

Commercial Umbrella Policy 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 as defined in Insuring Agreement IV, Definitions. The words "we", "us" and "our" refer to the Company providing this insurance. The word "INSURED" means any person or organization qualifying as such in Insuring Agreement IV, Definitions.

In consideration of the payment of the premium and in reliance upon the statements in the Declarations we agree with you to provide coverage as follows:

INSURING AGREEMENTS

I. COVERAGE

We will pay on behalf of the INSURED those sums in excess of the Retained Limit that the INSURED becomes legally obligated to pay by reason of liability imposed by law or assumed by the INSURED under an INSURED CONTRACT because of BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY or ADVERTISING INJURY that takes place during the Policy Period and is caused by an OCCURRENCE happening anywhere in the world. **The amount we will pay for damages is limited as described in Insuring Agreement III, Limits of Insurance.**

If we are prevented by law or statute from paying on behalf of the INSURED, then we will, where permitted by law or statute, indemnify the INSURED for those sums in excess of the Retained Limit.

II. DEFENSE

- A. We shall have the right and duty to defend any claim or SUIT seeking damages covered by the terms and conditions of this policy when:
 - 1. The applicable Limits of Insurance of the underlying policies listed in the Schedule of Underlying Insurance and the Limits of Insurance of any other underlying insurance providing coverage to the INSURED have been exhausted by payment of claims to which this policy applies;
 - 2. Damages are sought for BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY or ADVERTISING INJURY covered by this policy but not covered by any underlying insurance listed in the Schedule of Underlying Insurance or any other underlying insurance providing coverage to the INSURED.
- B. When we assume the defense of any claim or SUIT:
 - 1. We will defend any SUIT against the INSURED seeking damages on account of BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY or ADVERTISING INJURY even if such SUIT is groundless, false or fraudulent, but we have the right to investigate, defend and settle the claim as we deem expedient.

2. We will pay the following, to the extent that they are not included in the underlying policies listed in the Schedule of Underlying Insurance or in any other insurance providing coverage to the INSURED:
 - i. premiums on bonds to release attachments for amounts not exceeding our Limits of Insurance, **but we are not obligated to apply for or furnish any such bond;**
 - ii. premiums on appeal bonds required by law to appeal any claim or SUI T we defend, **but we are not obligated to apply for or furnish any such bond;**
 - iii. all costs taxed against the INSURED in any claim or SUI T we defend;
 - iv. 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 pre-judgment interest based on that period of time after the offer;**
 - v. all interest that accrues after entry of judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within our applicable Limit of Insurance;
 - vi. the INSURED'S expenses incurred at our request.

We will not defend any SUI T or claim after our applicable Limits of Insurance have been exhausted by payment of judgments or settlements.

All expenses we incur in the defense of any SUI T or claim are in addition to our Limits of Insurance.

C. In all other instances except A. above, we will not be obligated to assume charge of the investigation, settlement or defense of any claim made, SUI T brought or proceeding instituted against the INSURED. We will however, have the right and shall be given the opportunity to participate in the defense and trial of any claims, SUI TS or proceedings relative to any OCCURRENCE which, in our opinion, may create liability on our part under the terms of this policy. If we exercise such right, we will do so at our own expense.

III. LIMITS OF INSURANCE

- A. The Limits of Insurance shown in Item 3 of the Declarations and the rules below state the most we will pay regardless of the number of:
 1. INSUREDS;
 2. claims made or SUI TS brought; or
 3. Persons or organizations making claims or bringing SUI TS.
- B. The General Aggregate Limit is the most we will pay for all damages covered under Insuring Agreement I except:
 1. Damages included in the PRODUCTS-COMPLETED OPERATIONS HAZARD; and
 2. Coverages included in the policies listed in the Schedule of Underlying Insurance to which no underlying aggregate limit applies.

- C. The Products-Completed Operations Aggregate Limit is the most we will pay for all damages included in the PRODUCTS-COMPLETED OPERATIONS HAZARD.
- D. **Subject to B. and C. above, whichever applies, the Each OCCURRENCE Limit is the most we will pay for the sum of damages covered under Insuring Agreement I because of all BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY AND ADVERTISING INJURY arising out of any one OCCURRENCE.**

If the applicable limits of insurance of the policies listed in the Schedule of Underlying Insurance or of other insurance providing coverage to the INSURED are reduced or exhausted by payment of one or more claims that would be INSURED by our policy we will:

1. In the event of reduction, pay in excess of the reduced underlying limits of insurance; or
2. In the event of exhaustion of the underlying limits of insurance, continue in force as underlying insurance.

