

## COMMERCIAL UMBRELLA LIABILITY COVERAGE (FARM)

The following Table of Contents shows how this policy is organized. It will help "you" locate particular sections of this form.

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Additional provisions are shown separately.

Endorsements and schedules may also apply. They are identified on the "declarations".

Refer to the Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks.

### AGREEMENT

In return for "your" payment of the required premium, "we" provide the coverages described herein subject to all the "terms".

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## DEFINITIONS

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1. The words "you" and "your" mean the person, persons, or organization named as the insured on the "declarations".
2. The words "we", "us", and "our" mean the company providing this insurance.
3. "Advertising injury" means injury, other than "bodily injury", "personal injury", or "property damage" arising out of one or more of the following offenses:
  - a. oral or written publication of material:
    - 1) that slanders or libels a person or organization;
    - 2) that disparages a person's or organization's goods, products, or services; or
    - 3) that violates a person's right of privacy;
  - b. misappropriation of advertising ideas or style of doing business; or
  - c. infringement of copyright, title, slogan, trademark, or trade name.
4. "Bodily injury" means bodily harm to a person and includes sickness, disease, or death. This also includes required care and loss of services.

"Bodily injury" does not mean bodily harm, sickness, disease, or death that arises out of:

  - a. a communicable disease;
  - b. the actual, alleged, or threatened sexual molestation of a person;
  - c. mental or emotional injury, suffering, or distress that does not result from physical injury; or
- d. the use, sale, manufacture, delivery, transfer, or possession by any person of Controlled Substances as defined by the Federal Food and Drug Law at 21 U.S.C.A Sections 811 and 812, including any amendments. Controlled Substances include but are not limited to cocaine, LSD, marijuana, and all narcotic or hallucinogenic drugs. However, this does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.
5. "Damages" means compensation in the form of money for a person who claims to have suffered an injury.
6. "Declarations" are all pages labeled Declarations, Supplemental Declarations, or Schedules which pertain to this policy.
7. "Farming" means the ownership, maintenance, or use of premises for the production of crops or the raising or care of livestock, including all necessary operations.

"Farming" also includes the operations of roadside stands and farm markets maintained principally for the sale of the "insured's" own farm "products", but it does not include other retail activities.
8. Except as stated within this definition, "insured" means all persons or entities covered by "underlying insurance". Each such person or entity is a separate "insured", but this does not increase "our" "limit".

No person is an "insured" while using a "motorized vehicle" or watercraft unless that person has a reasonable expectation that he or she has a right to such use.
9. "Insured premises" means all premises covered by "underlying insurance".

10. "Limit" means the amount of coverage that applies.
11. "Motorized vehicle" means a self-propelled land or amphibious vehicle regardless of method of surface contact. This includes parts and equipment.
- This does not include vehicles that are designed and used to assist the handicapped, if such vehicles are not required to be licensed for road use.
12. "Motor vehicle" means a "motorized vehicle", a trailer, or a semi-trailer and all attached machinery or equipment, if:
- it is subject to "motor vehicle" registration; or
  - it is designed for use on public roads.
13. "Occurrence" means an accident, including repeated exposures to similar conditions.
14. "Personal injury" means injury, other than "advertising injury", "bodily injury", or "property damage", arising out of one or more of the following offenses:
- oral or written publication of material:
    - that slanders or libels a person or organization;
    - that disparages a person's or an organization's goods, products, or services; or
    - that violates a person's right of privacy;
  - false arrest, detention, or imprisonment;
  - malicious prosecution; or
  - wrongful entry into, wrongful eviction from, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies. This offense must be committed by or on behalf of the owner, landlord, or lessor of the room, dwelling, or premises.

15. "Pollutant" means:
- any solid, liquid, gaseous, thermal or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor and waste. Waste includes materials to be recycled, reclaimed or reconditioned, as well as disposed of; and
  - electrical or magnetic emissions, whether visible or invisible and sound emissions.
16. "Products/completed work hazard"
- "Products hazard" means "bodily injury" or "property damage" arising out of "products" after physical possession of the "products" has been relinquished to others.
  - "Completed work hazard" means "bodily injury" or "property damage" arising out of "your work". It does not include work that has not been completed, or that has not been abandoned.
- "Your work" is deemed completed at the earliest of the following times:
- when all work specified in "your" contract has been done;
  - when all work to be done at a job site has been completed if "your" contract includes work at more than one site; or
  - when "your work" at a job site has been put to its intended use by someone other than another contractor or subcontractor working on the same job site.

