

## COMMON POLICY CONDITIONS

All **Coverage Parts** included in this policy are subject to the following:

### A. BANKRUPTCY

In the event of bankruptcy, insolvency, or receivership of the **Insured**, this policy shall not apply as a replacement of any relevant **retained limit(s)** and **our** relevant **Limit(s) of Insurance** will apply only in excess of the relevant **retained limit(s)** as shown in **Item 2.** of the **Declarations Page, Schedule of Retained Limit(s)**.

### B. CANCELLATION

1. The **First Named Insured** shown in the **Declarations Page** may cancel this policy by mailing or delivering to **us** advance written notice of cancellation. The **First Named Insured's** cancellation shall be binding on all other **Insureds**.
2. If this policy has been in effect for less than 60 days, and is not a renewal of a policy **we** issued, **we** may cancel this policy for any reason by mailing by Certified mail to the **First Named Insured** written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if **we** cancel for nonpayment of premium; or
  - b. 60 days before the effective date of cancellation if **we** cancel for any other reason.
3. If this policy has been in effect for 60 days or more, or if this policy is a renewal of a policy **we** issued, **we** may cancel this policy only for one or more of the following reasons:
  - a. Nonpayment of premium;
  - b. Acts or omissions by **you** or **your** representative which materially increase the hazard insured against;
  - c. Acts or omissions by **you** or **your** representative constituting fraud or material misrepresentation in the procurement of this policy, in continuation of this policy or in presenting a **claim** under this policy;
  - d. Material change in the risk assumed;
  - e. Breach of policy duties or conditions;
  - f. Loss of reinsurance applicable to the risk insured against resulting from termination of treaty or facultative reinsurance; or
  - g. Determination by the Insurance Regulator of any state that the continuation of the policy would place **us** in violation of the insurance laws or would jeopardize **our** solvency.

If **we** cancel this policy based on one or more of the above reasons, **we** will send written notice of cancellation by Certified mail to the **First Named Insured** stating the reason(s) for cancellation. **We** will mail this notice at least:

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- a. 10 days before the effective date of cancellation if **we** cancel for nonpayment of premium.
  - b. 90 days before the effective date of cancellation if **we** cancel for any other reason other than the nonpayment of premium.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  5. If **we** cancel for nonpayment of premium, **you** may continue the coverage and avoid the effect of the cancellation if **we** receive payment in full at any time prior to the effective date of cancellation.
  6. If this policy is canceled, **we** will send the **First Named Insured** any premium refund due. If **we** cancel, the refund will be pro rata. If the **First Named Insured** cancels, the refund will be 90% of the pro rata refund, where allowable by law. The cancellation will be effective even if **we** have not made or offered a refund.
  7. If **we** have indemnified the **Insured** for the entire amount of the policy's Aggregate Limit(s) prior to this policy's termination date for losses other than losses arising from the **automobile hazard**, that portion of this policy's premium attributable to such coverage is fully earned.
  8. Proof of mailing will be sufficient proof of notice of cancellation.

#### C. NONRENEWAL

1. If **we** elect not to renew this policy, **we** will mail by Certified mail to the **First Named Insured** written notice of nonrenewal at least 60 days prior to the expiration of this policy.
2. Proof of mailing will be sufficient proof of notice of nonrenewal.
3. If either one of the following occurs, **we** are not required to provide written notice of nonrenewal:
  - a. A company within the same insurance group has offered to issue a renewal policy; or
  - b. **You** have obtained replacement coverage or have agreed in writing to do so.

#### D. CHANGES

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

**We** shall not be bound by any assignment of interest by any **Insured** unless **our** consent to such an assignment is endorsed into this policy.

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**E. DUTIES IN THE EVENT OF OCCURRENCE, WRONGFUL ACT, CLAIM OR SUIT**

1. **You** shall be deemed to be aware of and have knowledge of an **occurrence** or **wrongful act(s)** as of the date that **your** legal department, risk management department, claim administrator or any of **your** elected, appointed or employed officials receives notice of such **occurrence** or **wrongful act(s)**.
2. As a condition precedent to coverage, **you** must notify **us** as soon as practicable of an **occurrence** or **wrongful act(s)** which appears reasonably likely to involve indemnification or result in a **claim** or **suit** under this policy. Written notice should be as complete as possible, and must at least include:
  - a. How, when, and where the **occurrence** or **wrongful act(s)** took place;
  - b. The **Insured's** name and address;
  - c. The names and addresses of any persons seeking damages and/or any injured persons or witnesses; and
  - d. A description outlining the nature of any **occurrence** or **wrongful act(s)** and of any resulting injury or damage.

