “other insurance” is written to be excess of this policy.

**K. Premium**

The first Named Insured shown in the Declarations will be responsible for payment of all premiums when due.

The premium stated in the Declarations is a flat premium. It is not subject to adjustment except as provided herein or as changed by an endorsement to this policy issued by us.

**L. Separation of “Insureds”**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned 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 or "suit" is brought.

#### **M. Titles**

The titles to the various parts, sections, subsections and endorsements of this policy are intended solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections and endorsements.

#### **N. Transfer of Rights of Recovery Against Others to Us**

1. If the "insured" has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The "insured" must do nothing after "loss" to impair them. At our request, the "insured" will bring "suit" or transfer those rights to us and help us enforce them.
2. Any amount recovered will be apportioned in the inverse order of payment of "loss" to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.
3. If you and the insurer of "underlying insurance" waive any right of recovery against a specific person or organization for damages as required under an "insured contract", we will also waive any such rights we may have against such person or organization provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract".

#### **O. When "Loss" is Payable**

Coverage under this policy will not apply until the "insured," or the "insured's" underlying insurer has paid or is obligated to pay the full amount of the "retained limit."

When the amount of damages is determined by an agreed settlement or on a final judgment against an "insured" obtained after an actual trial, we will promptly pay on behalf of the "insured" the amount of damages covered under the terms of this policy. The first Named Insured will promptly reimburse us for any amount within the "retained limit" paid by us.

### **VII. DEFINITIONS**

- A. "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:
  1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  2. 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".
- B. "Auto" means a land motor vehicle, trailer or semi trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or mental injury resulting from bodily injury.
- D. "Coverage territory" means anywhere in the world, except to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including but not limited to the payment of claims.
- E. "Employee" means an individual working for you in return for remuneration. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker" or independent contractor.
- F. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- G. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- H. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

1. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
  2. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
1. The repair, replacement, adjustment or removal of “your product” or “your work”; or
  2. Your fulfilling the terms of the contract or agreement.
- I. “Insured” means a person or organization meeting the qualifications set forth in Section II - Who Is An Insured.
- J. “Insured contract” means that part of any contract or agreement pertaining to your business under which any “insured” assumes 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.
- “Insured contract” 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, road-beds, 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 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 shown in subparagraph 2 above and supervisory, inspection, architectural or engineering activities.
- K. “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”.
- L. “Loading or unloading” means the handling of property:
1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or “auto”;
  2. While it is in or on an aircraft, watercraft or “auto”; or
  3. 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”.
- M. “Loss” means those sums paid in the settlement a claim or “suit” or satisfaction of a judgment which the “insured” is legally liable to pay as damages because of “bodily injury”, “property damage”, or “personal and advertising injury”, after making proper deduction for all recoveries and salvages.
- 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 you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

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

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

- a. Equipment designed primarily for:
    - i. Snow removal;
    - ii. Road maintenance, but not construction or resurfacing; or
    - iii. Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- O. "Occurrence" means:
- 1. With respect to "bodily injury" or "property damage", an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general conditions shall be considered as arising out of the same "occurrence", regardless of the frequency or repetition thereof, or the number of claimants.
  - 2. With respect to "personal and advertising injury", a covered offense. All damages that arise from the same act, publication or general conditions are considered to arise out of the same "occurrence", regardless of the frequency or repetition thereof, the number or kind of media used or the number of claimants.
- P. "Other insurance" means a policy of insurance providing coverage for damages covered in whole or in part by this policy. "Other insurance" does not include "underlying insurance", the amount shown in the Declarations as the Self-Insured Retention or any policy of insurance specifically purchased to be excess of this policy and providing coverage that this policy also provides.
- Q. "Policy period" means the time between the inception date of this policy shown in the Declaration and the expiration date shown or earlier termination date of this policy.
- R. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- 1. False arrest, detention or imprisonment;
  - 2. Malicious prosecution;
  - 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - 4. 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;
  - 5. Oral or written publication, in any manner, of material that violates a person's right of privacy;

6. The use of another's advertising idea in your "advertisement"; or
  7. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- S. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. As used in this definition, waste includes materials to be recycled, reconditioned or reclaimed.
- T. "Products-completed operations hazard":
1. 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:
    - a. Products that are still in your physical possession; or
    - b. Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - i. When all of the work called for in your contract has been completed.
      - ii. 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.
      - iii. 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.

2. Does not include "bodily injury" or "property damage" arising out of:
    - a. The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any "insured";
    - b. The existence of tools, uninstalled equipment or abandoned or unused materials.
- U. "Property damage" means:
1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical injury that caused it; or
  2. Loss of use of tangible property that is not physically injured. All such loss of use will 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.

- V. "Retained limit" means either of the following:
1. The total applicable limits of "underlying insurance" and any applicable limit of "other insurance" providing coverage to the "insured"; or
  2. The amount shown in the Declarations as the Self-Insured Retention applicable to each "occurrence" that results in damages not covered by "underlying insurance" or "other insurance".
- W. "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:
1. An arbitration proceeding in which such damages are claimed and to which the "insured" must submit or does submit with our consent; or
  2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the "insured" submits with our consent.

- X. "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.
- Y. "Underlying insurance" means the policy or policies of insurance listed in the Schedule of "Underlying Insurance" attached to and forming a part of this policy.
- Z. "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.

AA. "Your product":

1. Means:

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

2. Includes:

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

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

BB. "Your work":

1. Means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

2. Includes:

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