Work which requires further service, maintenance, correction, repair, or replacement because of a defect or deficiency, but which is otherwise complete, will be deemed completed.

- c. Neither of these hazards 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, created by loading or unloading;
  - 2) the presence of tools, uninstalled equipment, or abandoned or unused materials; or
  - 3) "products" or work for which the classification on the "declarations" specifies 'including Products/Completed Work'.
17. "Products" means goods or products manufactured, sold, handled, distributed, or disposed of by "you", others trading under "your" name, or a person or organization whose business or assets "you" have acquired.
- "Products" includes:
- a. warranties or representations made at any time with respect to the fitness, quality, durability, or performance of "products";
  - b. containers (other than vehicles), materials, parts, or equipment furnished in connection with "products"; and
  - c. providing or failing to provide warnings or instructions.
- "Products" does not include vending machines or other property that is rented to or placed for the use of others, but not sold; or real property.
18. "Property damage" means:
- a. physical injury or destruction of tangible property; or
  - b. the loss of use of tangible property whether or not it is physically damaged. Loss of use is deemed to occur at the time of the "occurrence" that caused it.
19. "Suit" means any civil proceeding in a court of law in which "damages" because of "advertising injury", "bodily injury", "personal injury", or "property damage" to which this insurance applies are sought.
- "Suit" may also include arbitration proceedings in which "damages" for "advertising injury", "bodily injury", "personal injury", or "property damage" are claimed and to which the "insured" must submit or does submit with "our" consent, or any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the "insured" does submit with "our" consent.
20. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply to this policy.
21. "Underlying insurance" means the liability insurance coverage provided under policies shown in the Schedule of Underlying Insurance on the "declarations" for the "limits" and policy periods indicated. This includes any policies issued to replace those policies during the term of this insurance that provide:
- a. at least the same "limits"; and
  - b. the same hazards insured against, except as modified by general program revisions or as agreed to by "us" in writing.
22. "Underlying insurer" means any insurer who issues a policy of "underlying insurance".
23. "Your work" means:
- a. work or operations performed by "you" or on "your" behalf;
  - b. materials, parts, and equipment supplied for such work or operations;
  - c. written warranties or representations made at any time regarding quality, fitness, durability, or performance of any of the foregoing; and
  - d. providing or failing to provide warnings or instructions.

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## PRINCIPAL COVERAGE

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"We" pay, up to "our" "limit", all sums for which an "insured" is liable by law because of "advertising injury", "bodily injury", "personal injury", or "property damage" to which this Commercial Umbrella Liability Coverage applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Defense Coverage.

Subject to the Exclusions, this insurance applies only to:

1. "bodily injury" and "property damage" that occurs during the policy period and is caused by an "occurrence" that arises out of:
  - a. the ownership, maintenance, or use of the "insured premises" or operations that are necessary or incidental to the "insured premises"; or
  - b. the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading, or unloading of a "motor vehicle", but only to the extent that the "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence" and is not otherwise excluded by this policy; and
2. "advertising injury" and "personal injury" if the offense was committed during the policy period, but only to the extent that the "advertising injury" or "personal injury" is covered by "underlying insurance" at the time of the offense and is not otherwise excluded by this policy.

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## DEFENSE COVERAGE

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1. "We" have the right to defend, investigate, and settle any claim or "suit" seeking "damages" covered by this insurance. "We" may elect at any time to participate with the "insured" and with any "underlying insurer" or other insurer in the defense, investigation, and settlement of any claim or "suit" arising out of an "occurrence" or an offense which, in "our" opinion, may involve "damages" to which this insurance may apply.
2. "We" have the duty to defend any claim or "suit" seeking "damages" to which this insurance applies, but only with respect to "damages":
  - a. not covered by "underlying insurance" or any other valid and collectible insurance available to the "insured"; or
  - b. covered by "underlying insurance" or any other valid and collectible insurance available to the "insured" except for exhaustion of a "limit" by the payment of losses.

