

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED (CONTRACTORS)
(Includes Products-Completed Operations When Required By Contract)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

1. The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect;
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization; and
- c. Subject to the following limitations and conditions on the insurance provided to such additional insured:
 - (1) If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in **SECTION III - LIMITS OF INSURANCE**.
 - (2) The insurance provided to such additional insured does not apply to "bodily injury" or "property damage" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:
 - (a) The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - (b) Supervisory, inspection, architectural or engineering activities.
 - (3) The insurance provided to such additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the written contract or agreement requires you to provide such coverage or the end of the policy period, whichever is earlier.
 - (4) The insurance provided to such additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if the written contract or agreement requires that the insurance provided under this Coverage Part apply on a primary basis or a primary and non-contributory basis, then this insurance is primary to other insurance available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that other insurance. But, the insurance provided to the additional insured still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such other insurance.

- (5)** The additional insured must comply with the following duties:
- (a)** Give us written notice as soon as practicable of an "occurrence" which may result in a claim. To the extent possible, such notice should include:
 - (i)** How, when and where the "occurrence" took place;
 - (ii)** The names and addresses of any injured persons and witnesses; and
 - (iii)** The nature and location of any injury or damage arising out of the "occurrence".
 - (b)** If a claim is made or "suit" is brought against the additional insured:
 - (i)** Immediately record the specifics of the claim or "suit" and the date received; and
 - (ii)** Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
 - (c)** Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
 - (d)** Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to the additional insured is primary to other insurance available to the additional insured which covers that person or organization as a named insured.

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BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the written contract or agreement.

COMMERCIAL EXCESS LIABILITY POLICY

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 the "underlying insurance".

Other words and phrases that appear in quotation marks in this policy have special meaning. Refer to Section **IV** – Definitions. Other words and phrases that are not defined under this policy but defined in the "underlying insurance" will have the meaning described in the policy of "underlying insurance".

The insurance provided under this policy will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this policy will apply. However, the coverage provided under this policy will not be broader than that provided by the applicable "underlying insurance".

There may be more than one "underlying insurance" policy listed in the Schedule of "underlying insurance" and provisions in those policies conflict, and which are not superseded by the provisions of this policy. In such a case, the provisions, exclusions and limitations of the "underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay the "ultimate net loss" in excess of the limits shown in the Schedule of "underlying insurance" because of "injury or damage" to which this insurance applies, provided that the "underlying insurance" also applies, or would apply but for the exhaustion of its applicable limits of insurance.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "underlying insurance" have been exhausted in accordance with the provisions of such "underlying insurance" by actual payment of the "underlying insurance" limits. An offer to pay or a tender of limits of "underlying insurance" are not considered to be exhaustion of such "underlying insurance" limits.

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section **II** – 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 this policy. However, if the policy of "underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this policy.
- b. This insurance applies to "injury or damage" that is subject to the applicable Limits Of Insurance shown on the Schedule of "underlying insurance". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that coverage.

- c. If the "underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this policy. If the "underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this policy.
- d. Any additional insured under any policy of "underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this policy. In addition, the exclusions applicable to any "underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this policy.

Insurance provided under this policy does not apply to:

a. Asbestos

- (1) "Injury or damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, asbestos or products containing asbestos.
- (2) Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, asbestos or products containing asbestos, by any insured or by any other person or entity.
- (3) The cost or expense of compliance with any law or regulation regarding asbestos or products containing asbestos.
- (4) Any obligation to share damages with or repay someone else in connection with (1), (2), or (3) of this exclusion.

b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Employee Retirement Income Security Act (ERISA)

Any obligation of the insured under the Employee Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

d. Employment-Related Practices

"Injury or damage" to:

- (1) A person arising out of and in the course of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or malicious prosecution directed at that person.

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

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.

e. Fungi Or Bacteria

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such "injury or damage".
- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.
- (3) The cost or expense of compliance with any law or regulation regarding "fungi" or bacteria.
- (4) Any obligation to share damages with or repay someone else in connection with (1), (2) or (3) of this exclusion.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

f. Lead

- (1) "Injury or damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, lead or products containing lead.
- (2) Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, lead or products containing lead, by any insured or by any other person or entity.
- (3) The cost or expense of compliance with any law or regulation regarding lead or products containing lead.
- (4) Any obligation to share damages with or repay someone else in connection with (1), (2), or (3) of this exclusion.

g. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "underlying insurance".

h. Named Insured Versus Named Insured

Any "injury or damage" for which any Named Insured or its employees is legally liable and costs or expenses of any Named Insured or its employees arising out of, caused, or contributed to by any "injury or damage" claimed by any other Named Insured or its employees.

i. Nuclear Energy Liability

- (1) Under any Liability Coverage, to "injury or damage":
 - (a) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

- (i) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (ii) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (2) Under any Liability Coverage, to "injury or damage" resulting from "hazardous properties" of "nuclear material", if:
 - (a) The "nuclear material":
 - (i) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
 - (ii) Has been discharged or dispersed therefrom;
 - (b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or
 - (c) The "injury or damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, 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:

"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:
 - (i) Separating the isotopes of uranium or plutonium;
 - (ii) Processing or utilizing "spent fuel"; or
 - (iii) 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.

