

**COLONY INSURANCE COMPANY**  
**Public Entity Excess Liability Policy**

Date: 11/1/2015

Named Insured: **Lee County Board of County Commissioners**

Policy Number: PXL 15103202

Policy Effective Dates: from: 10/1/2015 to: 10/1/2016

Surplus Lines Agent: Craig S. Balco, Sr. 1250 Gulf Blvd., #406 Clearwater, FL 33767 License #: D051488	Producing Agent: Karl Sneider Apex Insurance Services, Inc. 201 Concourse Blvd., Suite 260 Glen Allen, VA 23059
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**THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER**

Policy Premium: \$357,062	Policy Fee: N/A
Inspection Fee: N/A	Service Fee: N/A
Tax: N/A	Citizen's Assessment: N/A
EMPA Surcharge: N/A	FHCF Assessment: N/A

Surplus Lines Agent,



Craig S. Balco, Sr.

Colony Insurance Company  
8720 Stony Point Parkway, Suite 400  
Richmond, VA 23235

POLICY NUMBER:

PXL 15103202

## PUBLIC ENTITY EXCESS LIABILITY POLICY DECLARATIONS

### SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY

<b>Producing agency and mailing address:</b> Apex Insurance Services, Inc. 201 Concourse Blvd., Suite 260 Glen Allen, VA 23059	<b>Surplus lines agency and mailing address:</b> C&C Risk Services, LLC 1095 Evergreen Circle, Suite 200 The Woodlands, TX 77380
<b>NAMED INSURED:</b>	<b>Lee County Board of County Commissioners</b>
<b>MAILING ADDRESS:</b>	<b>P.O. Box 398 Fort Myers, FL 33902</b>
<b>POLICY PERIOD: FROM</b>	<b>10/01/2015 TO 10/01/2016</b>
	<b>AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS ABOVE</b>
<b>RENEWAL OF POLICY:</b>	<b>PXL 14100902</b>

<b>COVERAGES:</b> General Liability, Automobile Liability, Employee Benefits Liability, Public Officials Liability and Employers Liability	<b>Self-Insured Retention</b> \$ 500,000 per occurrence
Workers Compensation:	\$ 750,000 per occurrence
<b>LIMITS OF INSURANCE:</b> \$ 2,000,000 per occurrence/\$ 4,000,000 annual aggregate for General Liability, Automobile Liability, Employee Benefits Liability  \$1,000,000 combined single limit for Employers Liability  \$ 2,000,000 per occurrence/\$ 2,000,000 annual aggregate for Public Officials Liability  Statutory for Workers Compensation	
<b>All coverages, except Workers Compensation, contribute to the reduction of the policy aggregate</b>	
<b>PREMIUM: \$357,062</b>	

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

Authorized Representative: Craig S. Balcerch

Policy Number: PXL 15103202

Named Insured: Lee County BOCC

## FLORIDA FORMS AND ENDORSEMENTS SCHEDULE

The following forms are included in the policy:

- Declarations - TR PR DEC FL – 0514
- Business Auto Coverage Form - CA 00 01 04 13
- Commercial General Liability Coverage Form – CG 00 01 04 13
- Signature Page – SIGCIFL 1013
- Service of Suit U094-0613
- OFAC Notice – ILP001-0104
- Certified Acts of Terrorism Exclusion – UCG2175 - 0115
- Limited Terrorism Exclusion – UCG2171 - 0115
- Common Policy Conditions – IL 0017 1198
- Nuclear Energy Liability Exclusion – IL 0021 1185
- Auto Physical Damage Exclusion – TR PR 001
- PIP Exclusion – TR PR 002
- Self-Insured Retention Endorsement – TR PR 003
- Municipality Endorsement – TR PR 004
- Excess Workers Compensation Endorsement – TR PR 005
- Other Insurance Endorsement – TR PR 006
- Excess Claim Reporting Requirements – TR PR 007
- Public Officials and Employees Liability Coverage – TR PR 010
- Supplementary Payments Endorsement – TR PR 011
- Service Company Designation Endorsement – TR PR 012
- Florida Legislative Claim Bill Endorsement – TR PR 013
- Florida Consumer Complaint Notice – TR PR 014
- Employee Benefit Liability Coverage – TR PR 015
- Pollution Exclusion – TR PR 016
- GEN - 1001
- GEN - 1002

Issue Date: 10/1/15

## BUSINESS AUTO COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. 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 V – Definitions.

### SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

<b>19</b>	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II – COVERED AUTOS LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

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

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. 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; or
- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

**4. Employee Indemnification And Employer's Liability**

"Bodily injury" to:

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

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

**5. Fellow Employee**

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

**6. Care, Custody Or Control**

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

**7. Handling Of Property**

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or

- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

**8. Movement Of Property By Mechanical Device**

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

**9. Operations**

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

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

**10. Completed Operations**

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work 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.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

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

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- (3) 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.

## 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. 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 the 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 the covered "auto";
- b. 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
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above 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 the covered "auto" or its parts if:

- (1) 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
- (2) The "bodily injury", "property damage" or "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".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur 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.

## 12. War

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

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

## 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

## C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

### **SECTION III – PHYSICAL DAMAGE COVERAGE**

#### **A. Coverage**

1. We will pay for "loss" to a covered "auto" or its equipment under:

##### **a. Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

##### **b. Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

##### **c. Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### **2. Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

#### **3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

#### **4. Coverage Extensions**

##### **a. Transportation Expenses**

We will pay up to \$20 per day, to a maximum of \$600, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

##### **b. Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

## B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

### a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

### b. War Or Military Action

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

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:
  - a. Wear and tear, freezing, mechanical or electrical breakdown.
  - b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:
  - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";

- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";

- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or

- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

## C. Limits Of Insurance

1. The most we will pay for:

- a. "Loss" to any one covered "auto" is the lesser of:

- (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

- (2) Removable from a permanently installed housing unit as described in Paragraph **b.(1)** above; or
  - (3) An integral part of such equipment as described in Paragraphs **b.(1)** and **b.(2)** above.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
  3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

**D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

**SECTION IV – BUSINESS AUTO CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

**A. Loss Conditions**

**1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

**2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
    - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
    - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
    - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
    - (4) Authorize us to obtain medical records or other pertinent information.
    - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

**3. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

#### **4. Loss Payment – Physical Damage Coverages**

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

#### **5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

### **B. General Conditions**

#### **1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

#### **2. Concealment, Misrepresentation Or Fraud**

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

#### **3. Liberalization**

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### **4. No Benefit To Bailee – Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

#### **5. Other Insurance**

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

#### **6. Premium Audit**

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

## 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

### SECTION V – DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
  1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "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.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any 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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. 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 the 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 the covered "auto";
- b. 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
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above 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 the covered "auto" or its parts, if:

- (1) 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
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur 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.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "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".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "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 Paragraph 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; or
6. Vehicles not described in Paragraph 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:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) 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 or well-servicing equipment.

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

- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
  1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense";
 to which this insurance applies, are alleged.  
 "Suit" includes:
  - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "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.
- P. "Trailer" includes semitrailer.

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

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

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

## SECTION I – COVERAGES

### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

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

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

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

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

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

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

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

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

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

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

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

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

### b. Contractual Liability

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' 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 attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies whether the insured may be 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 the injury.

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

**f. Pollution**

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

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

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

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

**g. Aircraft, Auto Or Watercraft**

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

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

This exclusion does not apply to:

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

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

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

**h. Mobile Equipment**

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

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

**i. War**

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

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

**j. Damage To Property**

"Property damage" to:

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

- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

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

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

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

**k. Damage To Your Product**

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

**l. Damage To Your Work**

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

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

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

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

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

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

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

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

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

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

**o. Personal And Advertising Injury**

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

**p. Electronic Data**

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

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

**q. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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

## **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

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

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

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

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

### **2. Exclusions**

This insurance does not apply to:

#### **a. Knowing Violation Of Rights Of Another**

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

#### **b. Material Published With Knowledge Of Falsity**

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

#### **c. Material Published Prior To Policy Period**

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

#### **d. Criminal Acts**

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

#### **e. Contractual Liability**

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

#### **f. Breach Of Contract**

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

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

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

#### **h. Wrong Description Of Prices**

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

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

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

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

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

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

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

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

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

**k. Electronic Chatrooms Or Bulletin Boards**

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

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

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

**m. Pollution**

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

**n. Pollution-related**

Any loss, cost or expense arising out of any:

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

**o. War**

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

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

**p. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

## COVERAGE C – MEDICAL PAYMENTS

### 1. Insuring Agreement

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

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

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

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

### 2. Exclusions

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

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

#### c. Injury On Normally Occupied Premises

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

#### d. Workers' Compensation And Similar Laws

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

#### e. Athletics Activities

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

#### f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

#### g. Coverage A Exclusions

Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

**g.** All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

**2.** If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

**a.** The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

**b.** This insurance applies to such liability assumed by the insured;

**c.** The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

**d.** The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

**e.** The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

**f.** The indemnitee:

**(1)** Agrees in writing to:

**(a)** Cooperate with us in the investigation, settlement or defense of the "suit";

**(b)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

**(c)** Notify any other insurer whose coverage is available to the indemnitee; and

**(d)** Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

**(2)** Provides us with written authorization to:

**(a)** Obtain records and other information related to the "suit"; and

**(b)** Conduct and control the defense of the indemnitee in such "suit".

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

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

## **SECTION II – WHO IS AN INSURED**

**1.** If you are designated in the Declarations as:

**a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

**b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

**c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

**d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

**e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:
    - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
      - (1) "Bodily injury" or "personal and advertising injury":
        - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
        - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
        - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
        - (d) Arising out of his or her providing or failing to provide professional health care services.
      - (2) "Property damage" to property:
        - (a) Owned, occupied or used by;
        - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
    - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
    - c. Any person or organization having proper temporary custody of your property if you die, but only:
      - (1) With respect to liability arising out of the maintenance or use of that property; and
      - (2) Until your legal representative has been appointed.
    - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
  3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
    - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage **C**;
  - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage **B**.

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

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

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

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

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

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and

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

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

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

#### 4. Other Insurance

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

##### a. Primary Insurance

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

##### b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

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

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

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

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

##### c. Method Of Sharing

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

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

#### 5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

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

**7. Separation Of Insureds**

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

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

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

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

**9. When We Do Not Renew**

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

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

**SECTION V – DEFINITIONS**

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

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

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

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, 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 prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

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

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

**13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

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

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

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

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

b. Does not include "bodily injury" or "property damage" arising out of:

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

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

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

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

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

**18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**20.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

**21.** "Your product":

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

**b.** Includes:

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

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

**22.** "Your work":

**a.** Means:

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

**b.** Includes:

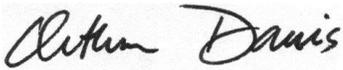
- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2)** The providing of or failure to provide warnings or instructions.

**Surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency.**

## **SIGNATURE PAGE**

IN WITNESS WHEREOF, the company issuing this policy has caused this policy to be signed by its President and its Secretary and countersigned (if required) on the Declarations page by a duly authorized representative of the company. This endorsement is executed by the company stated in the Declarations.

Colony Insurance Company



**President**



**Secretary**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SERVICE OF SUIT**

If service of process is to be made upon the Company by way of hand delivery or courier service, delivery should be made to the Company's principal place of business:

Claims Manager

Colony Insurance Company,  
Colony National Insurance Company, or  
Colony Specialty Insurance Company  
8720 Stony Point Parkway, Suite 400  
Richmond, Virginia 23235

If service of process is to be made upon the Company by way of the U.S. Postal Service, the following mailing address should be used:

General Counsel

Colony Insurance Company,  
Colony National Insurance Company, or  
Colony Specialty Insurance Company  
P.O. Box 469011  
San Antonio, Texas 78246

Where required by statute, regulation, or other regulatory directive, the Company appoints the Commissioner of Insurance, or other designee specified for that purpose, as its attorney for acceptance of service of all legal process in the state in any action or proceeding arising out of this insurance.

The Commissioner or other designee is requested to forward process to the Company as shown above, or if required in his/her particular state, to a designated resident agent for service of process.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

# U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **LIMITED TERRORISM EXCLUSION (OTHER THAN CERTIFIED ACTS OF TERRORISM)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

A. The following exclusion is added:

### **TERRORISM AND PUNITIVE DAMAGES**

This insurance does not apply to “any injury or damage” arising, directly or indirectly, out of:

- (1) An “other act of terrorism”, including any action taken in hindering or defending against an actual or expected incident of an “other act of terrorism”; or
- (2) Any act of terrorism:
  - (a) that involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
  - (b) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - (c) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage in (1) or (2) above; including
- (3) Damages arising, directly or indirectly, out of (1) or (2) above that are awarded as punitive damages.

B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

C. If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

D. The following definitions are added to the **DEFINITIONS** Section:

For the purposes of this endorsement, “any injury or damage” means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to any damage, “bodily injury”, “property damage”, “personal and advertising injury”, “injury” or “environmental damage” as may be defined in any applicable Coverage Part.

“Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a “certified act of terrorism” include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“Other act of terrorism” means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a “certified act of terrorism”. Multiple incidents of an “other act of terrorism” which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident. -

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# **CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

A. The following exclusion is added:

## **TERRORISM AND PUNITIVE DAMAGES**

This insurance does not apply to “any injury or damage” arising, directly or indirectly, out of:

- (1) A “certified act of terrorism” or an “other act of terrorism”, including any action taken in hindering or defending against an actual or expected incident of a “certified act of terrorism” or an “other act of terrorism”; or
- (2) Any act of terrorism:
  - (a) that involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
  - (b) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - (c) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;

regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage in (1) or (2) above; including

- (3) Damages arising, directly or indirectly, out of (1) or (2) above that are awarded as punitive damages.

B. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

C. The following definitions are added to the **DEFINITIONS** Section:

For the purposes of this endorsement, “any injury or damage” means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to any damage, “bodily injury”, “property damage”, “personal and advertising injury”, “injury” or “environmental damage” as may be defined in any applicable Coverage Part.

“Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a “certified act of terrorism” include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“Other act of terrorism” means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a “certified act of terrorism”. Multiple incidents of an “other act of terrorism” which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, 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 proper temporary custody of your property will have your rights and duties but only with respect to that property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

**(Broad Form)**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY NEW YORK DEPARTMENT OF  
TRANSPORTATION

1. The insurance does not apply:

**A.** Under any Liability Coverage, to "bodily injury" or "property damage:"

**(1)** 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 liability; or

**(2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) 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.

**B.** Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

**C.** Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material," if:

**(1)** The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;

**(2)** 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

**(3)** The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties;

"Nuclear material" means "source material," "Special nuclear material" or "by-product material;"

"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;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor;"

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes 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."

"Nuclear facility" means:

- (a) Any "nuclear reactor;"
- (b) 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;"

- (c) 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;
- (d) 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;

"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;

"Property damage" includes all forms of radioactive contamination of property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

**AUTO PHYSICAL DAMAGE EXCLUSION**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE PART**

**Section III – PHYSICAL DAMAGE COVERAGE** of the Business Auto Coverage Form – CA 00 01 is deleted in its entirety.

All other policy terms, conditions, definitions and exclusions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**PERSONAL INJURY PROTECTION EXCLUSION**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE PART**

Personal Injury Protection (No-Fault) or other coverages provided in compliance with the No-Fault laws of any State or province are excluded from coverage herein.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY

## **SELF-INSURED RETENTION ENDORSEMENT**

### **(Expenses Included in SIR)**

The policy of which this endorsement is a part is subject to the following conditions:

1. In consideration of the premium charged and as a condition to the issuance and continuation of the policy, it is agreed that the Named Insured shall retain and pay from its own funds a self-insured retention, per each “occurrence”, “accident”, offense, or “wrongful act” in the amount or amounts designated on the PUBLIC ENTITY EXCESS LIABILITY POLICY DECLARATIONS form and in accordance with and in acceptance of all the terms of this endorsement. The Named Insured shall retain and pay the self-insured retention as respects combined insured damages and insured allocated costs and expenses of investigation, defense, negotiation and settlement applicable to such insured damages. Payments for non-insured damages or non-insured allocated costs and expenses of investigation, defense, negotiation and settlement shall not reduce the self-insured retention retained and owed by the Named Insured. Our limit of liability, as stated elsewhere in the policy, shall apply solely in excess of the Names Insured’s self-insured retention. Allocated costs and expenses of investigation, defense, negotiation and settlement shall be limited to reasonable and necessary costs and expenses, and further shall not include any costs or expenses of any:
  - a. Claims management or service company of any “insured”, or
  - b. Wages or salaries of any “employee” of any “insured”, or
  - c. Operating expenses of any “insured”.
  - d. Fees or costs of any attorney or paralegal utilized, or serving as in-house counsel. This includes “employees” and contractors which are not paid on a time-and-expense basis by the Insured.
2. Where the insured damages and insured allocated costs and expenses arise under a “bodily injury” or “property damage” liability coverage part or another coverage part in the policy that is based upon an “occurrence”, the self-insured retention shall apply per each “occurrence”. Where the insured damages and insured allocated costs and expenses arise under a “personal and advertising injury” liability coverage part or another coverage part in the policy that is based upon an “occurrence” of an offense, the self-insured retention shall apply per each “occurrence” or offense. Where the insured damages and insured allocated costs and expenses arise from a “wrongful act” the self-insured retention shall apply per each “wrongful act”.
  - a. In the event that the Named Insured’s actual payment of combined insured damages and the insured allocated costs and expenses aforementioned, exhausts, per “occurrence”, “accident”, offense, or “wrongful act” the Named Insured’s self-insured retention and involves our liability, then, solely as respects each such

“occurrence”, “accident”, offense, or “wrongful act” we shall pay, the otherwise applicable limit of liability solely in excess of the self-insured retention.

