

COMMERCIAL UMBRELLA EXCESS LIABILITY COVERAGE FORM

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

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

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

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

TABLE OF CONTENTS

SECTION I – COVERAGES	2
COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY	2
1. Insuring Agreement	2
2. Defence Of Actions.....	3
3. Exclusions Applying Only To Coverage A.....	4
a. Aircraft Or Watercraft	4
b. Automobile	4
c. Damage To Impaired Property Or Property Not Physically Damaged	5
d. Damage To Property.....	5
e. Damage To Your Product	5
f. Damage To Your Work	5
g. Electronic Data.....	6
h. Employer's Liability	6
i. Expected Or Intended Injury Or Damage	6
j. Personal Injury Or Advertising Injury	6
k. Professional Services	6
l. Recall Of Products, Work Or Impaired Property.....	7
m. Uninsured Motorists, Underinsured Motorists And Automobile No-Fault Laws	7
n. Workers' Compensation And Similar Laws.....	7
COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY	7
1. Insuring Agreement	7
2. Defence Of Actions.....	7
3. Exclusions Applying Only To Coverage B.....	8
a. Breach Of Contract	8
b. Criminal Acts.....	8
c. Electronic Chatrooms Or Bulletin Boards	9
d. Insureds In Media And Internet Type Businesses	9
e. Intellectual Property	9
f. Knowing Violation Of Rights Of Another	9
g. Material Published Or Used Prior To Policy Period	9
h. Material Published With Knowledge Of Falsity	10
i. Quality Or Performance Of Goods – Failure To Conform To Statements	10
j. Unauthorized Use Of Another's Name or Product.....	10
k. Wrong Description Of Prices.....	10
COMMON EXCLUSIONS – COVERAGES A AND B	10
1. Asbestos	10
2. Contractual Liability	10
3. Employment-Related Practices	11
4. Fungi Or Spores	11
5. Nuclear Energy Liability.....	12
6. Pollution	12

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7. Terrorism 14

8. War Risks 14

SECTION II – WHO IS AN INSURED 14

SECTION III – LIMITS OF INSURANCE 16

SECTION IV – CONDITIONS 16

1. Bankruptcy 16

2. Duties In The Event Of Occurrence, Offence, Claim Or Action 16

3. Legal Action Against Us 17

4. Other Insurance 18

5. Premium Audit 18

6. Representations, Unintentional Errors Or Omissions 18

7. Separation Of Insureds, Cross Liability 18

8. Transfer Of Rights Of Recovery Against Others To Us 18

9. Maintenance Of Underlying Insurance 19

10. When Loss Is Payable 19

11. When We Are Prohibited From Defending An Insured 20

12. When We Are Prohibited From Paying Compensatory Damages On Behalf Of An Insured 20

13. When We Are Prohibited From Paying Other Expenses On Behalf Of An Insured 20

14. Currency 20

15. Limitations On Our Representations And Responsibility 20

16. Compulsory Insurance 20

SECTION V – DEFINITIONS 21

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as "compensatory damages" because of "bodily injury" or "property damage" to which this insurance applies. The amount we will pay for such "compensatory damages" is limited as described in Section III – Limits Of Insurance.
- b. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

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- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for "compensatory damages" because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
- e. "Compensatory damages" because of "bodily injury" include "compensatory damages" claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Defence Of Actions

- a. We will have no duty to defend the insured against any "action" that any other insurer has a duty to defend. We have the right to join in the defence of the insured against such "actions", and if we exercise that right, we will pay all expenses we incur.
- b. We will have the right and duty to defend the insured against any "action" seeking "compensatory damages" because of "bodily injury" or "property damage" to which this insurance applies (including "compensatory damages" wholly or partly within the "retained limit") but to which no "underlying insurance" applies because:
 - (1) Such "compensatory damages" are not covered by any "underlying insurance"; or
 - (2) The applicable limit of insurance of the "underlying insurance" that would apply to such "compensatory damages" has been exhausted as follows:
 - (a) If such "underlying insurance" is listed in the Schedule Of Underlying Insurance, the applicable limit of insurance stated for such "underlying insurance" in that schedule has been exhausted solely due to payments of claims or "actions" as permitted in Paragraph **10.b.** of Section **IV** – Conditions; and
 - (b) If such "underlying insurance" is any "other insurance", the applicable limit of insurance of such "other insurance" has been exhausted.

However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" because of "bodily injury" or "property damage" to which this insurance does not apply.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Paragraph **e.** below.

- c. We may, at our discretion:
 - (1) Investigate any "occurrence" or claim; and
 - (2) Settle any claim or "action".
- d. Our right and duty in Paragraph **b.** above ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B**.
- e. We will pay, with respect to any "action" against an insured we are defending:
 - (1) All expenses we incur.
 - (2) Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage under Coverage **A** applies. We do not have to furnish these bonds.
 - (3) The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred at our request by any person who is an insured to assist us in the investigation or defence of the claim or "action", including actual loss of earnings of up to \$500 a day by that insured because of time off from work.
 - (5) All costs assessed or awarded against the insured in the "action".
 - (6) Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

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These payments will not reduce the Limits of Insurance.

3. Exclusions Applying Only To Coverage A

The following exclusions apply only to Coverage **A**. These exclusions apply in addition to the exclusions in the Common Exclusions – Coverages **A** And **B** Section.