Notice of an **occurrence** or **wrongful act(s)** is not notice of a **claim** or **suit**. Once an individual(s) identified in paragraph 1. of this Condition becomes aware of an **occurrence** or **wrongful act(s)** which potentially implicates this policy, those individuals and all other **Insureds** must in no way jeopardize **our** rights.

Failure of any other of **your** agents or employees to notify **us** of any **occurrence** or **wrongful act(s)** of which the agent(s) or employee(s) has knowledge shall not by operation of this Condition invalidate the insurance afforded by this policy.

3. If notice of an **occurrence** or **wrongful act(s)** results in a subsequent **claim** or **suit**, and appears reasonably likely to involve indemnification by this policy, **you** must immediately record the specifics of the **claim** or **suit**, including any demands, notices, summonses, or legal papers, the date received and notify **us** as soon as practicable as a condition precedent to coverage. Notice shall be deemed given as soon as practicable if it is given to **us** by the department or person to whom **you** have delegated such responsibility as soon as practicable after they become aware of a **claim** or **suit**.
4. When **we** exercise **our** right to associate in or assume control of the defense of a **claim** or **suit** as provided by the Coverage Part(s), **you** and any other **Insured** involved in such **claim** or **suit** must:
  - a. Authorize **us** to obtain records and other information;
  - b. Cooperate with **us** in the investigation, settlement or defense of the **claim** or **suit**; and
  - c. 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 policy may also apply.
5. In any event as a condition precedent to coverage **you** must notify **us** in the manner specified above of any **occurrence**, **wrongful act(s)**, **claim**, or **suit** which:

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- a. Results in the establishment of a reserve, or would reasonably require the establishment of a reserve, for **ultimate net loss** under Coverage Part A or **loss** under Coverage Part B which equals or exceeds 33% of the relevant **retained limit**; or
- b. Involves any of the following:
  - (1) Death;
  - (2) An amputation or loss of use of a major extremity;
  - (3) Brain damage affecting mentality or central nervous system - such as permanent disorientation, behavior disorder, personality change, seizures, motor deficit, inability to speak (aphasia), hemiplegia or unconsciousness (comatose);
  - (4) Blindness;
  - (5) Any injury to the spinal cord;
  - (6) Multiple fractures;
  - (7) Nerve damage causing paralysis and loss of sensation in arm and hand, including but not limited to, RSD or brachial plexus nerve damage;
  - (8) Massive internal injuries affecting body organs;
  - (9) Burns - involving over 20% of the body with third degree, or over 40% of the body with second degree;
  - (10) Any disability where it appears reasonably likely that there will be disability that lasts for more than one year;
  - (11) Death of detainee while in custody or during the arrest process;
  - (12) Firearm discharge resulting in **bodily injury** or death;
  - (13) Rape and/or sexual molestation of any individual; or
  - (14) Class actions or putative class actions.

#### **F. EXAMINATION OF YOUR BOOKS AND RECORDS**

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

#### **G. FIRST NAMED INSURED**

**First Named Insured** means the person, entity, or organization shown in **Item 1, First Named Insured** of the **Declarations Page**. Such person, entity, or organization is authorized to act as sole agent for all **Insureds** for the procurement of coverage hereunder, the payment of premiums, the giving or receiving of notice of cancellation or nonrenewal, the receiving of unearned premium and the making of any changes in the policy.

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## H. INSPECTION AND SURVEYS

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give **you** reports on the conditions **we** find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. **We** do not make safety inspections. **We** do not undertake to perform the duty of any person or organization to provide for the health and safety of workers or the public. And **we** do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

## I. LEGAL ACTION AGAINST US

No person, entity, or organization has a right under this policy:

1. To join **us** as a party or otherwise bring **us** into any **claim** or **suit**; or
2. To sue **us** under this policy unless all of its terms have been fully complied with.