- b. In the event that an “occurrence”, “accident”, offense, or “wrongful act” continues beyond the policy period, the applicable self-insured retention would apply separately to each policy period in which the “occurrence”, “accident”, offense, or “wrongful act” was committed or was alleged to have been committed.
3. In the event of any loss or incident which, in the opinion of any “insured”, may give rise to coverage under this policy, no costs or expenses, other than for immediate first aid to others, shall be incurred by any “insured” except at his or her own cost, peril and expense, without our written consent. The Named Insured shall be obligated to:
    - a. Provide an adequate defense and investigation of any action for or notice of any actual, potential or alleged damages, and
    - b. Accept any reasonable offer or settlement within the Named Insured’s retention.

In the event of the Named Insured’s failure to comply with any part of this paragraph, We shall not be liable for any damages, costs or expenses relating to any such loss or incident.

4. Subject to paragraph 1.above, in the event that two or more coverages may apply to the same claim or “suit “arising from the same “accident”, “occurrence”, offense, or “wrongful act”, our limit of liability for each policy period, as stated elsewhere in the policy, for the combined insured damages and insured allocated costs and expenses of investigation, defense, negotiation and settlement applicable to such insured damages will be excess of the Named Insured’s highest self-insured retention.
5. We may, at our sole option, pay, as damages, costs and expenses, any part or all of the Named Insured’s self-insured retention in order to effect settlement of any action or claim against any “insured” and, upon written notice of any Named Insured of such payment by us having done so, the Named Insured shall, within ten (10) calendar days of our sending such notice, reimburse us in full. If payment is not received within ten (10) calendar days after written notice, the insured will be responsible for interest at the rate of ten percent (10%), per annum, from the date settlement was funded as well as all attorney’s fees incurred in the pursuit of reimbursement from the “insured”.
6. We shall not at any time have any duty to defend any action or claim against any “insured”, even after the satisfaction of all applicable self-insured retentions. Subject to the application of all applicable self-insured retentions, we will only have the duty to reimburse the reasonable costs and expenses set for in paragraph 1 above. We, however, shall have the right to assume, at any time and in our sole discretion, the defense of any action or claim against any “insured”, and if we exercise this right, we shall notify the Named insured in writing.
7. Whenever an action or claim is asserted against any Insured that may involve our liability under the Policy, the Named Insured shall keep us regularly apprised of the status and

developments concerning the action or claim. The Company shall not be required to furnish a reservation of rights (either in writing or verbally) to any “insured” with respect to the action or claim unless and until we determine in our reasonable opinion that payment of combined insured damages and insured allocated costs and expenses will exhaust, per “occurrence”, “accident”, offense, or “wrongful act” the self-insured retention or we give written notice pursuant to paragraph 6 that we have assumed the defense of the action or claim against the “insured”. This paragraph does not alter any other notification or reporting requirements on behalf of any ‘insured’ as provided elsewhere in the Policy.

8. A self-insured retention required under this policy is in addition to any self-insured retention, deductible or similar obligation of any insured that may be required by any other insurance.
9. The insured shall not enter into any agreement written or oral that would serve to waive, forgive or circumvent any part of the insured’s self-insured retention.

Except as set forth above, all other policy terms, conditions, definitions and exclusion remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY

## **MUNICIPALITY ENDORSEMENT**

This endorsement modifies all insurance provided by the policy:

### **EXCLUSIONS:**

This insurance does not apply to any liability:

- A. arising out of or caused or contributed to by any ownership, maintenance, operation, use loading, unloading or control of or responsibility for any aircraft;
- B. arising out of or caused or contributed to by any ownership, maintenance, operation, use or control of or responsibility for any airfield, airport, runway hangar, building or other property or facility designed for, used, connected, associated or affiliated with or in any way related to aviation or aviation activities;
- C. arising out of “bodily injury” if such “bodily injury” or “property damage” is due to any rendering of or failure to render any medical, surgical or dental service, but not including emergency medical services or first aid performed by emergency medical technicians or paramedics;
- D. arising out of or caused or contributed to by, or in any way connected, with any actual or alleged principle of eminent domain, condemnation proceeding, inverse condemnations, dedication by adverse use or adverse possession, by whatever name called as well as all other allegations associated with the aforementioned;
- E. arising out of, in connection with or caused or contributed to by any failure or inability to supply or any interruption of any adequate quantity of power, steam, pressure, fuel or water’
- F. arising out of or caused or contributed to by any subsidence, erosion or earth movement;
- G. arising out of or caused or contributed to by any operation, maintenance, ownership or control of or responsibility for any:
  - 1. hospital;
  - 2. clinic;
  - 3. treatment center or other public medical, psychiatric or psychological facility,
  - 4. medical, psychiatric or psychological treatment facility or infirmary at a prison, jail or other correctional facility of incarceration; or
  - 5. any other facility which is similar or related to any of the foregoing,except as respects to “bodily injury” or “property damage” arising out of fire, explosion, collapse or earthquake at such facility;
- H. arising out of or caused or contributed to by or connected with any actual or alleged violation of the Employee Retirement Income Security Act of 1974(Public Law 93-406)

or any amendment thereto or any similar provision of any local, state or federal law, statutory or common;

- I. arising out of or caused or contributed to by any actual or alleged discrimination;
- J. arising out of, caused by or contributed to by any actual or alleged deterioration, bursting, breaking, leaking, inadequacy, design of, control of, maintenance of, or any other alleged responsibility for any structure, device or water course, natural or man-made, including, but not limited to: dams, reservoirs, levees, banks, embankments, gates, canals, ditches, gutters, sewers, aqueducts, channels, culverts, retaining walls, drains, tanks, watershed, or drains, a purpose of which is the containing, carrying, impeding, channeling, diverting, or draining of water or other liquid;
- K. arising out of the sale or distribution or handling of contaminants or pollutants including but not limited to acids, alkylides, chemicals, metals or bacteria in water sold, handled or distributed by or on behalf of the Named Insured;
- L. arising out of inhaling, ingesting or prolonged exposure to asbestos or goods or products containing asbestos, or the use of asbestos in constructing or manufacturing any good, product or structure, or the removal of asbestos from any good, product or structure, or the manufacture, sale, transportation, storage or disposal of asbestos of goods or products containing asbestos;

The coverage afforded by this policy does not apply to payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

Except as set forth above, all other policy terms, conditions, definitions and exclusions remain unchanged.

*THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY*

## **EXTENSION OF GENERAL LIABILITY COVERAGE - EXCESS WORKERS' COMPENSATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

In consideration of the additional premium shown in the policy declarations, the Coverage Part is extended to include coverage for Workers' Compensation as follows:

The **INSURER** does agree with the **INSURED**:

- A.** In consideration of the payment of all premiums by the **INSURED**,
- B.** in consideration of the continued use of the **SERVICE COMPANY** designated in Endorsement **TR PR 012**,, or any other **SERVICE COMPANY** agreed to, in writing, by the **INSURER**,
- C.** in reliance upon the truth and completeness of all statements and representations made in the information submitted by your authorized agent.
- D.** in reliance upon the truth and completeness of all statements and representations made in the declarations, attached hereto and made a part hereof, and
- E.** subject to all of the **CONDITIONS** of this **INSURANCE CONTRACT** as follows:

### **CONDITION I – INSURING AGREEMENT**

The **INSURER** agrees to indemnify the **INSURED** for **LOSS**, in excess of the **SELF-INSURED RETENTION**, which **LOSS** is sustained, by the **INSURED**, because of liability imposed upon the **INSURED**

- A.** by the **WORKERS' COMPENSATIONS ACT** of any state designated in Endorsement **TR PR 012**, for damages on account of **BODILY INJURY** or **OCCUPATIONAL DISEASE**, which **BODILY INJURY** or **OCCUPATIONAL DISEASE** is:
  - 1.** As a result of an **OCCURRENCE** during the **INSURANCE CONTRACT PERIOD**, and
  - 2.** Suffered by any **EMPLOYEE** of the **INSURED**, which are incidental to the **OPERATIONS OF THE INSURED**.
- B.** by **LAW** for damages on account of **BODILY INJURY** or **OCCUPATIONAL DISEASE**, which **BODILY INJURY** or **OCCUPATIONAL DISEASE** is:
  - 1.** a result of an **OCCURRENCE** during the **INSURANCE CONTRACT PERIOD**, and
  - 2.** suffered by an **EMPLOYEE** of the **INSURED**, but only if that **EMPLOYEE** is regularly engaged by the **INSURED**:
    - a.** in a state designated in Endorsement **TR PR 012**, even if that **EMPLOYEE** may be temporarily outside such designated states in connection with operations which are conducted within such designated states.