"Our" duty to defend ends when "we" have paid an amount equal to "our" "limit" as a result of a judgment or written settlement.

If "we" are prevented by law or otherwise prevented from carrying out this agreement, "we" will pay the "insured" for any expense incurred with "our" written consent.

3. If "we" defend a "suit", "we" pay:
  - a. the costs taxed to an "insured";
  - b. the expenses incurred by "us";

- c. the actual loss of earnings by an "insured" for time spent away from work at "our" request ("We" pay up to \$100 per day.);
- d. the necessary expenses incurred by "you" at "our" request;
- e. prejudgment interest awarded against any "insured" on that part of the judgment "we" pay. If "we" offer to pay the "limit", "we" will not pay any pre-judgment interest based on that period of time after the offer;
- f. the interest which accrues after the entry of a judgment, but ending when "we" tender, deposit in court, or pay up to "our" "limit";
- g. the cost of appeal bonds or bonds for the release of attachments up to "our" "limit" ("We" are not required to apply for or furnish bonds.); and
- h. the cost, up to \$500, for bail bonds required of an "insured" because of an accident or a traffic law violation arising out of the use of a vehicle to which this policy applies ("We" are not required to apply for or furnish bonds.).

These payments will not reduce the "limits" as described under How Much We Pay.

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## EXCLUSIONS

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"We" do not pay for a loss if one or more of the following excluded events apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded event.

### EXCLUSIONS THAT APPLY TO BODILY INJURY AND/OR PROPERTY DAMAGE

1. "We" do not pay for "bodily injury" or "property damage" which is expected by, directed by, or intended by the "insured" or that is the result of intentional and malicious acts of the "insured".

This exclusion does not apply to "bodily injury" that arises out of the use of reasonable force to protect people or property.

2. "We" do not pay for liability for "bodily injury" or "property damage" assumed by an "insured" under any contract or agreement. However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".
3. "We" do not pay for "bodily injury" or "property damage" that arises out of the rendering or the failure to render a professional service.
4. "We" do not pay for "bodily injury" or "property damage" which results from the use of a "motorized vehicle" in or in the practice or the preparation for racing, speed, pulling or pushing, demolition, or stunt activities or contests.
5. "We" do not pay for "bodily injury" or "property damage" that arises out of the ownership, use, maintenance, rental, or holding for rental of any part of the "insured premises" for purposes other than farming. However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".
6. "We" do not pay for "bodily injury" or "property damage" that arises out the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading, or unloading of an aircraft.

7. "We" do not pay for "bodily injury" or "property damage" that arises out of the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading, or unloading of a "motorized vehicle". Except as stated in the following paragraph, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".

Regardless of the "terms" of the "underlying insurance", this Commercial Umbrella Liability Coverage does not provide:

- a. automobile no-fault or any similar coverage; or
  - b. uninsured motorists or underinsured motorists coverage or any similar coverage.
8. "We" do not pay for "bodily injury" or "property damage" that arises out of the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading, or unloading of watercraft. Except as stated in the following paragraph, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".

Regardless of the "terms" of the "underlying insurance", this Commercial Umbrella Liability Coverage does not apply to "bodily injury" or "property damage" which results from the use of watercraft in or in the practice or the preparation for any prearranged or organized racing, speed, or stunt activities or contests.

9. "We" do not pay for "bodily injury" or "property damage" for which any "insured" may be held liable by reason of:
- a. causing or contributing to the intoxication of a person;
  - b. the furnishing of alcoholic beverages to a person under the influence of alcohol or under the legal drinking age; or

- c. a law or regulation relating to the sale, gift, distribution, or use of alcoholic beverages.

This exclusion applies if "you" are in the business of manufacturing, distributing, selling, or serving alcoholic beverages.

10. "We" do not pay for:

- a. "bodily injury" to an employee if it occurs in the course of employment by the "insured"; or
- b. consequential injury to any family member, relative, or dependent of the employee due to "bodily injury" to the employee.