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

E. **Retained Limit**

We will be liable only for that portion of damages in excess of the INSURED'S Retained Limit which is defined as the greater of either:

1. **The total of the applicable limits of the underlying policies listed in the Schedule of Underlying Insurance and the applicable limits of any other underlying insurance providing coverage to the INSURED; or**
2. **The amount stated in the Declarations as Self INSURED Retention as a result of any one OCCURRENCE not covered by the underlying policies listed in the Schedule of Underlying Insurance nor by any other underlying insurance providing coverage to the INSURED;**

and then up to an amount not exceeding the Each OCCURRENCE Limit as stated in the Declarations.

IV. DEFINITIONS

- A. ADVERTISING INJURY means injury arising solely out of your advertising activities as a result of one or more of the following offenses:
 1. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 2. Oral or written publication of material that violates a person's right of privacy;
 3. Misappropriation of advertising ideas or style of doing business; or

4. Infringement of copyright, title or slogan.
- B. AUTO means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But AUTO does not include MOBILE EQUIPMENT.
- C. BODILY INJURY means bodily injury, sickness, disability or disease. BODILY INJURY shall also mean mental injury, mental anguish, humiliation, shock or death if directly resulting from bodily injury, sickness, disability or disease.
- D. IMPAIRED PROPERTY means tangible property, other than YOUR PRODUCT or YOUR WORK, that cannot be used or is less useful because:
1. It incorporates YOUR PRODUCT or YOUR WORK that is known or thought to be defective, deficient, inadequate or dangerous; or
 2. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
1. The repair, replacement, adjustment or removal of YOUR PRODUCT or YOUR WORK; or
 2. Your fulfilling the terms of the contract or agreement.
- E. INSURED means each of the following, to the extent set forth:
1. THE NAMED INSURED, meaning:
 - a. any person or organization listed in Item 1 of the Declarations, and any company that is your subsidiary as of the effective date of this policy and any company you own or control as of the effective date of this policy; and
 - b. any organization newly acquired, controlled or formed by you during the policy period **but only:**
 - 1) **as respects Occurrences taking place after you acquire, take control or form such organization;**
 - 2) **if such organization is included under the coverage provided by the policies listed in the Schedule of Underlying Insurance; and**
 - 3) **if you give us prompt notice after you acquire, take control or form such organization.**

We may make an additional premium charge for any additional organizations you acquire, form or take control of during the period of this policy.

 2. If you are an individual, you and your spouse, **but only with respect to the conduct of a business of which you are the sole owner.**
 3. If you are a partnership or joint venture, the partners or members and their spouses **but only as respects the conduct of your business.**

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

4. Any person or organization, other than the NAMED INSURED, included as an additional INSURED in the policies listed in the Schedule of Underlying Insurance **but not for broader coverage than is available to such person or organization under such underlying policies.**
5. Any of your partners, executive officers, directors, stockholders or employees **but only while acting within their duties.**

However, the coverage granted by this provision 5. does not apply to the ownership, maintenance, use, loading or unloading of any AUTOS, aircraft or watercraft unless such coverage is included under the policies listed in the Schedule of Underlying Insurance and then for no broader coverage than is provided under such underlying policies.

6. Any person, **other than one of your employees**, or organization while acting as your real estate manager.
7. Any person, organization, trustee or estate to whom you are obligated by a written INSURED Contract to provide insurance such as is afforded by this policy **but only with respect to:**
 - a. **liability arising out of operations conducted by you or on your behalf; or**
 - b. **facilities owned or used by you.**
8. Any person (**other than your partners, executive officers, directors, stockholders or employees**) or organization with respect to any AUTO owned by you, loaned to you or hired by you or on your behalf and used with your permission.

However, the coverage granted by this provision 8. does not apply to any person using an AUTO while working in a business that sells, services, repairs or parks AUTOS unless you are in that business.