"Injury or damage" includes all forms of radioactive contamination of property.

j. Pollution

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants at any time; or
- (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;
 - (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; or
 - (c) Requirements by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any similar State or Federal environmental act(s).

k. Recording And Distribution of Material Or Information In Violation Of Law

"Injury or 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.

l. Silica

- (1) "Injury or damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- (2) Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.
- (3) The cost or expense of compliance with any law or regulation regarding "silica" or "silica-related dust".
- (4) Any obligation to share damages with or repay someone else in connection with (1), (2), or (3) of this exclusion.

m. Sublimited Coverage

"Injury or damage" arising out of any coverage that is subject to a limit of insurance that is less than the limit for "underlying insurance" shown in the Schedule of "underlying insurance".

n. War

"Injury or damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, or revolution.

o. Workers' Compensation And Similar Laws

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

SECTION II – 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 number of vehicles involved;
 - c. Persons or organizations making claims or bringing suits; or
 - d. Limits available under any "underlying insurance".
2. The Limits Of Insurance of this policy will apply as follows:
 - a. This insurance only applies in excess of the limits shown in the Schedule of "underlying insurance".
 - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this policy.

However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "underlying insurance".
 - c. Subject to Paragraph **2.b.** above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
 - d. If the Limits Of Insurance of the "underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits Of Insurance in the same manner.
3. If any "underlying insurance" has a policy period that is different from the policy period of this policy then, for the purposes of this insurance, the limits shown in the Schedule of "underlying insurance" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

The Aggregate Limit of this policy applies separately to each consecutive annual period of this policy and to any remaining period of this policy 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 III – CONDITIONS

The following conditions apply. In addition, the conditions applicable to any "underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

1. Appeals

If the "underlying insurance" carrier(s) or insured elects not to appeal a judgment in excess of the amount of the limits shown in the Schedule of "underlying insurance", we may do so at our own expense. If we elect to appeal we may also pay for:

- a. Taxable court costs;
- b. Pre- and post-judgment interest; and
- c. Disbursements associated with such appeal.

In no event will this provision increase our liability beyond the applicable Limits Of Insurance described in Section II – Limits Of Insurance.

2. Bankruptcy

a. Bankruptcy Of Insured

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

b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurance" carrier(s) will not relieve us of our obligations under this policy.

However, insurance provided under this policy will not replace any "underlying insurance" in the event of:

- a. Bankruptcy or insolvency of the insured; or
- b. Its "underlying insurance" carrier(s).

The insurance provided under this policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Duties In The Event Of An Event, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the "event" 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 "event".

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 insured involved 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:

- (1) Voluntarily make a payment;
 - (2) Assume any obligation; or
 - (3) Incur any expense, other than for first aid;
- without our consent.

4. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for:

- a. Giving and receiving of notice of cancellation; or
- b. The receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with:

- a. A complete copy of any "underlying insurance"; and
- b. Any subsequently issued endorsements or policies which may in any way affect the insurance provided under this policy.

5. 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. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- 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 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.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

6. 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 by all other insureds to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement.

7. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this policy, but insurance provided under this policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if:

- a. Any "underlying insurance" is:
 - (1) Cancelled;
 - (2) Not renewed;
 - (3) Replaced; or
 - (4) Otherwise terminated; or
- b. The limits or scope of coverage of any "underlying insurance" is changed.

8. 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 insurance is also excess over any other insurance available to an additional insured.

This condition will not apply to insurance specifically written as excess over this policy.

When this insurance is excess, if no other insurer 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 "ultimate net 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 policy; and
 - (2) The total of all deductible and self-insured amounts under all that other insurance.

9. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. If this policy is auditable, the premium shown in this policy is a deposit premium only. At the close of each audit period, we will:

- (1) Compute the earned premium for that period; and
- (2) Send notice to the first Named Insured.

The due date for audit premium 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, but not if such audit premium is less than the Minimum Premium shown in the Declarations.

- 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.

10. Loss Payable

Liability under this policy does not apply to a given claim unless and until:

- a. The insured or insured's "underlying insurance" carrier(s) has become obligated to pay the limits shown in the Schedule of "underlying insurance"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the limits shown in the Schedule of "underlying insurance" has been determined by a:

- (1) Final settlement or judgment; or
- (2) Written agreement;

among the insured, claimant, "underlying insurance" carrier(s) (or a representative of one or more of these) and us.

11. Legal Action Against Us

No person or organization has a right under this policy:

- 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 policy 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:

- a. Are not payable under the terms of this policy; or
- b. Are in excess of the applicable limit of insurance.

An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurance" carrier(s) and the claimant or the claimant's legal representative.

12. Transfer Of Defense

a. Defense Transferred To Us

When the limits of "underlying insurance" have been exhausted in accordance with the provisions of "underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable limit not been exhausted.

b. Defense Transferred By Us

When our Limits Of Insurance have been exhausted, our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this policy of any outstanding claims or suits seeking damages:

- (1) To which this insurance applies; and
- (2) Which would have been covered by the "underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this policy, we will cooperate in the transfer of control to the insured and its designated representative.

13. No Duty To Notify If We Do Not Renew

If we decide not to renew this policy, we are under no obligation to mail or deliver notice of nonrenewal to any insured.

SECTION IV – DEFINITIONS

The definitions applicable to any "underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "underlying insurance" applies.
2. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, wet or dry rot, scents or byproducts produced or released by fungi.
3. "Injury or damage" means any injury or damage, covered in the applicable "underlying insurance" arising from an "event".
4. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
5. "Silica-related dust" means a mixture or combination of silica and other dust or particles.
6. "Ultimate net 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:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent."Ultimate net loss" includes defense expenses if the "underlying insurance" specifies that limits are reduced by defense expenses.
7. "Underlying insurance" means any policy of insurance or self-insurance listed in the Schedule of "underlying insurance". Claims-made policies or endorsements will not be considered as "underlying insurance".