This exclusion applies whether the "insured" is liable either as an employer or in any other capacity and to any obligation of an "insured" to fully or partially reimburse another for "damages" arising out of the injury. However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".

11. "We" do not pay for:

- a. "bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, release, or escape of "pollutants":
  - 1) at or from any premises, site, or location which is or was at any time owned by, occupied by, rented to, or loaned to any "insured", unless the "bodily injury" or "property damage" arises from the heat, smoke, or fumes of a fire which:
    - a) becomes uncontrollable or breaks out from where it was intended to be located; or
    - b) is set by the "insured" on the "insured premises" for the purpose of burning off crop stubble or other vegetation consistent with normal and usual "farming" practices, and is not in violation of any ordinances or laws;

- 2) 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;
  - 3) which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any "insured" or any person or organization for whom any "insured" may be legally responsible; or
  - 4) at or from any premises, site, or location where any "insured" or any contractor or subcontractor, directly or indirectly under "your" control, is working:
    - a) if the "pollutants" are brought on or to the premises, site, or location in connection with such work by such "insured", unless the "bodily injury" or "property damage" arises from the heat, smoke, or fumes of a fire which becomes uncontrollable or breaks out from where it was intended to be located; or
    - b) if the work is to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effect of "pollutants"; or
  - b. any loss, cost, or expense arising out of any:
    - 1) request, demand, or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of "pollutants"; or
    - 2) claim or suit by or on behalf of any governmental authority relating to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to or assessing the effects of "pollutants".
  - c. However, item a. of this exclusion does not apply to "bodily injury" or "property damage" that arises out of the ownership, operation, maintenance, use, occupancy, renting, loaning, entrusting, supervision, loading, or unloading of a "motor vehicle", but only to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".
12. "We" do not pay for "bodily injury" if benefits are provided or are required to be provided by the "insured" under a workers' compensation, disability benefits, occupational disease, unemployment compensation, or like law.
  13. "We" do not pay for "bodily injury" or "property damage" that arises out of war. War includes undeclared war, civil war, insurrection, rebellion or revolution, or an act or a condition of war.
  14. "We" do not pay for "bodily injury" or "property damage" which results from the discharge of substances from an aircraft. However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".
  15. "We" do not pay for "bodily injury" or "property damage" that arises out of the ownership, use, or maintenance of:
    - a. farm tools, farm tractors and trailers, or draft animals, including vehicles used with such animals, under contract to others for a charge;
    - b. draft animals, including vehicles used with such animals, for route delivery purposes;
    - c. saddle animals while they are rented to others by or for an "insured"; or



- d. an animal in, or in the practice or preparation for, any prearranged racing, speed, pulling or pushing, or stunt activities or contests. This item, 14.d., applies only to "occurrences" that take place at the location designated for the contest or activity.

However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".

- 16. "We" do not pay for "bodily injury" or "property damage" which results from the "insured's" performance of or failure to perform custom farm work for others for a charge under contract or agreement. However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".
- 17. "We" do not pay for "bodily injury" that arises out of any:
  - a. refusal to employ;
  - b. termination of employment;
  - c. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, errors, or omissions; or
  - d. consequential "bodily injury" as a result of 17.a., 17.b., or 17.c. above.

This exclusion applies where the "insured" is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third party for "damages" arising out of 17.a., 17.b., 17.c., or 17.d. above.

- 18. "We" do not pay for the liability of an employee for:
  - a. "bodily injury" to "you" or another employee; or

- b. damage to property owned by, rented to, or loaned to other employees or any of "your" partners or members and their spouses (if "you" are a joint venture or a partnership).

However, this exclusion does not apply to the extent that such "bodily injury" or "property damage" is covered by "underlying insurance" at the time of the "occurrence".

- 19. "We" do not pay for "bodily injury" or "property damage" arising out of lead in any form.
- 20. "We" do not pay for 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, neutralize, or in any way respond to or assess the effects of lead; or
  - b. claim or "suit" by or on behalf of any governmental authority for damages resulting from testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to or assessing the effects of lead.