This insurance does not apply to:

a. Aircraft Or Watercraft

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

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

This exclusion does not apply to "bodily injury" or "property damage" to which any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance would apply but for the exhaustion of its limits of liability.

b. Automobile

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any of the following vehicles owned or operated by or on behalf of, or rented or loaned to, any insured:

- (1) Any "automobile";
- (2) Any motorized snow vehicle, or any trailer for such vehicle; or
- (3) Any "racing or stunting vehicle".

Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "automobile", motorized snow vehicle, or "racing or stunting vehicle" owned or operated by or on behalf of, or rented or loaned to, any insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury" or "property damage".

This exclusion does not apply to:

- (1) "Bodily injury" or "property damage" covered by any S.P.F. No. 7 – Standard Excess Automobile Policy (Third Party Liability Only), N.B.P.F. No. 7 – Standard Excess Automobile Policy (Third Party Liability Only) or Q.P.F. No. 7 – Quebec Automobile Insurance Policy (Excess Liability Form) if such policy is attached to this policy and shown in the Policy Forms List in this policy, in which case the provisions of such applicable Standard Excess Automobile Policy or Quebec Automobile Insurance Policy will apply to such "bodily injury" or "property damage" in place of the provisions of this Commercial Umbrella Excess Liability Coverage Form; or
- (2) Any of the following to which any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance would apply but for the exhaustion of its limits of liability:
 - (a) "Bodily injury" to an "employee" of the insured on whose behalf contributions are made by or required to be made by the insured under the provisions of any Canadian provincial or territorial workers' compensation law;
 - (b) "Bodily injury" or "property damage" arising out of a defective condition in, or the improper maintenance of, any "automobile" owned by the insured while leased to others for a period of 30

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days or more, provided that the lessee is obligated under contract to ensure that the "automobile" is insured;

- (c) "Bodily injury" or "property damage" arising out of the ownership or use of any machinery, apparatus or equipment mounted on or attached to any vehicle while at the site of the use of such machinery, apparatus or equipment. However, this exception does not apply when such machinery, apparatus or equipment is mounted on or attached to any "automobile" or motorized snow vehicle and such machinery, apparatus or equipment is used for the purpose of "loading or unloading"; or
- (d) "Bodily injury" or "property damage" arising out of "loading or unloading" if such operations are precluded from coverage under the motor vehicle section of any provincial or territorial act or regulation.

c. Damage To Impaired Property Or Property Not Physically Damaged

"Property damage" to "impaired property", or to property that has not been physically damaged, 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 damage to "your product" or "your work" after it has been put to its intended use.

d. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you or any other person or organization for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed by you under a sidetrack agreement, provided that the "property damage" occurs subsequent to the execution of the sidetrack agreement.

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

e. Damage To Your Product

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

f. Damage To Your Work

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

This exclusion does not apply if:

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- (1) The damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; and
- (2) Any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to such "property damage" but for the exhaustion of its limits of liability.

g. Electronic Data

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

h. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) Whether the insured may have an obligation to share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by you under a contract or agreement, provided that:
 - (a) The "bodily injury" occurs subsequent to the execution of the contract or agreement; and
 - (b) Any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to such "bodily injury" but for the exhaustion of its limits of liability; or
- (2) A claim made or an "action" brought by a Canadian resident "employee" on whose behalf contributions are made by or required to be made by you under the provisions of any Canadian provincial or territorial workers' compensation law, if cover or benefits have been denied by any Canadian Workers' Compensation Authority and if any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to such claim or "action" but for the exhaustion of its limits of liability.

i. Expected Or Intended Injury Or Damage

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

j. Personal Injury Or Advertising Injury

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

k. Professional Services

- (1) "Bodily injury" or "property damage" arising out of providing or failing to provide professional services for others by or on behalf of an insured while acting or working as any of the following:
 - (a) Accountant;
 - (b) Architect, engineer or surveyor;
 - (c) Lawyer;
 - (d) Insurance agent, broker, company, consultant or representative; or
 - (e) Real estate agent or broker.

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- (2) "Bodily injury" or "property damage" arising out of providing or failing to provide "professional health care services" by or on behalf of an insured.

Paragraph (1)(b) of this exclusion does not apply to "bodily injury" or "property damage" arising out of providing or failing to provide:

- (1) "Professional technology services" by any of your "employees" while acting or working as an engineer; or
- (2) Professional services by any of your "employees" while acting or working as an engineer on or for "your product";

if any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to such "bodily injury" or "property damage" but for the exhaustion of its limits of liability.

Unless you are in the business or occupation of providing "professional health care services", Paragraph (2) of this exclusion does not apply to "bodily injury" arising out of providing or failing to provide first aid by:

- (1) Any insured listed under Paragraph 1. of Section II – Who Is An Insured; or
- (2) Any of your "employees", "student interns" or "volunteer workers";

if any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to such "bodily injury" but for the exhaustion of its limits of liability.

I. Recall Of Products, Work Or Impaired Property

"Compensatory 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.

m. Uninsured Motorists, Underinsured Motorists And Automobile No-Fault Laws

Any liability under any of the following laws:

- (1) Uninsured Motorists' Law;
- (2) Underinsured Motorists' Law; or
- (3) "Automobile" No-Fault Law or other first-party personal injury law.

n. Workers' Compensation And Similar Laws

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

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as "compensatory damages" because of "personal injury" or "advertising injury" to which this insurance applies. The amount we will pay for such "compensatory damages" is limited as described in Section III – Limits Of Insurance.
- b. This insurance applies to "personal injury" or "advertising injury" caused by an offence arising out of your business, but only if the offence was committed in the "coverage territory" and during the policy period.