### **CONDITION II – SELF-INSURED RETENTION**

- A. As respects to any Specific Excess Workers' Compensation Insurance, the **INSURED** shall retain, as to each **OCCURRENCE**, as a self-insured retention and for the **INSURED'S** own account:
  - 1. that amount stated in the **POLICY DECLARATIONS**, and
  - 2. subject to the terms and conditions of Endorsement **TR PR 003**.
- B. As respects any Aggregate Excess Workers' Compensation Reinsurance, the **INSURED** shall retain, in the aggregate, as respects occurrences which are insured under this **INSURANCE CONTRACT** and which take place during the **INSURANCE CONTRACT PERIOD**, as a self-insured retention and for the **INSURED'S** own account:
  - 1. that amount stated in policy declarations, and
  - 2. all costs and all expenses of any and all investigation, defense, negotiation and settlement, and
  - 3. all **INTERMEDIATE INSURANCE**.

At such time as the **INSURED** has accumulated, subject to the per **OCCURRENCE** contribution limit stated in policy declarations, the self-insured retention stated in the policy declarations, the **INSURER** shall waive and the **INSURED** shall no longer be required to retain that amount, and the **INSURER** agrees to indemnify the **INSURED** for **LOSS** and per **OCCURRENCE**, up to the amount stated in the Policy Declarations.

#### **CONDITION III - FAILURE OF THE INSURED TO**

- A. Comply with any **WORKERS' COMPENSATION ACT**, or
- B. Qualify as a **SELF-INSURER** in the event that the **INSURED**:
  - 1. rejects the **WORKERS' COMPENSATION ACT**, in whole or in part, as respects any operations in any of the states designated in Endorsement **TR PR 012**, or
  - 2. fails to qualify as a duly authorized self-insurer under the **WORKERS' COMPENSATION ACT** of any state designated in Endorsement **TR PR 012**, then the amount of **LOSS** and **CLAIM EXPENSES** shall be considered not to exceed the amount of **LOSS** and **CLAIM EXPENSES** which would have resulted if the **INSURED** had not rejected such act and had qualified as a duly authorized self-insurer.

#### **CONDITION IV – EXCLUSIONS**

The insurance afforded by this **INSURANCE CONTRACT** shall not apply to any:

- A. **LOSS** or **CLAIM EXPENSE** arising out of or caused or contributed to by any operations, which operations are insured or should have been insured:
  - 1. under a standard Workers' Compensation and employers Liability Policy,
  - 2. under any other policy of direct insurance, or with or through any state fund, but whatever name called, or
- B. costs or expenses of defense, settlement, negotiation or investigation other than **CLAIM EXPENSES**, or
- C. bodily injury to or sickness, disease or death of any persons who were illegally employed by the **INSURED** with knowledge of such illegality by the **INSURED** or any officer, director, trustee or representative of the **INSURED**, or
- D. salaries or other remuneration of any **EMPLOYEES** of the **INSURED**, or
- E. interest.

## CONDITION V – DEFINITIONS

- A. **INSURED** means only that person or organization named in the **DECLARATIONS**.
- B. **INSURANCE CONTRACT PERIOD** means that period of time designated in the **DECLARATIONS** or, if this **INSURANCE CONTRACT** is sooner terminated, such lesser period of time.
- C. **STANDARD PREMIUM** means the unmodified premium which the **INSURED** would have for full coverage Workers' Compensation and Employers Liability Insurance if the **INSURED** were so insured during the **INSURANCE CONTRACT PERIOD**.
- D. **PAYROLL** means salary, tips, bonuses, commissions, overtime earning, the monetary value of all non-monetary remuneration and all other remuneration earned by all **EMPLOYEES** during the **INSURANCE CONTRACT PERIOD** but **PAYROLL** shall not include any expenses, which expenses were:
1. reimburse to any **EMPLOYEE** by the **INSURED**, and
  2. incurred by such **EMPLOYEE**, on behalf of the **INSURED**, in the course of the business activities of the **INSURED**.
- E. **SUBMISSION MATERIALS** means those documents submitted on your behalf by your authorized agent.
- F. **LOSS** means only such amounts as are actually paid, in cash, by or on behalf of the **INSURED**, in payment of benefits under the applicable **WORKERS' COMPENSATION ACT** or **LAW**:
1. In settlement of claims, and
  2. in satisfaction of awards or judgments, but **LOSS** shall not include any salaries or other remuneration paid or due to any **EMPLOYEES** of the **INSURED** on any **CLAIM EXPENSES**.
- G. **WORKERS' COMPENSATION ACT** means the **WORKERS' COMPENSATION ACT** of the applicable state designated in Endorsement **TR PR 012**, whether or not including any separate occupational disease act of that same state.
- H. **BODILY INJURY** means bodily injury or sickness, whether or not resulting in death, but **BODILY INJURY** shall not include any **OCCUPATIONAL DISEASE**.
- I. **OCCUPATIONAL DISEASE** means any occupational disease, whether or not resulting in death, but **OCCUPATIONAL DISEASE** shall not include any **BODILY INJURY**.
- J. **OCCURRENCE** means:
1. as respects **BODILY INJURY**, an accident, or
  2. as respects **OCCUPATIONAL DISEASE**, each separate occupational disease suffered by each separate **EMPLOYEE**, which **OCCURRENCE** shall be deemed to take place on the date which such **EMPLOYEE** ceases work as a result of such occupational disease.
- K. **EMPLOYEE** means any person who is performing work of any kind for the **INSURED**, and for whom and because of such work the **INSURED** is liable for the payment of benefits, under the **WORKERS' COMPENSATION ACT** of any state designated in Endorsement **TR PR 012**., because of **BODILY INJURY** or **OCCUPATIONAL DISEASE**.
- L. **LAW** shall mean statute of common law as shall obligate the **INSURED** to pay damages to any **EMPLOYEE** of the **INSURED** because of **BODILY INJURY** or **OCCUPATIONAL DISEASE** sustained by that **EMPLOYEE** in the course of employment by the **INSURED**, but **LAW** shall not

include any **WORKERS' COMPENSATION ACT**.

**M. CLAIM EXPENSES** means any and all:

1. court costs, and
2. allocated investigation, adjustment or legal expenses, but **CLAIMS EXPENSES** shall not include any salaries or other remuneration paid or due to any **EMPLOYEE** of the **INSURED**.

#### **CONDITION VI – PREMIUM**

- A.** The **PREMIUM** designated in the policy declarations is an advance premium only, which when paid by the **INSURED**, shall be credited to the amount of earned premium due at the end of the **INSURANCE CONTRACT PERIOD**. At the close of each period (or part thereof terminating with the end of the **INSURANCE CONTRACT PERIOD**) designated in the **DECLARATIONS**, the earned **PREMIUM** shall be computed for such period and, upon notice thereof to the **INSURED**, shall become fully due and payable. If the total earned **PREMIUM** for the **INSURANCE CONTRACT PERIOD** is less than the **PREMIUM** paid to date during the **INSURANCE CONTRACT PERIOD**, the **INSURER** shall return, for the account of the **INSURED** and subject to the **MINIMUM AND FULLY EARNED PREMIUM**, the unearned portion paid by the **INSURED**.
- B.** The **INSURED** shall maintain accurate and complete records of such information as is necessary for premium computation, and shall send copies of such records to the **INSURER** at the end of the **INSURANCE CONTRACT PERIOD** and at such other times as the **INSURER** may direct.

#### **CONDITION VII – ADMINISTRATION OF CLAIMS**

- A.** The **INSURED** shall:
  1. investigate and settle or defend all claims, and
  2. conduct the defense and appeal in all actions, suits or other proceedings, which claims, actions, suits or other proceedings are commenced against the **INSURED**, and
  3. give prompt notice to the **INSURER** of any:
    - a.** claim, suit, action or other proceeding commenced against the **INSURED**, and
    - b.** proceeding, event or development which, in the judgment of the **INSURED**, may result in a claim against the **INSURER**, and
  4. promptly forward to the **INSURER** copies of all pleadings, claims, suits, actions, proceedings and reports of investigation as may be requested by the **INSURER**.
- B.** The **INSURER** may elect, at its own option, cost and expense, to participate with the **INSURED** in the defense or appeal of any claim, suit, action or other proceedings in which the **INSURER** judges it may become involved.
- C.** The **INSURED** shall not, except at its own cost, peril and expense, make any voluntary settlement of any **LOSS** which involves the **INSURER**, except with the written consent of the **INSURER**.