- F. INSURED CONTRACT means any oral or written contract or agreement entered into by you and pertaining to your business under which you assume the tort liability of another party to pay for BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY OR ADVERTISING INJURY 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.
- G. MOBILE EQUIPMENT means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 2. Vehicles maintained for use solely on or next to premises you own or rent;
 3. Vehicles that travel on crawler treads;

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

However, self-propelled vehicles with the following types of permanently attached equipment are not MOBILE EQUIPMENT but will be considered AUTOS:

- i. 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 and well servicing equipment.

H. OCCURRENCE means:

1. As respects BODILY INJURY OR PROPERTY DAMAGE, an accident, including continuous or repeated exposure to conditions, which results in BODILY INJURY or PROPERTY DAMAGE neither expected nor intended from the standpoint of the INSURED. All such exposure to substantially the same general conditions shall be considered as arising out of one OCCURRENCE;
2. As respects PERSONAL INJURY, an offense arising out of your business that results in PERSONAL INJURY. All damages that arise from the same or related injurious material or act shall be considered as arising out of one OCCURRENCE, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants; and
3. As respects ADVERTISING INJURY, an offense committed in the course of advertising your goods, products and services that results in ADVERTISING INJURY. All damages that arise from the same or related injurious material or act shall be considered as arising out of one OCCURRENCE, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants,

- I. PERSONAL INJURY means injury other than BODILY INJURY or ADVERTISING INJURY arising out of one or more of the following offenses:
 - 1. False arrest, detention or imprisonment;
 - 2. Malicious prosecution;
 - 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
 - 4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - 5. Oral or written publication of material that violates a person's right of privacy.

- J. 1. PRODUCTS-COMPLETED OPERATIONS HAZARD includes all BODILY INJURY AND PROPERTY DAMAGE occurring away from premises you own or rent and arising out of YOUR PRODUCT OR YOUR WORK **except:**
 - a. **products that are still in your physical possession; or**
 - b. **work that has not yet been completed or abandoned.**
 - 2. 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 site has been completed if your contract calls for work at more than one 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.
 - 3. **This hazard does not include BODILY INJURY or PROPERTY DAMAGE arising out of:**
 - a. **the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the loading or unloading of it;**
 - b. **the existence of tools, uninstalled equipment or abandoned or unused materials.**

- K. PROPERTY DAMAGE means:
 - 1. 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
 - 2. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the OCCURRENCE that caused it.

- L. SUIT means a civil proceeding in which BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY OR ADVERTISING INJURY to which this insurance applies is alleged. SUIT includes:

1. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
2. Any other alternative dispute resolution proceeding in Which such damages are claimed and to Which you submit with our consent.

M. YOUR PRODUCT 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.

YOUR PRODUCT 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.

YOUR PRODUCT does not include vending machines or other property rented to or located for the use of others but not sold.

N. YOUR WORK 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.

O. YOUR WORK 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.

V. EXCLUSIONS

This insurance does not apply to:

- A. Any obligation of the INSURED under a Workers Compensation, Unemployment Compensation, Social Security or Disability Benefits Law, or under any similar law.**
- B. Any obligation of the INSURED under the Employees' Retirement Income Security Act of 1974 or any amendments to that act.**

C. Any obligation of the INSURED under a "No Fault", "Uninsured Motorist", "Underinsured Motorist" law, including the Road Accidents Victims Compensation law or similar law.

D. PROPERTY DAMAGE to

- 1. Property you own rent, occupy or use;**
- 2. Personal property in the care, custody or control of the INSURED.**

E. 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.

F. PROPERTY DAMAGE to YOUR PRODUCT arising out of it or any part of it.

G. PROPERTY DAMAGE to YOUR WORK arising out of it or any part of it and included in the PRODUCTS-COMPLETED OPERATIONS HAZARD.

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

H. 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.

I. Liability of any employee with respect to BODILY INJURY or PERSONAL INJURY to another employee of the same employer injured in the course of such employment.

However, if insurance for such liability is provided by a policy listed in the Schedule of Underlying Insurance:

- 1. This exclusion shall not apply; and**

2. The insurance provided by our policy will not be broader than the insurance coverage provided to the employee by the policy listed in the Schedule of Underlying Insurance.