2. Defence Of Actions

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- a. We will have no duty to defend the insured against any "action" that any other insurer has a duty to defend. We have the right to join in the defence of the insured against such "actions", and if we exercise that right, we will pay all expenses we incur.
- b. We will have the right and duty to defend the insured against any "action" seeking "compensatory damages" because of "personal injury" or "advertising injury" to which this insurance applies (including "compensatory damages" wholly or partly within the "retained limit") but to which no "underlying insurance" applies because:
 - (1) Such "compensatory damages" are not covered by any "underlying insurance"; or
 - (2) The applicable limit of insurance of the "underlying insurance" that would apply to such "compensatory damages" has been exhausted as follows:
 - (a) If such "underlying insurance" is listed in the Schedule Of Underlying Insurance, the applicable limit of insurance stated for such "underlying insurance" in that schedule has been exhausted solely due to payments of claims or "actions" as permitted in Paragraph **10.b.** of Section **IV** – Conditions; and
 - (b) If such "underlying insurance" is any "other insurance", the applicable limit of insurance of such "other insurance" has been exhausted.

However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" because of "personal injury" or "advertising injury" to which this insurance does not apply.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under Paragraph **e.** below.

- c. We may, at our discretion:
 - (1) Investigate any "occurrence" or claim; and
 - (2) Settle any claim or "action".
- d. Our right and duty in Paragraph **b.** above ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B**.
- e. We will pay, with respect to any "action" against an insured we are defending:
 - (1) All expenses we incur.
 - (2) The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (3) All reasonable expenses incurred at our request by any person who is an insured to assist us in the investigation or defence of the claim or "action", including actual loss of earnings of up to \$500 a day by that insured because of time off from work.
 - (4) All costs assessed or awarded against the insured in the "action".
 - (5) Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the Limits of Insurance.

3. Exclusions Applying Only To Coverage B

The following exclusions apply only to Coverage **B**. These exclusions apply in addition to the exclusions in the Common Exclusions – Coverages **A** And **B** Section.

This insurance does not apply to:

a. Breach Of Contract

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

b. Criminal Acts

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

c. Electronic Chatrooms Or Bulletin Boards

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

d. Insureds In Media And Internet Type Businesses

"Personal injury" or "advertising injury" arising out of an offence committed by an insured whose business is:

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

This exclusion does not apply to Paragraphs **a.(1), (2) and (3)** of the definition of "personal injury".

For the purposes of this exclusion:

- (1) Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- (2) The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

e. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "action" that also alleges any such infringement or violation:

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trademark;
- (6) Trade secret; or
- (7) Other intellectual property rights or laws.

This exclusion does not apply to:

- (1) "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, trade dress, "title" or "slogan" in your "advertisement"; or
- (2) Any other "personal injury" or "advertising injury" alleged in any claim or "action" that also alleges any such infringement or violation of another's copyright, trade dress, "title" or "slogan" in your "advertisement".

f. Knowing Violation Of Rights Of Another

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

g. Material Published Or Used Prior To Policy Period

- (1) "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period.
- (2) "Advertising injury" arising out of infringement of copyright, trade dress, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

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h. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

i. Quality Or Performance Of Goods – Failure To Conform To Statements

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

j. Unauthorized Use Of Another's Name or Product

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

k. Wrong Description Of Prices

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

COMMON EXCLUSIONS – COVERAGES A AND B

The following exclusions apply to Coverages **A** and **B**. These exclusions apply in addition to the exclusions contained in each Coverage Section.

This insurance does not apply to:

1. Asbestos

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibres or products containing asbestos, provided that the "bodily injury", "property damage", "personal injury" or "advertising injury" is caused or contributed to by the hazardous properties of asbestos.
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, asbestos, asbestos fibres or products containing asbestos; or
 - (2) Claim or "action" by or on behalf of a governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibres or products containing asbestos.

This exclusion applies:

- a. Regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage", "personal injury" or "advertising injury", or loss, cost or expense;
- b. Whether the insured may have an obligation to:
 - (1) Share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the "bodily injury", "property damage", "personal injury" or "advertising injury"; or
 - (2) Share loss, cost or expense with or repay someone else who must pay such loss, cost or expense; and
- c. To any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with the "bodily injury", "property damage", "personal injury" or "advertising injury", or loss, cost or expense.

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "advertising injury" for which the insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement. This

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exclusion does not apply to "bodily injury", "property damage" or "personal injury" to which any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance would apply but for the exhaustion of its limits of liability.

Any provisions in such policy of "underlying insurance" that impose a duty to defend your indemnitee that is not an insured against any "action" also apply to this insurance, but only if:

- a. Such policy of "underlying insurance" does not apply to the "compensatory damages" because the applicable limit of insurance stated for such policy of "underlying insurance" in the Schedule Of Underlying Insurance has been exhausted solely due to payments of claims or "actions" as permitted in Paragraph **10.b.** of Section **IV** – Conditions; and
- b. No "other insurance" applies to the "compensatory damages", or the applicable limit of insurance of any "other insurance" that applies to the "compensatory damages" has been exhausted.

Our right and duty to defend such "actions" ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B**; or
- b. The required conditions set forth, or the terms of the required agreement described, in such policy of "underlying insurance" for the duty to defend that indemnitee to exist are no longer met.