#### **CONDITION VIII – SERVICE COMPANY**

- A.** The **INSURED** shall engage the **SERVICE COMPANY** named in Endorsement **TR PR 012**, and such **SERVICE COMPANY** shall be engaged to provide the **INSURED** with at least the following services:

1. supervision of the **INSURED'S** legal obligations to **EMPLOYEES** injured in the course of the **INSURED'S** employ
2. maintenance of accurate and complete records of all details concerning each and every occurrence,
3. furnishings of complete and accurate periodical advice to the **INSURED** and the **INSURER**, on forms of the **SERVICE COMPANY**, with regard to any and all:
  - a. accident reports, and
  - b. notices of **OCCURRENCE**, claim, suit, action or other proceeding,
4. tabulations, separately, of all:
  - a. payments,
  - b. reserves, and
  - c. expenses or expense reserves made or established because of any **BODILY INJURY** to or **OCCUPATIONAL DISEASE** or any **EMPLOYEE** of the **INSURED**.
5. compilation and furnishing of all notices and reports required, and
6. general administration of and responsibility for all other details concerning the effective discharge of the **INSURED'S** obligations to its **EMPLOYEES**, which obligations arise out of **BODILY INJURY** or **OCCUPATIONAL DISEASE** of any **EMPLOYEES**.

#### **CONDITION IX – INSPECTION AND AUDIT**

- A. The **INSURER** shall be permitted, but in no event shall it be obligated, to inspect the property and operations of:
  1. the **INSURED**
  2. the **SERVICE COMPANY**, and
  3. any and all agents of either or both of the foregoing at any time.
- B. Any:
  1. right of the **INSURER** to make such inspections,
  2. making thereof, or
  3. report thereon

shall not constitute an undertaking, on behalf or for the benefit of anyone, to warrant or determine that such property or operations are safe or healthful or in compliance with any law, rule, regulation or standard.
- C. The **INSURER** may examine and audit the books and records of:
  1. the **INSURED**
  2. the **SERVICE COMPANY**, and
  3. any and all agents of either or both of the foregoing at any time:
    - a. during the **INSURANCE CONTRACT PERIOD**,
    - b. during any extensions of the **INSURANCE CONTRACT PERIOD**,
    - c. within three (3) years of the end of either of the foregoing, or
    - d. while there is any actual or potential outstanding liability for **LOSS** or **CLAIM EXPENSE** under this **INSURANCE CONTRACT**,

whichever comes last, but only insofar as such books or records may relate to this **INSURANCE CONTRACT**.

#### **CONDITION X – COOPERATION**

The **INSURED** and the **SERVICE COMPANY** shall cooperate with the **INSURER** and, at the request of the **INSURER**, each shall:

- A. assist in:
  - 1. making settlements,
  - 2. the of suits or other actions or proceedings,
  - 3. enforcing any and all rights of contribution or indemnity against any person who or organization which may be liable to the **INSURED** or the **SERVICE COMPANY** for **BODILY INJURY** or **OCCUPATIONAL DISEASE** which is reinsured under this **INSURANCE CONTRACT**,
  - 4. securing and giving evidence,
  - 5. obtaining the attendance and cooperation of witnesses, and
- B. attend hearings, trials and other proceedings.

#### **CONDITION XI – SUBROGATION**

In the event of any payment under this **INSURANCE CONTRACT**, the **INSURER** shall be subrogated to all of the **INSURED'S** rights of recovery therefore against any person or organization, and the **INSURED** and the **SERVICE COMPANY** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. no person or organization shall do anything to prejudice such a right.

#### **CONDITION XII – OTHER INSURANCE**

- A. In event that the **INSURED** should have any excess insurance, indemnity or other insurance for the same elements of **LOSS** or **CLAIM EXPENSES** as insured under this **INSURANCE CONTRACT**, the **INSURER** shall not be liable for a greater proportion of such **LOSS** and **CLAIM EXPENSES** than the applicable **INSURANCE LIMIT** of this **INSURANCE CONTRACT** bears to the combined insurance limits, limits of liability and limits of indemnity of all valid and collectible reinsurance, insurance and indemnity policies or contract applicable to that **LOSS** or **CLAIM EXPENSES**.
- B. This **CONDITION** shall not apply to **INTERMEDIATE REINSURANCE**, which reinsurance this **INSURANCE CONTRACT** shall always be in excess of.

#### **CONDITION XIII – ACTION AGAINST INSURER**

- A. No action shall lie against the **INSURER** unless, as a condition precedent thereto,
  - 1. the **INSURED** and
  - 2. all agents, representatives and **EMPLOYEES** of the **INSURED** shall have fully complied with all the **CONDITIONS** of this **REINSURANCE CONTRACT**, and the amount of the **INSURED'S** obligation to pay shall have been finally determined by:
    - a. judgment or award against the **INSURED**, after actual trial or hearing
    - b. written agreement among the claimant, the **INSURED** and the **INSURER**, or

- c. written agreement between the claimant and the **INSURER**, whichever comes first.
- B.** Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this **INSURANCE CONTRACT** to the extent of the reinsurance afforded. No person or organization shall have the right under this **INSURANCE CONTRACT** to join the **INSURER** in any action against the **INSURED** to determine the **INSURED'S** liability. The **INSURER** shall not be implicated by or on behalf of the **INSURED**.

#### **CONDITION XIV – CHANGES**

- A.** Notice to or knowledge possessed by anyone shall not:
- 1. effect a waiver of any of the **CONDITIONS** of this **INSURANCE CONTRACT**,
  - 2. effect a change in any part of this **INSURANCE CONTRACT**, or
  - 3. stop the **INSURER** from asserting any rights under this **INSURANCE CONTRACT**.

The **CONDITIONS** of this **INSURANCE CONTRACT** shall not be waived or changed except by written endorsement, which endorsement is signed by an authorized representative of the **INSURER** and issued to form a part of this **INSURANCE CONTRACT**.

#### **CONDITION XV – ASSIGNMENT**

This **INSURANCE CONTRACT** shall not be assignable without the prior, written permission of the **INSURER**, which written permission shall be evidenced by written endorsement attached hereto.

#### **CONDITION XVI – TERMINATION**

- A.** This **INSURANCE CONTRACT** may be terminated:
- 1. By or on behalf of the **INSURED** by:
    - a. surrender thereof to the **INSURER** or any of its authorized representatives, or
    - b. mailing to the **INSURER** written notice, which notice shall state when thereafter such termination shall be effective, or
  - 2. By or on behalf of the **INSURER** for:
    - a. non-payment,
    - b. failure to comply with any **CONDITION** of this **INSURANCE CONTRACT**,
    - c. fraud, or
    - d. material misrepresentation
- by mailing to the **INSURED**, and at the mailing address stated herein, written notice, which notice shall state when, not less than ten ( 10 ) days thereafter, such termination shall be effective.
- B.** Any mailing of notice, as aforesaid, shall be sufficient proof of notice, and delivery of such written notice by or on behalf of the **INSURED** or the **INSURER** shall be equivalent to mailing. The time of surrender or the effective date and hour stated in the notice, whichever is applicable, shall become the end of the **INSURANCE CONTRACT PERIOD**.
- C.** If termination is effected by or on behalf of the **INSURED**, earned premium shall be calculated in accordance with the customary short rate table and procedure, but if termination is effected by or on behalf of the **INSURER**, earned premium shall be computer pro-rata. Premium adjustment shall

be subject to the **MINIMUM AND FULLY EARNED PREMIUM** and may be made either at the time that termination is effected or as soon as practicable thereafter, but payment or tender of unearned premium shall not be a condition to termination. The check of the **INSURER** or of any of its authorized representatives shall be payment in full of any return premium due. Payment or tender for the account of the **INSURED** shall be payment to all interests. If this **INSURANCE CONTRACT** insures more than one **INSURED**, notice and payment or tender to any of such **INSUREDS** shall be notice and payment to all interests. If, at the time that termination becomes effective, the **INSURER'S** aggregate **INSURANCE LIMIT** is exhausted by payment or award or reserve for judgments or settlements, or otherwise, then all premium shall be fully earned and due and no return premium shall be due.