J. BODILY INJURY or PROPERTY DAMAGE arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft or any aircraft owned by the INSURED or rented to the INSURED without a crew.

However, if insurance for such BODILY INJURY OR PROPERTY DAMAGE is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by our policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance.

K. PERSONAL INJURY OR ADVERTISING INJURY:

1. **Arising out of oral or written publication of material, if done by or at the direction of the INSURED with knowledge of its falsity;**
2. **Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;**
3. **Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the INSURED; or**
4. **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.

L. ADVERTISING INJURY arising out of:

1. **Breach of contract, other than misappropriation of advertising ideas under an implied contract;**
2. **The failure of goods, products or services to conform with advertised quality or performance;**
3. **The wrong description of The price of goods, products or services; or**
4. **An offense committed by an INSURED whose business is advertising, broadcasting, publishing or telecasting.**

- M. 1. BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY arising out of the actual or threatened discharge, dispersal, seepage, migration, release or escape of pollutants anywhere in the world;**
2. **Any loss, cost or expense arising out of any governmental direction or request that we the INSURED or any other person or organization test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize or assess the effects of pollutants; or**

3. **Any loss, cost, or expense, including but not limited to costs of investigation or attorneys' fees, incurred by a governmental unit or any other person or organization to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants.**

This exclusion M. shall not apply to BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY arising out of:

- a. Heat, smoke or fumes from a hostile fire;
- b. The upset, overturn or collision of a motor vehicle; or
- c. The PRODUCTS-COMPLETED OPERATIONS HAZARD;

if insurance for such BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY is provided by a policy listed in the Schedule of Underlying Insurance. However, the insurance provided by our policy for such BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance.

As used in this exclusion:

- a. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste material. Waste material includes materials which are intended to be or have been recycled, reconditioned or reclaimed;
- b. A hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

N. BODILY INJURY or PROPERTY DAMAGE due to war whether or not declared, or any act or condition incident to war. War includes civil war insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

O. Any loss or damage arising from TERRORISM

TERRORISM means the unlawful use of violence against persons or property to further political objectives, and which is intended to intimidate or coerce a government, individuals or persons to modify their behavior or policies, or for the purpose of putting the public or any part thereof in fear, perpetrated by any person or persons acting on behalf of or in connection with any hostile organisation.

- a. **In respect of claims brought within the State of Israel, TERRORISM as defined above, must carry with it, an explicit confirmation from the Israeli Police or of the Ministry of Defense or from the Manager of the Property Tax and Compensation Fund, as defined by the Property Tax and Compensation Fund Law 1961 with all its amendments, or any equivalent thereof, that the damage was caused directly by an act of Terror.**
- b. **In respect of claims brought outside the borders of the State of Israel, TERRORISM as defined above, shall mean an act which is verified by the United States Department of State, or by any other equivalent Governmental Authority responsible for such declarations, as an act of TERRORIM..**

TERRORISM does not include :

- a. Any act of violence directed at a specific individual or individuals which is motivated by personal reasons specific to the parties, i. e., robbery, crime of passion, murder; or**
- b. Any act of war or civil war.**

P. BODILY INJURY or PROPERTY DAMAGE expected or intended from the standpoint of the INSURED.

However, this exclusion does not apply to BODILY INJURY resulting from the use of reasonable force to protect persons or property.

- Q. 1 BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;**
- 2. Any obligation of the INSURED to indemnify any party because of damages arising out of such BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or**
 - 3. Any obligation to defend any SUIT or claim against the INSURED alleging BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY and seeking damages, if such SUIT or claim arises from BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.**

R. BODILY INJURY or PERSONAL INJURY to:

- 1. A person arising out of any:**
 - i. Refusal to employ that person;**
 - ii. Termination of that person's employment; or**
 - iii. Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or**
- 2. The spouse, child, parent, brother or sister of that person as a consequence of BODILY INJURY or PERSONAL INJURY to that person at any of the e employment-related practices described in paragraph a., b. or c. above is directed.**

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.**

S. **BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY or ADVERTISING INJURY arising out of or by reason of:**

1. **The purchase, sale, offer of sale, or solicitation of any security, debt, bank deposit or financial interest or instrument;**
2. **Any representations made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument; or**
3. **Any depreciation or decline in price or value of any security, debt, bank deposit or financial interest or instrument.**

T. **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.**

However, if insurance for such BODILY INJURY or PROPERTY DAMAGE is provided by a policy listed in the Schedule of Underlying Insurance:

1. This exclusion shall not apply; and
2. The insurance provided by our policy will not be broader than the insurance coverage provided by the policy listed in the Schedule of Underlying Insurance.