Any provisions in such policy of "underlying insurance" that deem legal fees and litigation expenses incurred by or for your indemnitee that is not an insured to be "compensatory damages" because of "bodily injury" or "property damage" also apply to this insurance, and the payment of such legal fees and litigation expenses under this insurance will be deemed to be the payment of a judgment or settlement under Coverage **A** for "bodily injury" or "property damage".

Any provisions in such policy of "underlying insurance" that deem legal fees and litigation expenses incurred by or for your indemnitee that is not an insured to be "compensatory damages" because of "personal injury" also apply to this insurance, and the payment of such legal fees and litigation expenses under this insurance will be deemed to be the payment of a judgment or settlement under Coverage **B** for "personal injury".

3. Employment-Related Practices

"Bodily injury" or "personal injury" to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or
 - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination, directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal injury" to that person at whom any of the employment-related practices described in Paragraph **a.(1), (2) or (3)** above is directed.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. Whether the insured may have an obligation to share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the injury.

4. Fungi Or Spores

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores".
- b. Any loss, cost or expense arising out of any:

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

This exclusion applies:

- a. Regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage", "personal injury" or "advertising injury", or loss, cost or expense;
- b. Whether the insured may have an obligation to:
 - (1) Share "compensatory damages" with or repay someone else who must pay "compensatory damages" because of the "bodily injury", "property damage", "personal injury" or "advertising injury"; or
 - (2) Share loss, cost or expense with or repay someone else who must pay such loss, cost or expense; and
- c. To any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with the "bodily injury", "property damage", "personal injury" or "advertising injury", or loss, cost or expense.

This exclusion does not apply to "bodily injury", or physical damage to any animal, that:

- a. Arises out of "fungi" or "spores" that are found in or on, or are, "your product" intended by you to be applied topically to, or ingested by, humans or animals; and
- b. Occurs after you have relinquished physical possession of such product.

5. Nuclear Energy Liability

- a. Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof.
- b. "Bodily injury", "property damage", "personal injury" or "advertising injury" with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability.
- c. "Bodily injury", "property damage", "personal injury" or "advertising injury" resulting directly or indirectly from the "nuclear energy hazard" arising from:
 - (1) The ownership, maintenance, operation or use of a "nuclear facility" by or on behalf of an insured;
 - (2) 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"; or
 - (3) The possession, consumption, use, handling, disposal or transportation of "fissionable substances", or of other "radioactive material" (except radioactive isotopes, away from a "nuclear facility", which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage", "personal injury" or "advertising injury".

6. Pollution

- a. With respect to Coverage A only:
 - (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":

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

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

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(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or "action" by or on behalf of a governmental authority 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".

b. With respect to Coverage **B** only:

(1) "Personal injury" or "advertising injury" arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

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

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or "action" by or on behalf of a governmental authority 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".

7. Terrorism

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of "terrorism" or any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism".

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage", "personal injury" or "advertising injury".

8. War Risks

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "bodily injury", "property damage", "personal injury" or "advertising injury".

SECTION II – WHO IS AN INSURED

1. If you are designated in the Common Policy Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your partners or your members, and their spouses, are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
- d. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as your trustees.
- e. An organization other than a partnership, joint venture, limited liability company or trust, you are an insured. Your "executive officers" and directors are also insureds, but only with respect to their duties as your "executive officers" or directors. Your shareholders are also insureds, but only with respect to their liability as your shareholders.

2. Each of the following is also an insured as described below:

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- a. Your "volunteer workers", your "student interns" and your "employees", other than either your managers (if you are a limited liability company) or your "executive officers" (if you are an organization other than a partnership, joint venture, limited liability company or trust), are insureds for "bodily injury", "property damage", "personal injury" and "advertising injury" for which they are insureds under any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance that would apply to such "bodily injury", "property damage", "personal injury" and "advertising injury" but for the exhaustion of its limits of liability.
 - b. Any person (other than your "employee" or "volunteer worker") or any organization while acting as your real estate manager is an insured for "bodily injury", "property damage", "personal injury" and "advertising injury" for which they are insureds under any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance that would apply to such "bodily injury", "property damage", "personal injury" and "advertising injury" but for the exhaustion of its limits of liability.
 - c. Any person or organization having proper temporary custody of your property if you die is an insured, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.
 - e. Any organization you newly acquire or form, other than a partnership or joint venture, that qualifies as a Named Insured under a similar provision in any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance that would have applied to the "bodily injury", "property damage", "personal injury" or "advertising injury" but for the exhaustion of its limits of liability will qualify as a Named Insured if there is no "other insurance" which provides similar umbrella liability or excess liability coverage to that organization. However:
 - (1) Coverage under this provision is provided only until the end of the period of time during which the organization qualifies as a Named Insured under that provision in that policy of Commercial General Liability "underlying insurance";
 - (2) Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - (3) Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offence committed before you acquired or formed the organization.
 - f. Any other person or organization that does not qualify as an insured under Paragraph 2. a., b., c., d. or e. above and that is an insured under any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance is an insured. However:
 - (1) Coverage under this provision is subject to all the limitations upon coverage under such policy of "underlying insurance", and the limits of insurance afforded to such person or organization will be:
 - (a) The difference between the limits of insurance of such policy of "underlying insurance" and the minimum limits of insurance which you agreed to provide, if you have agreed to provide insurance for that person or organization in a written contract or agreement; or
 - (b) The Limits of Insurance shown in the Commercial Umbrella Excess Liability Declarations; whichever is less; and
 - (2) If you have agreed to provide insurance for that person or organization in a written contract or agreement, coverage under this provision does not apply if the minimum limits of insurance you agreed to provide such person or organization in such written contract or agreement are wholly within the limits of insurance of such policy of "underlying insurance".