#### **CONDITION XVII – FRAUD OR MISREPRESENTATION**

In the event that any **INSURED** or any officer, director, trustee or representative of the **INSURED** shall knowingly and in any way:

- A. falsify any claim, suit or other action or proceeding,
- B. falsify any material statement,
- C. falsify any material representation, or
- D. partake in or acquiesce to any of the foregoing, then solely as respects such **INSURED**, the reinsurance afforded by this **INSURANCE CONTRACT**, and all rights resulting therefrom, shall be null and void. The **INSURER** shall have the right at its option to terminate the entire **INSURANCE CONTRACT**.

#### **CONDITION XIII – DECLARATIONS, SUBMISSION MATERIALS, AND ACCEPTANCE**

By acceptance of the **INSURANCE CONTRACT**,

- A. the **INSURED**,
- B. the **SERVICE COMPANY**, and
- C. all officers, directors, trustees and representatives of either or both of the above, agree and affirm that each of the persons or other entities named in the **DECLARATIONS**
  1. is a qualified self-insurer, and
  2. will operate, with and within the permission of the proper authorities, as a qualified self-insurer with respect to the **WORKERS' COMPENSATION ACT** of each and every of the states designated in Endorsement **TR PR 012**,
- D. the **INSURED** and all officers, directors, trustees and representatives of the **INSURED** agree and affirm that:
  1. all statements or representations made in the **DECLARATIONS** are each of their statements, agreements and representations,
  2. all statements or representations made in the **SUBMISSION MATERIALS** are each of their statements, agreements and representations,
  3. this **INSURANCE CONTRACT** is issued and continued by the **INSURER** in reliance upon the truth and completeness of each and every of such statements, agreements, and representations, and

4. this **INSURANCE CONTRACT** embodies all agreements among and between the **INSURED**, the **INSURER** and all representatives of either or both, as respects all aspects of the insurance afforded hereunder.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

## **OTHER INSURANCE AMENDMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

### **BUSINESS AUTO COVERAGE PART**

The Other Insurance Conditions of **Section IV – Commercial General Liability Conditions** of the Commercial General Liability Coverage Form – CG 00 01 and **Section IV – Business Auto Conditions** of the Commercial Auto Coverage Form – CA 00 01 are deleted in their entirety and replaced with the following:

#### **Other Insurance**

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurers defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the "loss" in the absence of the insurance provided under this Coverage Part; and
  - (2) The total of all deductible and self-insured amounts under all other insurance.

For the purpose of this Condition, "loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlements, judgments, binding arbitration, or other binding alternate dispute resolution proceeding entered into with our consent.

#### **Multiple Coverages**

- a. In the event that two or more coverages may apply to the same claim or "suit" arising from the same "accident", "occurrence", offense, or "wrongful act", the most we will pay for the combined insured damages and insured allocated costs and expenses of investigation, defense, negotiation and settlement applicable to such insured damages is

the highest applicable limit of insurance subject to the Limits of Insurance provisions of the policies.

- b. In the event that Workers' Compensation is one of the two or more coverages that may apply to the same claim or "suit" arising from the same "accident", "occurrence", offense, or "wrongful act", then the most we will pay is the highest applicable limit of insurance subject to the Limits of Insurance provisions of the policies not including payments made under statutory Workers Compensation benefits.

All other policy terms, conditions, definitions and exclusions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

## **EXCESS CLAIM REPORTING REQUIREMENTS**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

### **BUSINESS AUTO COVERAGE PART**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS – 2. Duties In The Event Of Occurrence, Offense, Claim or Suit** of the Commercial General Liability Coverage Form – CG 00 01 and **Section IV – BUSINESS AUTO CONDITIONS – 2. Duties In The Event Of Accident, Claim, Suit Or Loss** of the Commercial Auto Coverage Form – CA 00 01;

We require prompt notice of any occurrence, loss, claim or suit when any of the following criteria are triggered:

#### **A. Monetary Threshold**

1. All claims with a total incurred, or recognized exposure, over 50% of the self-insured retention (SIR).  
Total incurred is defined as paid loss and expense plus all outstanding reserves
2. Any claim in which defense counsel's evaluated exposure is greater than the SIR.

#### **B. Injury Threshold**

Any claim with allegations or defined injuries regardless of liability with the following:

1. Fatality;
2. Spinal cord injury
3. Brain damage (including closed head injuries)
4. Third or second degree burns over 50% of the body
5. Impairment of vision or hearing of 50% or more
6. Nerve damage causing paralysis or loss of sensation in a limb
7. Massive Internal injuries affecting body organ(s), and/or multiple fractures
8. Significant shattering or non-union of a limb
9. Permanent loss of use of an arm or leg including amputation

#### **C. Claim Type**

1. Any suit involving allegations of violation of federal civil rights by the police department or a law enforcement officer which involve bodily injury.
2. Any workers compensation claim involving a claim for designation of Permanent and Total disability.
3. Any occurrence and/or wrongful act which will likely exceed the SIR (even if it has not developed into a formal claim).

All other policy terms, conditions, definitions and exclusions remain unchanged.

## COLLEGES OR SCHOOLS ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**This Insurance does NOT apply to:**

1. 'Bodily Injury', 'Personal and Advertising Injury' or 'Property Damage' to any student or pupil arising out of any corporal punishment administered by or at the direction of any insured or any of the insured's employees;
2. 'Bodily Injury' or 'Property Damage' sustained by any person while practicing or participating in, or officiating at any sports or athletic contest, practice or exhibition;
3. Any claims arising out of 'Bodily Injury' or 'Property Damage' as a result of trampolines.
4. Any claims arising out of any wrongful act, error or omission, misstatement, or breach of duty committed or alleged to have been committed by the Named Insured, or by any current or former trustee or member of the Board of Governors of any educational institution, or any current or former executive officer or member of any public school board or commission.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

## **PERSONAL INJURY LIABILITY FOR POLICE OFFICERS**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A. Under Section I, Coverage B. Personal and Advertising Injury Liability**, the following is added to Paragraph **a.** of Section 1. **Insuring Agreement**:

(3)“Personal and Advertising Injury” sustained by any person or organization and arising out of any offense, act or omission committed by one or more “police/peace officers” resulting from law enforcement activities of your police department or any of your other law enforcement agencies, including their agents or employees, subject to the following additional provisions:

- B. Under Section V – Definitions**, the following offenses are added to Definition 14. (“Personal and Advertising Injury”):

**f.** Erroneous service of civil papers by police/peace officers or

**g.** Assault and battery and resultant bodily injury by police/peace officers in the course of law enforcement activities. For **g.** only, “Personal and Advertising Injury” includes “Bodily Injury” that results from an assault and/or battery.

- C. Under Section V – Definitions**, the following definition is added for the purpose of this endorsement:

**23.** “Police/peace officer” is defined as a member of an official civil police or sheriff’s force or department of the Named Insured (including department of corrections and jailers) designated in the declarations of the policy or added by endorsement, organized to maintain order, prevent and detect crime, and enforce law.

- D. Under Section I, Coverage B.,** the following is added to **2. Exclusions**, Paragraph **a**:

**q.** Arising out of any actual or alleged rape, sexual assault, sexual battery, sexual molestations, sexual discrimination, sexual harassment, sexual relations, sexual intimacy, sexual act, sexual activity, sexual handling, sexual exploitation, sexual exhibition, sexual exposure, undue familiarity, alienation of affections, or any behavior with sexual connotation or purpose, both direct and indirect, including the negligent employment, investigation, supervision, reporting to authorities, or retention of any “police/peace officer” for whom any insured is or ever was legally responsible.

- E. Under Section II – Who Is An Insured**, paragraph 1. Is replaced with the following:

1. Each of the following is an insured under the insurance to the extent set forth below:
  - a. if the Named Insured is designated in the declarations as an individual, the person so designated and his spouse;
  - b. if the Named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint ventures designated and any partner or member thereof but only with respect to his liability as such;
  - c. if the Named Insured is designated in the declarations as other than individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such.

This insurance does not apply to “Personal and Advertising Injury” arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured.

Except as set forth above, all other policy terms, conditions, definitions and exclusion remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY

## **PUBLIC OFFICIALS AND EMPLOYEES LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following Insuring Agreement is added to **SECTION I – COVERAGES**:

### **COVERAGE D – PUBLIC OFFICIALS AND EMPLOYEES LIABILITY INSURANCE**

#### **1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of a “Wrongful Act” to which this insurance applies. The amount we will pay for damages is limited as described in Limits of Insurance (Section III) and no other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS – COVERAGES A and B**.
- b. This applies to a “Wrongful Act”:
  - (1) The “Wrongful Act” was committed by you, as a “Public Official” of the Named Insured or by an employee of the Named Insured for whom you are responsible as a “Public Official” of the Named Insured; provided that the “wrongful Act” was committed in the conduct of the Named Insured’s business and provided that you qualify as an insured under this policy.
  - (2) The “Wrongful Act” was committed within one (1) year prior to the inception date of this Policy, but not on or after the expiration date of this Policy.
  - (3) The “Wrongful Act” was unknown to you as a “Public Official” of the Named Insured until on or after the inception date of this Policy.