U. **BODILY INJURY or PROPERTY DAMAGE:**

1. a. **with respect to which the INSURED is also an INSURED under a nuclear energy liability policy issued by the Nuclear Energy Liability-Property Insurance Assoc., Mutual Atomic Energy Liability Underwriters or the Nuclear Insurance Association of Canada, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; or**
 - b. **resulting from the hazardous properties of nuclear material and with respect to which (1) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, (2) the INSURED is, or had this policy not been available would be, entitled to indemnity from the United States of America or a" agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.**
2. **BODILY INJURY or PROPERTY DAMAGE resulting from the hazardous properties of nuclear material, if:**

- a. **the nuclear material (1) is at any nuclear facility owned by the INSURED or operated by the INSURED or on the INSURED'S behalf, or (2) has been discharged or ispsensed therefrom;**
 - b. **the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by the INSURED or on the INSURED'S behalf; or**
 - c. **the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by the 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 c. applies only to PROPERTY DAMAGE to such nuclear facility and any property thereat.**
3. As used in this exclusion:
- i. "hazardous properties" includes radioactive, toxic or explosive properties;
 - ii. "nuclear material" means source material, special nuclear material or by-product material;
 - iii. "source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof;
 - iv. "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
 - v. "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of a nuclear facility included within the definition of nuclear facility below,
 - vi. "nuclear facility" means:
 - 1) any nuclear reactor;
 - 2) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging wastes;
 - 3) any equipment or device used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the INSURED'S custody at the premises Mere 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; or
 - 4) any structure, basin, excavation, premises or place prepared or used for 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;

- vii. "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.
- viii. PROPERTY DAMAGE includes all forms of radioactive contamination of property.

VI. CONDITIONS

A. Appeals

If the INSURED or the INSURED'S underlying insurers do not appeal a judgment in excess of the Retained Limit, we have the right to make such an appeal. If we elect to appeal, our liability on such an award or judgment shall not exceed our Limits of Insurance as stated in Item 3 of the Declarations plus the cost and expense of such appeal.

B. Audit

We may audit and examine your books and records as they relate to this policy at any time during the period of this policy and for up to three years after the expiration or termination of this policy.

C. Bankruptcy or Insolvency

Your bankruptcy, insolvency or inability to pay or the bankruptcy, insolvency or inability to pay of any of your underlying insurers will not relieve us from the payment of any claim covered by this policy. **But under no circumstances will such bankruptcy, insolvency or inability to pay require us to drop down and replace the Retained Limit or assume any obligation within the Retained Limit area.**

D. Cancellation

- a. The first Named INSURED shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. (1) In the event of non-payment of premium, and the outstanding premium remains unpaid within fifteen (15) days after a written notice shall be mailed or delivered by us to the first Named INSURED, we may cancel the policy by giving written notice stating the effective date of cancellation, which shall be not less than twenty-one (21) days after such notice was received by the INSURED.

If we cancel for any other reason, we may cancel this policy by mailing or delivering to the first Named INSURED written notice of cancellation at least 60 days before the effective date of cancellation

- c. We will mail or deliver our notice to the first Named INSURED'S last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

- e. If this policy is canceled, 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. If the first Named INSURED cancels and the Total Advance Program Premium is indicated as a minimum premium, no refund will be made. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

E. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver or a change in any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy and that is signed by one of our authorized representatives.