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 Common Policy Declarations. No person or organization is an insured with respect to the conduct of any current or past limited liability company that is not shown as a Named Insured in the Common Policy Declarations unless such person or organization is an insured in that

respect under any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance that would apply to the "bodily injury", "property damage", "personal injury" and "advertising injury" but for the exhaustion of its limits of liability. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II – Who Is An Insured.

SECTION III – LIMITS OF INSURANCE

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

However, the General Aggregate Limit does not apply to "compensatory damages" because of "bodily injury", "property damage", "personal injury" or "advertising injury" if any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance applied to such "bodily injury", "property damage", "personal injury" or "advertising injury", and the "compensatory damages" to which such "underlying insurance" applied are subject to no aggregate limit in such "underlying insurance".

3. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all "compensatory damages" under Coverage **A** because of all "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of all "compensatory damages" under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
5. Subject to Paragraph **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all "compensatory damages" because of all "personal injury" and "advertising injury" sustained by any one person or organization.
6. The Limits of Insurance 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, 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 to be part of the last preceding annual or remaining period for purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

The following conditions apply to this insurance in addition to the conditions in the Common Policy Conditions form that is part of your policy:

1. **Bankruptcy**
 - a. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
 - b. Bankruptcy or insolvency of the "underlying insurer" that provides any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance will not relieve us of our obligations under this insurance. However, in event of bankruptcy or insolvency of such "underlying insurer", this insurance will not replace such "underlying insurance", and this insurance will apply as if such "underlying insurance" were in full effect.
2. **Duties In The Event Of Occurrence, Offence, Claim Or Action**

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- a.** You must see to it that we or our authorized representative are notified as soon as practicable of an "occurrence" or an offence which may result in a claim to which this insurance may apply. To the extent possible, notice should include:
- (1)** How, when and where the "occurrence" took place or the offence was committed;
 - (2)** The nature and location of any injury or damage caused by the "occurrence" or offence; and
 - (3)** The names and addresses of any persons or organizations sustaining such injury or damage, and the names and addresses of any witnesses.
- b.** If a claim or "action" to which this insurance may apply is made or brought against any insured, you must:
- (1)** Immediately record the specifics of the claim or "action" and the date received; and
 - (2)** Notify us or our authorized representative as soon as practicable.
- You must see to it that we or our authorized representative receive written notice of the claim or "action" as soon as practicable.
- c.** You and any other involved insured must:
- (1)** Cooperate with any "underlying insurer" in the investigation or settlement of the claim or "action" or the defence against the "action", and if we are conducting such activities, cooperate with us in that regard;
 - (2)** Comply with the terms of any "underlying insurance"; and
 - (3)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense to which this insurance applies without our consent.
- e.** The following provisions apply to Paragraph **a.** above, but only for the purposes of the insurance provided to you or any insured listed under Paragraph **1.** or **2.a., b., c.** or **d.** of Section **II** – Who Is An Insured:
- (1)** Notice to us or our authorized representative of such "occurrence" or offence must be given as soon as practicable only after the "occurrence" or offence is known to any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give notice of an "occurrence" or offence.
 - (2)** If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us or our authorized representative of such "occurrence" or offence must be given as soon as practicable only after the "occurrence" or offence is known by:
 - (a)** Any individual who is:
 - (i)** A partner or member of any partnership or joint venture;
 - (ii)** A manager of any limited liability company;
 - (iii)** A trustee of any trust; or
 - (iv)** An "executive officer" or director of any organization other than a partnership, joint venture, limited liability company or trust;

that is your partner, joint venture member, manager or trustee; or
 - (b)** Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offence.

3. Legal Action Against Us

No person or organization has a right under this insurance:

- a.** To join us as a party or otherwise bring us into an "action" asking for "compensatory damages" from an insured; or
- b.** To sue us unless all of the terms of this insurance have been fully complied with.

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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 "compensatory damages" that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. As used in this paragraph, an agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

This insurance is excess over any valid and collectible "other insurance", whether primary, contributing, excess, contingent or on any other basis.

As used anywhere in this coverage form or any of its endorsements, other insurer means a provider of "other insurance".

5. Premium Audit

- a. We will compute all premiums for this insurance in accordance with our rules and rates.
- b. The premium shown in the Common Policy Declarations may be an estimated premium only. If it is an estimated premium, your policy will contain an endorsement that shows when and how we compute your deposit premium and your actual premium.
- c. If the premium is an estimated premium, the first Named Insured must keep records of the information we need for premium computation and must send us copies of those records at such times as we may request.
- d. Additional premium for this policy may become payable when any additional person or organization qualifies as an insured under Paragraph 1., 2.e. or 2.f. of Section II – Who Is An Insured.

6. Representations, Unintentional Errors Or Omissions

By accepting this policy, you agree that:

- a. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

The unintentional error in, or unintentional omission of, any information provided by you which we relied upon in issuing this insurance will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of termination or nonrenewal in accordance with applicable insurance laws or regulations.