#### **ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO PROPERTY DAMAGE**

- 1. "We" do not pay for "property damage" to property owned by, occupied by, or rented to "you".
- 2. "We" do not pay for "property damage" to premises "you" sell, give away, or abandon, if the "property damage" arises out of any part of those premises.
- 3. "We" do not pay for "property damage" to property used by or loaned to "you". However, this exclusion does not apply to liability assumed under a written sidetrack agreement.

4. "We" do not pay for "property damage" to either business or non-business personal property in the care, custody, or control of an "insured". However, this exclusion does not apply to liability assumed under a written sidetrack agreement.
5. "We" do not pay for "property damage" to that specific part of any property that must be restored, repaired, or replaced because of faults in "your work". However, this exclusion does not apply to the extent that such "property damage" is covered by "underlying insurance" at the time of the "occurrence".
6. "We" do not pay for "property damage" to "products" if the damage arises out of the "products" or their parts.
7. "We" do not pay for "property damage" to "your work" if the "property damage" arises out of "your work" and is included in the "products/completed work hazard". However, this exclusion does not apply to the extent that such "property damage" is covered by "underlying insurance" at the time of the "occurrence".
8. "We" do not pay for "property damage" to property that has not been physically injured or destroyed or to impaired property that arises out of:
  - a. a delay or failure to perform a contract by "you" or one acting on "your" behalf; or
  - b. a defect, deficiency, inadequacy, or unsafe condition in "your work" or "products".However, this exclusion does not apply to "property damage" that is covered by "underlying insurance" at the time of the "occurrence".
9. "We" do not pay for any loss or expense incurred by "you" or anyone else arising out of the loss of use, disposal, withdrawal, recall, inspection, repair, replacement, adjustment, or removal (including any expenses involved in the withdrawal or recall) of "your work", "products", or impaired

property. This applies when the loss of use, disposal, withdrawal, recall, inspection, repair, replacement, adjustment, or removal was because of a known or suspected defect, deficiency, or unsafe condition.

#### **ADDITIONAL EXCLUSIONS THAT APPLY ONLY TO ADVERTISING INJURY AND/OR PERSONAL INJURY**

The following additional exclusions apply to coverage for "advertising injury" and/or "personal injury" when provided under the "terms" of this Commercial Umbrella Liability Coverage:

1. "We" do not pay for "advertising injury" or "personal injury" arising out of lead in any form.
2. "We" do not pay for "personal injury" that arises out of any:
  - a. refusal to employ;
  - b. termination of employment;
  - c. coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, errors, or omissions; or
  - d. consequential "personal injury" as a result of 2.a., 2.b., or 2.c. above.
3. "We" do not pay for the liability of an employee for "personal injury" to "you" or another employee.

This exclusion applies where the "insured" is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third party for "damages" arising out of 2.a., 2.b., 2.c., or 2.d. above.

3. "We" do not pay for the liability of an employee for "personal injury" to "you" or another employee.

However, this exclusion does not apply to the extent that such "personal injury" is covered by "underlying insurance" at the time of the offense.

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## WHAT YOU MUST DO IN CASE OF LOSS

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1. "You" must cooperate with the "underlying insurers" as required by the terms of their policies and comply with all terms and conditions of those policies.
2. "You" must see to it that "we" receive notice as soon as practical of an "occurrence" or an offense to which this insurance may apply. To the extent possible, the notice to "us" should state:
  - a. the name of the "insured"; the policy number; and the time, place, and details of the "occurrence" or offense; and
  - b. the names and addresses of all known potential claimants and witnesses.
3. **Cooperation** -- The "insured" must cooperate with "us" in performing all acts required by this policy.
4. **Volunteer Payments** -- An "insured" must not make payments, pay or offer rewards, or assume obligations or other costs except at the "insured's" own cost.
5. **Other Duties** -- In case of an "occurrence" or offense which might result in a claim, the "insured" must promptly give "us" copies of all legal papers, demands, and notices that relate to the "occurrence", offense, or claim.

At "our" request, the "insured" must help "us":

- a. to settle a claim;
- b. to conduct "suits" (This includes being at trials and hearings.);
- c. to enforce the right of recovery or indemnification against all parties who may be liable to an "insured" for the injury or damage;
- d. in the securing of and giving of evidence; and

- e. in obtaining the attendance of all witnesses.