F. Duties In The Event of an OCCURRENCE, claim or SUIT

1. You must see to it that we are notified as soon as practicable of an OCCURRENCE which may result in a claim under this policy. To the extent possible, notice should include:
 - a. how, when and where the OCCURRENCE took place;
 - b. the names and addresses of any injured persons and witnesses; and
 - c. the nature and location of any injury or damage arising out of the Occurrence.
2. If a claim is made or SUIT is brought against any INSURED that is reasonably likely to involve this policy you must notify us in writing as soon as practicable.
3. You and any other involved INSURED must:
 - a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or SUIT;
 - b. authorize us to obtain records and other information;
 - c. cooperate with us in the investigation, settlement or defense of the claim or SUIT; and
 - d. assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the INSURED because of injury or damage to which this insurance may also apply.
4. **No INSUREDS will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.**

G. Inspection

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person or organization to provide for the health or safety of your employees or the public. We do not warrant that your premises or operations are safe or healthful or that they comply with laws, regulations, codes or standards.

H. Legal Actions Against Us

There will be no right of action against us under this insurance unless:

- 1. You have complied with all the terms of this policy; and**
- 2. The amount you owe has been determined with our consent or by actual trial and final judgment. This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.**

I. Maintenance of Underlying Insurance

During the period of this policy, you agree:

1. To keep the policies listed in the Schedule of Underlying Insurance in full force and effect;
2. That any renewals or replacements of the policies listed in the Schedule of Underlying Insurance will not be more restrictive in coverage;
3. That the limits of insurance of the policies listed in the Schedule of Underlying Insurance shall not change except for any reduction or exhaustion of aggregate limits by payment of claims for OCCURRENCES covered by this policy; and
4. That the terms, conditions and endorsements of the policies listed in the Schedule of Underlying Insurance will not materially change during the period of this policy.

If you fail to comply with these requirements, we will only be liable to the same extent that we would had you fully complied with these requirements.

J. Other Insurance

If other valid and collectible insurance applies to a loss that is also covered by this policy, this policy will apply excess of the other insurance. However, this provision will not apply if the other insurance is specifically written to be excess of this policy.

K. Premium

The first Named INSURED designated in Item 1 of the Declarations shall be responsible for payment of all premiums when due.

The premium for this policy shall be computed on the basis set forth in Item 4 of the Declarations. At the beginning of the policy period, you must pay us the Advance Premium shown in Item 4 of the Declarations.

When this policy expires or if it is cancelled, we will compute the earned premium for the time this policy was in force. If this policy is subject to audit adjustment, the actual exposure basis will be used to compute the earned premium. If the earned premium is greater than the Advance Premium, you will promptly pay us the difference. If the earned premium is less than the Advance Premium, we will return the difference to you. But in any event we shall retain the Minimum Premium as shown in Item 4 of the Declarations for each twelve months of our policy period.

L. Prior Insurance

If a loss covered by this policy is also covered in whole or in part under any other excess policy issued to the INSURED prior to the effective date of this policy, our Limits of Insurance as stated in Item 3 of the Declarations will be reduced by any amounts due the INSURED under such prior insurance.

M. Separation of INSUREDS

Except with respect to our Limits of Insurance and any rights or duties specifically assigned to the first NAMED INSURED designated in Item 1 of the Declarations, this insurance applies:

1. As if each NAMED INSURED were the only NAMED INSURED; and
2. Separately to each INSURED against whom claim is made or SUIT brought.

N. Subrogation

If any INSURED has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The INSURED must do nothing after loss to impair these rights and must help us enforce them.

Any recoveries shall be applied as follows:

1. Any interests, including the INSURED, that have paid an amount in excess of our payment under this policy will be reimbursed first;
2. We then will be reimbursed up to the amount we have paid; and
3. Lastly, any interests, including the INSURED, over which our insurance is excess, are entitled to claim the residue.

Expenses incurred in the exercise of rights of recovery shall be apportioned between the interests, including the INSURED, in the ratio of their respective recoveries as finally settled.

O. Transfer Of Your Rights And Duties

Your rights and duties under this policy may not be transferred without our written consent.

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative **but only while acting within the scope of duties as your legal representative**. However, notice of cancellation sent to the first Named INSURED designated in Item 1 of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

P. When Loss Is Payable

Coverage under this policy will not apply unless and until the INSURED or the INSURED'S underlying insurer is obligated to pay the Retained Limit.

When the amount of loss has finally been determined, we will promptly pay on behalf of the INSURED the amount of loss falling within the terms of this policy.

You shall promptly reimburse us for any amount within the Self INSURED Retention paid by us on behalf of an INSURED.

IN WITNESS WHEREOF, we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by one of our duly authorized representatives, where required by law.