7. Separation Of Insureds, Cross Liability

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

- a. If the insured has rights to recover from others all or part of any payment we have made under this insurance in connection with a claim or "action", those rights are transferred to us. Except as provided in Paragraph b. below, the insured must do nothing to impair such rights. At our request, the insured will bring action or initiate an alternative dispute resolution proceeding to enforce those rights, or will transfer those rights to us and help us enforce them.

We will apply any amounts recovered in enforcing those rights of recovery in the following order:

- (1) First, we will reimburse any person or organization (including us or the insured) any amount such person or organization has paid in excess of the Limits of Insurance shown in the Commercial Umbrella Excess Liability Declarations.
- (2) Next, if there is any amount remaining, we will retain an amount equal to the amount we have paid under this insurance in connection with the claim or "action".

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- (3) Then, if there is any amount remaining, we will pay that amount to any person or organization (including the insured and any "underlying insurer") that is entitled to claim any remaining amount.

If any amounts are recovered in enforcing those rights of recovery, reasonable expenses incurred in enforcing such rights will be shared among all persons or organizations receiving amounts recovered. Each such person's or organization's share of those expenses will be based on the ratio of its amount recovered to the total amount recovered by all such persons or organizations in enforcing such rights. We will deduct each such person's or organization's share of those expenses from any amount we pay to such person or organization.

- b. If the insured has agreed in a 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:
- (1) "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
 - (2) "Personal injury" or "advertising injury" caused by an offence that is committed; subsequent to the execution of the contract or agreement.

9. Maintenance Of Underlying Insurance

- a. The insurance afforded by each policy of "underlying insurance" listed in the Schedule Of Underlying Insurance will be maintained for the full policy period of this insurance. This provision does not apply to the reduction of the applicable limit of insurance of such "underlying insurance" due to payments described in Paragraph **10.b.** of Section **IV – Conditions**.
- b. If any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance expires during the policy period of this insurance, you will renew that policy with limits of insurance and with coverage at least equal to such expiring policy.
- c. If you fail to comply with any of the conditions described in Paragraphs **a.** and **b.** above, this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with such condition.
- d. You must give us prompt written notice of any change in the "underlying insurance" as respects:
- (1) Limits of insurance, other than any reduction of the applicable limit of insurance of such "underlying insurance" due to any payment described in Paragraph **10.b.** of Section **IV – Conditions**;
 - (2) Coverage, including termination of any coverage; or
 - (3) Exhaustion of aggregate limits of insurance.

10. When Loss Is Payable

- a. We will pay "compensatory damages" payable under this insurance only after:
- (1) The insured's liability for such "compensatory damages" is established by:
 - (a) A final judgment; or
 - (b) A written agreement between the claimant, the insured, any "underlying insurer" and us; and
 - (2) The amount of the "applicable underlying limit" is paid by:
 - (a) The "underlying insurer" as described in Paragraph **b.** below; or
 - (b) You, if the "retained limit" applies.
- b. The "applicable underlying limit" of "underlying insurance" listed in the Schedule Of Underlying Insurance can only be exhausted due to payments of:
- (1) Judgments or settlements for "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offence committed, during the policy period of this insurance; or
 - (2) Medical expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" listed in the Schedule Of Underlying Insurance applies, if such medical expenses are incurred for "bodily injury" caused by an accident that takes place during the policy period of this insurance.

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- c. If we are defending your indemnitee that is not an insured against an "action", we will pay "compensatory damages" payable under this insurance only after:
- (1) That indemnitee's liability for such "compensatory damages" is established by:
 - (a) A final judgment; or
 - (b) A written agreement between the claimant, the indemnitee and us; and
 - (2) The amount of the "applicable underlying limit" is paid as described in Paragraph b. above.
- d. You will reimburse us for any payment we make for "compensatory damages" that are within the "retained limit".

11. When We Are Prohibited From Defending An Insured

If we have a duty to defend an insured under Paragraph 2. of Section I – Coverage A – Bodily Injury And Property Damage Liability or Paragraph 2. of Section I – Coverage B – Personal And Advertising Injury Liability and the laws or regulations of a country or jurisdiction prohibit us from fulfilling our duty to defend an insured, the insured will be responsible for providing that defence. We will repay that insured for the reasonable expenses incurred with our consent for such defence. But we will only repay the insured for such expenses until we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

12. When We Are Prohibited From Paying Compensatory Damages On Behalf Of An Insured

If the laws or regulations of a country or jurisdiction prohibit us from paying, on behalf of an insured, amounts that the insured is legally obligated to pay as "compensatory damages" because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies, the insured may pay such "compensatory damages" with our consent.

If the insured gives us proof of such payments, we will repay the insured for such "compensatory damages". But we will only repay the insured for such "compensatory damages" until we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

13. When We Are Prohibited From Paying Other Expenses On Behalf Of An Insured

If we have a duty to pay expenses described in Paragraph 2.e. of Section I – Coverage A – Bodily Injury And Property Damage Liability or Paragraph 2.e. of Section I – Coverage B – Personal And Advertising Injury Liability and the laws or regulations of a country or jurisdiction prohibit us from paying such expenses on behalf of an insured, we will repay the insured for such expenses that the insured incurs with our consent.