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## HOW MUCH WE PAY

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1. The "limits" shown on the "declarations" for this Commercial Umbrella Liability Coverage are the most "we" pay regardless of the number of:
  - a. "insureds" under this policy;
  - b. persons or organizations who sustain injury or damage;
  - c. claims made or suits brought; or
  - d. vehicles or watercraft involved in an accident.
2. The Commercial Umbrella Liability Coverage General Aggregate Limit is the most "we" will pay during a policy period for the sum of all "damages", except for "damages" due to "bodily injury" or "property damage":
  - a. included in the "products/completed work hazard"; or
  - b. arising out of any "motor vehicle".
3. The Commercial Umbrella Liability Coverage Products/Completed Work Hazard Aggregate Limit is the most "we" will pay during a policy period for "damages" due to "bodily injury" or "property damage" included in the "products/completed work hazard".
4. The Commercial Umbrella Liability Coverage Each Occurrence Limit, subject to the General Aggregate Limit and the Products/Completed Work Hazard Aggregate Limit, is the most "we" will pay for the total of all "damages" due to all "advertising injury", "bodily injury", "personal injury", and "property damage" arising out of a single "occurrence" or offense.

The Commercial Umbrella Liability Coverage General Aggregate Limit and the Commercial Umbrella Liability Coverage Products/Completed Work Hazard Aggregate Limit apply separately to each consecutive 12-month period beginning with the inception date shown on the "declarations" for this Commercial Umbrella Liability Coverage. They also apply separately to any remaining policy period of less than 12 months, unless the Commercial Umbrella Liability Coverage has been extended after it was written. In that case, the additional period will be considered part of the last preceding period for the purpose of determining "limits".

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## EXCESS INSURANCE

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1. **Other Insurance** -- The insurance provided by this policy is excess over "underlying insurance", whether or not valid and collectible, or any other valid and collectible insurance available to the "insured", except insurance which is specifically purchased by the "insured" as excess insurance over the insurance provided by this policy.

If there is no "underlying insurance" or valid and collectible insurance available to the "insured" with respect to an "occurrence" or offense to which the insurance provided by this policy applies, then this insurance will apply as excess over the Retained Limit shown on the "declarations", except when:

- a. the "underlying insurer" is bankrupt or insolvent as stated below under item 3., Bankruptcy of Underlying Insurer; or
  - b. "you" fail to maintain "underlying insurance" as stated under Condition 8., Maintenance of Underlying Insurance.
2. **Failure To Maintain Underlying Insurance** -- If "you" fail to maintain "underlying insurance" as required by Condition 8., Maintenance of Underlying Insurance, the insurance provided by this policy will not replace such "underlying insurance" but will apply as if the "underlying insurance" were valid and collectible.

3. **Bankruptcy Of Underlying Insurer** -- In the event of bankruptcy or insolvency of any "underlying insurer", the insurance provided by this policy will not replace such "underlying insurance", but will apply as if the "underlying insurance" were valid and collectible.
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## CONDITIONS

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1. **Appeals** -- If an "underlying insurer" elects not to appeal a judgment in excess of the "limit" of any "underlying insurance", "we" may elect to make such appeal. If "we" so elect, "we" will be liable, in addition to the applicable "limit", for all expenses "we" incur that pertain to such appeal.
2. **Bankruptcy Of An Insured** -- Bankruptcy or insolvency of an "insured" does not relieve "us" of "our" obligations under this policy.
3. **Cancellation and Nonrenewal** -- "You" may cancel this policy by returning the policy to "us" or by giving "us" written notice and stating at what future date coverage is to stop.

"We" may cancel or not renew this policy by written notice to "you" at the address shown on the "declarations". Proof of delivery or mailing is sufficient proof of notice.

If "we" cancel this policy during the first 60 days that it is in effect, "we" will give "you" notice at least ten days before cancellation is effective.

If "we" cancel this policy after it has been in effect 60 days or more or if it is a renewal of a policy issued by "us", "we" will give "you" notice:

- a. at least ten days before cancellation is effective, if cancellation is because the premium has not been paid when due; or
- b. at least 30 days before cancellation is effective, if cancellation is for any reason other than nonpayment of premium.