#### **2. Exclusions**

This insurance does not apply to any claim:

- A. Seeking any of the following to which you are not legally entitled:
  - (1) Profit;
  - (2) Gain;
  - (3) Advantage; or
  - (4) Other remuneration;

However, you shall be protected under the terms of this Policy, unless a judgment or other final adjudication established such lack of legal entitlement;

- B. Brought about or contributed to by your dishonesty; however, notwithstanding the foregoing, you shall be protected under the terms of this Policy as to any claims upon which suit is brought against you because of any alleged dishonesty on the part of

- you, unless a judgment or other final adjudication thereof adverse to you, shall establish that acts of dishonesty committed by you were:
- (1) Deliberate;
  - (2) With actual dishonest purpose and intent; and;
  - (3) Material to the cause of action so adjudicated; and
  - (4) Other remuneration.
- C. Seeking relief, or redress, in any form other than money damages;
- D. For loss, damage to or destruction of any tangible property, including any resulting loss of use;
- E. Arising out of bodily injury, sickness, disease, death, or mental anguish;
- F. For injury arising from:
- (1) False arrest, assault or battery, detention, imprisonment, malicious prosecution or abuse or process, or
  - (2) Disparagement, defamation including but not limited to libel, slander or violation of an individual's right or privacy;
- G. Arising from a publication or utterance in the course of or related to advertising, broadcasting, or telecasting activities, conducted by or on behalf of you;
- H. Arising from strikes, riots or civil commotions;
- I. Arising from inverse condemnation, adverse possession or eminent domain;
- J. Arising from the willful violation of any statute, ordinance or regulation committed by or with your knowledge or consent;
- K. Arising from the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids, or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, regardless of whether such discharge, dispersal, release or escape is sudden and/or accidental, (This exclusion does not apply to Bodily Injury or Property Damage caused by heat, smoke, or fumes from a hostile fire);
- L. Arising from your activities in a fiduciary capacity with respect to any employee benefit plan or any self-insurance fund
- M. Arising from activities of any attorney-at-law, medical personnel, architect, engineer or accountant, in the scope of his professional duties; however, notwithstanding the foregoing, you shall be protected under the terms of this Policy as to any claims made against them as "Public Officials" or Employees of your;
- N. Arising out of breach of contract;
- O. Arising out of the activities of any law enforcement agency or personnel;
- P. Arising out of awards for back salary or future salary or compensation;
- Q. Arising out of the operation of or activities of any schools, airports, transit authorities, hospitals, housing authorities, utilities;
- R. To any cross claims or counter claims brought by one Insured under the Coverage against another reinsured under this coverage;

- S. Arising out of failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture;
- T. Arising out of failure to provide adequate insurance coverage;
- U. Exclusions A through L of the MUNICIPALITY ENDORSEMENT apply to this insurance with the exception of Exclusion I.;
- V. Arising from a “Wrongful Act” by the insured with the intent to cause injury, harm or damage to any employee, person or legal entity.

### **3. Limits**

The following paragraph is added to SECTION III – LIMITS OF INSURANCE:

8. The “Public Officials” and Employee Liability Insurance each Occurrence Limit is the most we will pay under Coverage D for damages because of a “Wrongful Act”. The Aggregate Limit shown in the declaration is the most we will pay for all damages under Coverage D.

### **4. Definitions**

The following is added to **SECTION V – DEFINITIONS;**

“Wrongful Act” means any actual or alleged error or omission, misstatement or misleading statement, neglect or breach of duty including malfeasance and the nonfeasance by you, as a “Public Official” or by any employee of the Named Insured for whom you are responsible as a “Public Official” of the Named Insured.

“Public Official” means an individual either elected to office or appointed by you to public office as a department head, including officers, directors and members of any boards or commissions, but only with respect to their duties as you elected or appointed officials, officers, directors, or board of commission members.

All other policy terms, conditions, definitions and exclusions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

## **SUPPLEMENTARY PAYMENTS CHANGES**

### **Loss Adjustment Expenses Within Policy Limits**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

#### **BUSINESS AUTO COVERAGE PART**

**Section 1 – Coverages, Supplemental Payments – Coverages A and B** of the Commercial General Liability Coverage Form – CG 00 01, and **Section II – Covered Autos Liability Coverage, A. Coverage, 2. Coverage Extensions** of the Commercial Auto Coverage Form – CA 00 01, are deleted in their entirety and replaced with the following:

#### **SUPPLEMENTARY PAYMENTS**

We will pay with respect to any claim we investigate or settle, or any “suit” against an “insured” for which we assume the defense:

1. All expenses we incur in the defense of a claim including costs, fees, expenses, attorney fees and costs, investigative costs, expert defense costs, expert costs, independent medical examinations and all other costs or expenses incurred in defense of a claim, excluding the salaries of “employees” of the company.
2. Up to \$2,000 for the cost of bail bonds (including bonds for “accidents” or traffic law violations arising out of the use of any vehicle to which coverage applies, or because of an “accident” we cover). We do not have to furnish these bonds.
3. The cost of bonds to release attachments in any “suit” against the “insured” we defend, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$250 a day because of time off from work.
5. All costs taxed against the “insured” in the “suit”. However, these payments do not include attorney’s fees or attorneys’ expenses taxed against the insured.
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment in any “suit” against the “insured” we defend, and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

For any action or claim where we assume the defense of an insured, the defense ends when we have used up the applicable limit of insurance in the payment of attorney's fees, legal expenses, costs, interest, judgments or settlements or the conditions set for above.

Except as set forth above, all other policy terms, conditions, definitions and exclusions remain unchanged.

**AMENDATORY ENDORSEMENT**  
**DESIGNATION OF SERVICE COMPANY**

It is hereby understood and agreed that the following Service Company will be utilized:

1. WC Service Company: PMA Management Corp.  
2701 Rocky Point Drive  
Suite 250 Island Center  
Tampa, Florida 33607
  
2. Liability Service Company: Same
  
3. Loss run contact: Bill Burckhardt  
Claims Supervisor
  
4. Insurance is applicable in the following state: Florida

It is further agreed that periodic loss runs will be provided to the insurer by the service company or the insured directly. Loss runs will be provided on a monthly or quarterly basis based on agreement with the insurer.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY

## **FLORIDA LEGISLATIVE CLAIM BILL ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

### **BUSINESS AUTO COVERAGE PART**

The following is added to **Section III – LIMITS OF INSURANCE** of the Commercial General Liability Coverage Form – CG 00 01, and **Section II – Covered Autos Liability Coverage, A. Coverage, 2. Coverage Extensions – C. Limit Of Insurance** of the Commercial Auto Coverage Form – CA 00 01,

The most we will pay is further limited by Florida Statute 768.28, which provides that:

Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$200,000 or \$300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature.

However, subject to the limits indicated in the policy declarations, we will pay:

- a. The amount indicated when the Florida Legislature enacts an appropriate claim bill in accordance with Section 768.28 (5) of the Florida Statutes;
- b. The amount determined by a court of competent jurisdiction for liable action taken outside the state of Florida; or
- c. The amount indicated in the policy declarations when Florida Statutes 768.28 is not applicable.

The following is added to **Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** of the Commercial General Liability Coverage Form – CG 00 01 04 13, and **Section IV – BUSINESS AUTO CONDITIONS** of the Commercial Auto Coverage Form – CA 00 01 10 13;

### **SUPPORT AND COOPERATION IN OPPOSITION TO CLAIM BILL LEGISLATION**

If we act to oppose legislation brought forth in accordance with Florida Statute 768.28, arising from a covered occurrence, you shall use your best efforts to provide us with positive support and cooperation in such opposition.

Except as set forth above, all other policy terms, conditions, definitions and exclusions remain unchanged.

## FLORIDA CONSUMER COMPLAINT NOTICE

**If you have a problem or complaint concerning your insurance policy with us, we are always available to help you. For assistance, please contact your independent agent or the following company representative:**

### *Company Contact*

To obtain information or make a complaint:

1. You may call the following toll-free number to make a claim, or for claim information:

*(877) 474-8808*

2. You may also call the following toll-free number for information or to make a complaint:

*(877) 474-8808*

3. Or you may contact the Florida Department of Financial Services to obtain general information on companies, coverages, rights or complaints.

This notice is for information purpose only and does not become a part or condition of the attached document.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ CAREFULLY

## **EMPLOYEE BENEFITS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

All endorsements applicable to the coverage above continue to apply to this coverage part.