14. Currency

Payments for "compensatory damages" or expenses described in Paragraph 2.e. of Section I – Coverage A – Bodily Injury And Property Damage Liability or Paragraph 2.e. of Section I – Coverage B – Personal And Advertising Injury Liability will be in the currency of Canada. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for the payment of "compensatory damages" will be calculated based on the rate of exchange on the date of judgment or settlement. Any necessary currency conversion for payment of expenses described in Paragraph 2.e. of Section I – Coverage A – Bodily Injury And Property Damage Liability or Paragraph 2.e. of Section I – Coverage B – Personal And Advertising Injury Liability will be calculated based on the rate of exchange on the date immediately preceding the date the payment is processed.

15. Limitations On Our Representations And Responsibility

It is understood that we are not an admitted or authorized insurer outside Canada, the United States of America, its territories and possessions and Puerto Rico. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries or jurisdictions relating to insurance.

16. Compulsory Insurance

This insurance is not a substitute for required or compulsory insurance in any country or jurisdiction outside Canada, the United States of America, its territories and possessions and Puerto Rico.

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You agree to maintain all required or compulsory insurance in any such country or jurisdiction up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

SECTION V – DEFINITIONS

1. "Action" means a civil proceeding that seeks "compensatory damages" because of "bodily injury", "property damage", "personal injury" or "advertising injury". "Action" includes:
 - a. An arbitration proceeding that seeks such "compensatory damages" and to which the insured must submit or submits with our consent; and
 - b. Any other alternative dispute resolution proceeding that seeks such "compensatory damages" and to which the insured submits with our consent.
2. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on other electronic means of communication; and
 - b. Regarding websites, only that part of a website that is about your goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
3. "Advertising injury":
 - a. Means injury, other than "personal injury", caused by one or more of the following offences:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "action" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that violates a person's right of privacy;
 - (3) The use of another's advertising idea in your "advertisement"; or
 - (4) Infringing upon another's copyright, trade dress, "title" or "slogan" in your "advertisement", provided that the claim is made or the "action" is brought by a person or organization that claims ownership of such copyright, trade dress, "title" or "slogan".
 - b. Includes "bodily injury" caused by one or more of the offences described in Paragraph a. above.
4. "Applicable underlying limit" means:
 - a. If any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to the "compensatory damages" but for the exhaustion of its limits of liability, the sum of:
 - (1) The applicable limit of insurance stated for such "underlying insurance" in the Schedule Of Underlying Insurance less the amount by which that limit has been reduced solely due to payments of claims or "actions" by:
 - (a) The "underlying insurer" that provides such "underlying insurance"; or
 - (b) You under any self-insured retention or deductible that applies to such "underlying insurance" and is within that limit;
 as permitted in Paragraph 10.b. of Section IV – Conditions; and
 - (2) The applicable limit of insurance of any "other insurance" that applies to such "compensatory damages"; or

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- b. If the policies of "underlying insurance" listed in the Schedule Of Underlying Insurance do not apply to the "compensatory damages" because of any reason other than the exhaustion of the limits of liability of such insurance, the greater of the following:
- (1) The "retained limit" if:
 - (a) No "other insurance" applies to such "compensatory damages"; or
 - (b) "Other insurance" applies to such "compensatory damages", but the applicable limit of that "other insurance" is less than the "retained limit", in which case the "retained limit" will be reduced by the amount of the applicable limit of that "other insurance"; or
 - (2) The applicable limit of insurance of any "other insurance" that applies to such "compensatory damages" if such limit is greater than the "retained limit".

If any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance would apply to the "compensatory damages" but for:

a. The insured's failure to comply with any condition of such policy; or

b. The "underlying insurer" of such "underlying insurance" becoming bankrupt or insolvent;

such policy will be deemed to apply to the "compensatory damages", and we will pay only to the extent that we would have paid had the insured complied with such condition, or had that "underlying insurer" not become bankrupt or insolvent.

5. "Automobile" means a land motor vehicle, trailer or semitrailer that is required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract, including any attached machinery or equipment.
6. "Bodily injury" means:
 - a. Physical harm, including sickness or disease, sustained by a person; or
 - b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
7. "Broadcasting" means transmitting any audio or visual material for any purpose:
 - a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any of such programming.
8. "Compensatory damages" does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.
9. "Coverage territory" means anywhere in the world.
10. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and application software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media that are used with electronically controlled equipment.
11. "Employee" includes a "leased worker" and a "temporary worker".
12. "Executive officer" means a person holding any of the officer positions created by an organization's charter, constitution, by-laws or any other similar governing document.
13. "Fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
14. "Fungi" includes any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens or pathogens.
15. "Hostile fire" means a fire that becomes uncontrollable or breaks out from where it was intended to be.

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- 16.** "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a.** It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b.** You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a.** The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - b.** Your fulfilling the terms of the contract or agreement.
- 17.** "Leased worker" means a person leased by a labour leasing firm under an agreement between the insured and the labour leasing firm, to perform duties related to the conduct of the insured's business. However, "leased worker" does not include a "temporary worker".
- 18.** "Loading or unloading" means the handling of property:
- a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft, "automobile", or other vehicle;
 - b.** While it is in or on an aircraft, watercraft, "automobile", or other vehicle; or
 - c.** While it is being moved from an aircraft, watercraft, "automobile", or other vehicle to the place where it is finally delivered.
- However, "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft, "automobile", or other vehicle.
- 19.** "Nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of "radioactive material".
- 20.** "Nuclear facility" means:
- a.** Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - b.** Any equipment or device designed or used for:
 - (1)** Separating the isotopes of plutonium, thorium and uranium or any one or more of them; or
 - (2)** Processing or packaging waste;
 - c.** Any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them 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 radioactive material;
- and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- 21.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- Unless you are in the business or occupation of providing "professional health care services", "occurrence" also means an act or omission committed by:
- a.** Any insured listed under Paragraph 1. of Section II – Who Is An Insured; or
 - b.** Any of your "employees", "student interns" or "volunteer workers";
- in providing or failing to provide first aid to a person.
- 22.** "Other insurance":
- a.** Means insurance, or the funding of losses, that is provided by, through or on behalf of:

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- (1) Another insurance company;
- (2) Us or any of our affiliated insurance companies;
- (3) Any risk retention group;
- (4) Any self-insurance method or program; or
- (5) Any similar risk transfer or risk management method.

b. Does not include:

- (1) Any policy of "underlying insurance" listed in the Schedule Of Underlying Insurance; or
- (2) Any policy of insurance that was bought specifically to apply in excess of the Limits of Insurance shown in the Commercial Umbrella Excess Liability Declarations.

23. "Personal injury":

a. Means injury, other than "advertising injury", caused by one or more of the following offences:

- (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, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
- (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "action" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
- (5) Oral or written publication, including publication by electronic means, of material that violates a person's right of privacy.

b. Includes "bodily injury" caused by one or more of the offences described in Paragraph **a.** above.

24. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

25. "Products-completed operations hazard":

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

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

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

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

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

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(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

26. "Professional health care services" includes:
- Any medical, surgical, dental, laboratory, x-ray or nursing services, treatment, advice or instruction, or the related furnishing of food or beverages;
 - The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
 - The handling or treatment of corpses, including autopsies, organ donations and other postmortem procedures;
 - Any health or therapeutic service, treatment, advice or instruction;
 - Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
 - Any psychiatric, psychological or emotional counselling service, treatment, advice or instruction; and
 - The service by any person as a member of a formal accreditation, standards review, peer review or equivalent professional board or committee or member of any professional organization or committee.
27. "Professional technology services" means any computer or electronic information technology service, including:
- System, network, communications or website analysis, design, consulting, programming, installation, integration or related services;
 - Software development, installation, distribution, licensing or maintenance;
 - Technical training, staffing, maintenance, repair or support services;
 - Electronic processing, storage, transmission or other handling of data; and
 - Hosting, managing or administering computer systems, network or facilities.
28. "Property damage" means:
- Physical damage to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical damage that caused it; or
 - Loss of use of tangible property that is not physically damaged. All such loss of use will be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.
29. "Racing or stunting vehicle" means any vehicle that is being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity.
30. "Radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
31. "Retained limit" means the amount shown as the Retained Limit in the Commercial Umbrella Excess Liability Declarations. The "retained limit" applies as described in Paragraph **b.** of the definition of "applicable underlying limit". If the "retained limit" applies, it is the amount that you will be responsible for paying for each of the following:
- The sum of all "compensatory damages" under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
 - The sum of all "compensatory damages" under Coverage **B** because of all "personal injury" and "advertising injury" sustained by any one person or organization.
32. "Slogan":
- Means a phrase that others use for the purpose of attracting attention in their advertising.
 - Does not include a phrase used as, or in, the name of:

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- (1)** Any person or organization, other than you; or
- (2)** Any business, or any of the premises, goods, products, services or work, of any person or organization, other than you.
- 33.** "Spores" includes any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi".
- 34.** "Student intern" means a registered student whose courses of study include mandatory on-the-job training and whom the insured has the right to direct and control while performing duties for that insured.
- 35.** "Temporary worker" means a person who is hired to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 36.** "Terrorism" means an ideologically motivated unlawful act or acts, including the use of violence or force or threat of violence or force, committed by or on behalf of any group, organization, or government for the purpose of influencing any government or instilling fear in the public or a section of the public.
- 37.** "Title" means a name of a literary or artistic work.
- 38.** "Underlying insurance":
- a.** Means:
 - (1)** Any policy listed in the Schedule Of Underlying Insurance; and
 - (2)** Any "other insurance" available to the insured.
 - b.** Includes any renewal or replacement of any policy described in Paragraph **a.(1)** above, if such renewal or replacement is during the policy period of this Commercial Umbrella Excess Liability policy.
 - c.** Does not include any part of the policy period of any of the policies described in Paragraph **a.(1)** or **b.** above that began before, or that continues after, the policy period of this Commercial Umbrella Excess Liability policy.
- 39.** "Underlying insurer" means:
- a.** Any insurer that provides a policy of "underlying insurance" listed in the Schedule Of Underlying Insurance that applies to the "compensatory damages", or that would apply to the "compensatory damages" but for the exhaustion of its limits of liability; or
 - b.** Any provider of any "other insurance" available to the insured that applies to the "compensatory damages", or that would apply to the "compensatory damages" but for the exhaustion of its limits of liability.
- 40.** "Volunteer worker" means a person who:
- a.** Is not an "employee" or "student intern" of the insured;
 - b.** Donates his or her work; and
 - c.** Is not paid a fee, salary or other compensation for that work.
- 41.** "Your product":
- a.** Means:
 - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; or
 - (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b.** Includes:
 - (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of such goods or products; and
 - (2)** The providing of or failure to provide warnings or instructions with respect to such goods or products.

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

42. "Your work":

a. Means:

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

b. Includes:

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

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