If "we" do not renew this policy, "we" will give "you" notice at least 30 days before nonrenewal is effective.

"Your" return premium, if any, will be refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium is not a condition of cancellation.

4. **Change, Modification, or Waiver of Policy Terms** -- A waiver or change of the "terms" of this policy must be issued by "us" in writing to be valid. If, in the policy period, "we" adopt a revision which broadens coverage without an additional premium, the broadened coverage will apply.

"Our" request for an appraisal or examination under oath does not waive policy "terms".

If this policy has no expiration date, "we" may substitute or "we" may add, at each anniversary date, forms that are then authorized for use.

5. **Conformity With Statute** -- "Terms" in conflict with the laws of the state where the premises described on the "declarations" is located are changed to conform to such laws.
6. **Inspections** -- "We" have the right, but are not obligated, to inspect "your" property and operations. This inspection may be made by "us" or may be made on "our" behalf. An inspection or its resulting advice or report does not warrant that "your" property or operations are safe, healthful, or in compliance with laws, rules, or regulations. Inspections or reports are for "our" benefit only.
7. **Legal Action Against Us** -- No legal action may be brought against "us" unless:
- all the "terms" of this policy have been complied with; and
  - the amount of an "insured's" liability has been fixed by:

- 1) a final judgment against an "insured" as a result of a trial; or
- 2) a written agreement of the "insured", the claimant, and "us".

No person has a right under this policy to join "us" or implead "us" in actions that are brought to fix the liability of an "insured".

8. **Maintenance Of Underlying Insurance** -- "You" must maintain the "underlying insurance" in full force and effect during the term of this policy.

If any "underlying insurance" is canceled or not renewed and not replaced or is at any time materially changed in "limits" or coverages, "you" must notify "us" at once. "We" will not be liable under this policy for more than "we" would have been liable if that "underlying insurance" had not been terminated or had not been kept at its original "limits" or coverages.

Reduction or exhaustion of any aggregate "limit" in any "underlying insurance" by payments for judgments, settlements, or expenses for "occurrences" or offenses during the policy period of this policy will not be a failure to maintain "underlying insurance" in full force and effect.

No statement contained in this condition limits "our" right to cancel or not renew this policy.

9. **Misrepresentation, Concealment, or Fraud** -- This coverage is void if, before or after a loss:
- "you" or any other "insured" has willfully concealed or misrepresented:
    - 1) a material fact or circumstance that relates to this insurance or the subject thereof; or
    - 2) the "insured's" interest herein; or
  - there has been fraud or false swearing by "you" or any other "insured" with regard to a matter that relates to this insurance or the subject thereof.

10. **Subrogation** -- If "we" pay for a loss, "we" may require that "you" assign to "us" the right of recovery up to the amount "we" pay. "We" are not liable for a loss if, after the loss, "you" impair "our" right to recover against others. "You" may waive "your" right to recover, in writing, before a loss occurs, without affecting coverage.

11. **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 "your" death.

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.

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## NUCLEAR ENERGY LIABILITY EXCLUSION

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This insurance does not apply:

1. under any liability coverage, to "bodily injury" or "property 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 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:

- 1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereto; or
- 2) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.

2. 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.

3. under any liability coverage, to "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, or operated by or on behalf of, an "insured"; or
  - 2) has been discharged or dispersed therefrom;
- b. the "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, stored, processed, transported, or disposed of by or on behalf of an "insured"; or

- c. 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 (c.) applies only to "property damage" to such "nuclear facility" and any property thereat.

## DEFINITIONS

The following definitions apply to the Nuclear Energy Liability Exclusion:

1. "Hazardous properties" include radioactive, toxic, or explosive properties.
2. "Nuclear material" means "source material", "special nuclear material", or "by-product material".
3. "Source material", "special nuclear material", "by-product material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.
4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
5. "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".

6. "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; or
  - 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 sites, and all premises used for such operations.
7. "Nuclear reactor" means any apparatus designed or used:
- a. to sustain nuclear fission in a self-supporting chain reaction; or
  - b. to contain a critical mass of fissionable material.
8. "Property damage" includes all forms of radioactive contamination of property.