In addition to words and phrases contained in the Commercial General Liability Coverage Part, other words and phrases that appear in quotation marks have special meaning. Refer to Paragraph E. **ADDITIONAL DEFINITIONS** of this endorsement.

The definitions of the words and phrases “coverage territory”, “insured” and “suit”, contained in Paragraph E. apply in place of the definitions stated elsewhere in the policy, but only as respects coverage under this endorsement.

The provisions of this endorsement apply only as respects to Employment Benefit Liability Coverage afforded hereunder.

### **A. COVERAGE**

#### **1. Insuring Agreement**

We will pay those sums that the insured becomes legally obligated to pay as damages because of any negligent act, error or omission of the insured, or of any other person for whose acts the insured is legally liable. The negligent act, error or omission must be committed in the “administration” of your “employee benefit program” during the policy period. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **3. SUPPLEMENTARY PAYMENTS OF THIS ENDORSEMENT**. The negligent act, error or omission must take place in the “coverage territory”. We will have the right, but not the duty, to defend any “suit” seeking those damages. But:

- a.** The amount we will pay for damages is limited as described in Paragraph C. **LIMITS OF INSURANCE**.
- b.** We may at our discretion, investigate any report of a negligent act, error or omission and settle any claim or “suit” that may result; and
- c.** Any defense ends when we have exhausted the applicable limit of insurance in the payment of judgments or settlements.

#### **2. Exclusions**

This insurance does not apply to:

- a. Loss arising out of any dishonest, fraudulent, criminal or malicious act or omission, committed by any insured.
- b. “Bodily injury” or “property damage” or “personal injury”;
- c. Loss arising out of failure of performance of contract by any insurer;
- d. Loss arising out of an insufficiency of funds to meet any obligations under any plan included in the “employee benefit program”,
- e. Any claim or “suit” based upon:
  - (1) Failure of any investment to perform as represented by an insured; or
  - (2) Advice given to any person to participate or not to participate in any plan included in the “employee benefit program”,
- f. Loss arising out of your failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security or disability benefits;
- g. Loss for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement Security Act of 1974, as now or hereafter amended; or
- h. Loss or damage for which benefits have accrued under the terms of an employee benefit plan to the extent that such benefits are available from fund accrued by the insured for such benefits or from collectible insurance notwithstanding the insured’s act, error or omission in administering the plan which precluded the claimant from receiving such benefits.

### **3. Supplementary Payments**

We will pay, with respect to any claim or “suit” we defend:

- a. All expenses we incur.
- b. 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.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit” including actual loss or earnings up to \$100 a day because of time off from work.
- d. All costs taxed against the insured in the “suit”.
- e. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance we will not pay any prejudgment interest based on that period of time after the offer.
- f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited with the court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

## **B. WHO IS AN INSURED**

1. If you are designated in the declarations as an organization, other than a partnership or joint venture, you are insured.
2. Your directors and employees are also insured, but only with respect to their liability as your employee.

## **C. LIMITS OF INSURANCE**

1. The limits of insurance shown in the policy declarations, and the rules below, will be the most we will pay regardless of the number of:
  - a. Insured;
  - b. Claims made or “suits” brought’
  - c. Persons or organizations making claims or bringing “suits”
  - d. Acts, errors or omissions which result in loss; or
  - e. Plans included in your “employee benefits program”.
2. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions committed in the “administration” of your “employee benefit program”.
3. Subject to the Aggregate Limit, the occurrence limit is the most we will pay for all damages sustained by any one employee, including the employee’s dependents and beneficiaries because of acts, errors or omissions committed in the “administration” of your “employee benefit program”.

## **D. SELF-INSURED RETENTION**

1. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Self-Insured Retention.
2. The Self-Insured Retention applies to all damages sustained by an employee because of an act, error or omission covered by this insurance.
3. The terms of this insurance, including those with respect to:
  - a. Our right to defend any “suits” seeking those damages, and
  - b. Your duties in the event of an act, error or omission claim or “suit” apply irrespective of the application of the Self-Insured amount.

## **E. ADDITIONAL DEFINITIONS**

1. “Administration” means:
  - a. Counseling employees, including their dependents and beneficiaries, with respect to the “employee benefit program”;
  - b. Handling records in connection with the “employee benefits program”; or
  - c. Effecting or terminating any employee’s participation in a plan included in the employee benefit program.
2. “Coverage territory” means the United States of America (including its territories and possessions), Puerto Rico and Canada.

3. "Employee benefit program" mean the following plans:
  - a. Group life insurance, group accident and health insurance, "profit sharing plans", pensions plans and "stock subscription plans", provided that no one other than an employee may participate in such plans;
  - b. Unemployment insurance, social security benefits, workers compensation and disability benefits;
  - c. Any other similar plan designated by endorsement.
4. "Insured" means any person or organization qualifying as such under Paragraph **B. WHO IS AN INSURED.**
5. "Profit sharing plans" means only such plans that are equally available to all full time employees.
6. "Stock subscription plans" means only such plans that are equally available to all full time employees.
7. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes an arbitration proceeding alleging such damages to which you must submit or submit without consent.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION - POLLUTION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**Exclusion f.** under paragraph 2., **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY of SECTION I- COVERAGES** is replaced by the following:

**f. Pollution**

- (1) “Bodily injury” or “property damage” which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order 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 any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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

**Colony Insurance Company**  
**Public Entity Excess Liability Policy**

Insured: Lee County Board of County

Policy No: PXL 15103202

Commissioners Effective Date: 10/01/2015

In consideration of the premium charged, it is understood and agreed that **EXCLUSION B.** and **EXCLUSION E.** of the **MUNICIPALITY ENDORSEMENT TR PR 004-0514**, are deleted in their entirety and replaced by the following:

B. arising out of or caused by or contributed to by any ownership, maintenance, operation, use or control of or responsibility for any airfield, airport, runway hangar, building or other property or facility designed for, used, connected, associated or affiliated with or in any way related to aviation or aviation activities; however this exclusion does not apply to the premises liability arising out of the common areas open to the public including but not limited to parking lots, sidewalks, parking garages and terminal buildings.

E. arising out of, in connection with or caused or contributed to by any failure or inability to supply or any interruption of any adequate quantity of power, steam, pressure or fuel.

All other terms and conditions remain unchanged.

GEN – 1001

Issue Date: 10/01/2015

**Colony Insurance Company**  
**Public Entity Excess Liability Policy**

Insured: Lee County Board of County

Policy No: PXL 15103202

Commissioners Effective Date: 10/01/2015

In consideration of the premium charged, it is understood and agreed that **EXCLUSION Q.** of the **PUBLIC OFFICIALS AND EMPLOYEES LIABILITY INSURANCE TR PR 010 – 0514** endorsement is deleted in its entirety and replaced by the following:

Q. Arising out of the operation of or activities of any schools, airports, hospitals and housing authorities.

All other terms and conditions remain unchanged.

GEN – 1002

Issue Date: 10/01/2015

# POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act. The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury - in consultation with the Secretary of Homeland Security, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019; AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

PLEASE ALSO BE AWARE THAT YOUR POLICY DOES NOT PROVIDE COVERAGE FOR ACTS OF TERRORISM THAT ARE NOT CERTIFIED BY THE SECRETARY OF THE TREASURY.

### Acceptance or Rejection of Terrorism Insurance Coverage

You must accept or reject this insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, before the effective date of this policy. Your coverage cannot be bound unless our representative has received this form signed by you on behalf of all insureds with all premiums due.

**Coverage acceptance:**

I hereby elect to purchase coverage for certified acts of terrorism, as defined in Section 102(1) of the Act for a prospective annual premium of \$ Included. I understand that I will not have coverage for losses resulting from any non-certified acts of terrorism.

OR

**Coverage rejection:**

I hereby decline to purchase coverage for certified acts of terrorism, as defined in Section 102(1) of the Act. I understand that I will not have coverage for any losses arising from either certified or non-certified acts of terrorism.

\_\_\_\_\_  
Lee County BOCC  
**Policyholder/Applicant's Signature-**  
**Must be person authorized to sign for all Insureds.**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Named Insured**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
Colony Insurance Company  
**Insurance Company**

\_\_\_\_\_  
PXL 15103202  
**Policy Number**

\_\_\_\_\_  
N/A  
**Submission Number**

\_\_\_\_\_  
DO51488  
**Producer Number**

\_\_\_\_\_  
Craig S. Balco Sr.  
**Producer Name**

\_\_\_\_\_  
1250 Gulf Boulevard, #406  
**Street Address**

\_\_\_\_\_  
Clearwater, FL 33767  
**City, State, Zip**

**The producer shown above is the wholesale insurance broker your insurance agent used to place your insurance coverage with us. Please discuss this Disclosure with your agent before signing.**