A person, entity, or organization may sue **us** to recover for an **agreed settlement**, as defined below, or for a final judgment against an **Insured** obtained after a contested **claim** or **suit**, but **we** will not be liable for **ultimate net loss** under Coverage Part A or **loss** under Coverage Part B that are not payable under the terms of this policy or that are in excess of the relevant **Limit(s) of Insurance** or within the applicable **retained limit**.

We also retain the right to challenge the terms and conditions of any settlement which is not an **agreed settlement**, including but not limited to whether an **Insured** had a legal obligation to pay damages to the claimant and whether the facts of the **claim** or **suit** underlying the settlement create any obligations under this policy. An **agreed settlement** means a settlement and release of liability signed by **us**, the **Insured** and the claimant or the claimant's legal representative.

## J. NAMED INSURED

**Named Insured** means the persons or organizations shown in **Item 1, Named Insured(s)** of the **Declarations Page** including the **First Named Insured**.

## K. PREMIUMS

The **First Named Insured** shown in the **Declarations Page** is responsible for the payment of all premiums.

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## L. OTHER INSURANCE

1. All coverage under this policy is excess over any other insurance, whether written on a primary, excess, contingent or on any other basis, except for other insurance that is specifically purchased by **you** to apply in excess of this policy's relevant **Limit(s) of Insurance** set forth in the **Declarations Page** or in any endorsement. In any event, **we** will have no duty to defend any **claim** or **suit**. The **retained limit(s)** may not be satisfied by any other insurance.
2. If any other insurance purchased by **you** or on **your** behalf is deemed to apply on the same excess basis as this policy, **our** indemnification obligation, subject to the relevant **retained limit(s)** and **Limit(s) of Insurance** of this policy, will be shared with such other insurance by the method described in paragraphs 3.and 4. below.
3. If such other insurance permits contribution by equal shares, **we** will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid or indemnified (as the case may be) the **Insured** its relevant limit of insurance or none of the loss remains, whichever comes first.
4. If such other insurance does not permit contribution by equal shares, **we** will indemnify by limits. Under this method, each insurer's share is based on the ratio of its relevant limit(s) of insurance to the total limits of insurance of all such insurers.
5. **We** have no obligation to indemnify or pay any expenses incurred by such other insurer(s).

## M. PREMIUM AUDIT

1. **We** will compute all premium(s) for this policy in accordance with **our** rules and rates.
2. Premium(s) for this policy shown as advance premium(s) is/are a deposit premium(s) only. At the close of each policy period, **we** will compute the earned premium(s) for that period. Audit premium(s) are due and payable on notice to the **First Named Insured**.
3. The advance premium(s) stated in the **Declarations Page** is/are an estimated deposit premium(s) only and will be held until final expiration date at which time the earned premium(s) shall be computed. If the computed earned premium(s) exceed(s) the estimated advance premium(s) paid, including any interim audit adjustments, **you** shall pay the excess to **us**. If the computed earned premium(s) is/are less than the paid estimated advance premium(s), including any interim audit adjustments, **we** shall return the unearned portion to the **First Named Insured** subject to any applicable minimum premium(s) shown in the **Declarations Page**.
4. The **First Named Insured** must keep record of the information **we** need for premium(s) computation, and send **us** copies at such times as **we** may request.
5. If the policy is written on a flat premium basis, it is not subject to premium audit.

## N. REPRESENTATIONS

By accepting this policy and as a condition precedent to coverage, **you** agree that:

1. The information shown on the **Declarations Page** is accurate and complete;

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2. The information is based upon representations **you** made to **us** in **your** submission and/or application(s) for this policy;
3. **We** have issued this policy in reliance upon **your** representations in the submission and/or application(s); and
4. Except as otherwise provided in this policy or by law, this policy is void in any case of fraud or if **you** conceal or misrepresent any material facts concerning this policy, in **your** submission and/or application(s) for this policy.

**O. SEPARATION OF INSUREDS**

Except with respect to the relevant **Limit(s) of Insurance** and the corresponding **retained limit(s)**, any applicable exclusion(s), and any rights or duties specifically assigned to the **First Named Insured**, this policy applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each **Insured** against whom **claim** or **suit** is brought.

**P. SUBROGATION - RECOVERY FROM OTHERS**

1. **We** have the right to recover all payments which **we** have made to or on behalf of the **Insured** from anyone liable for a loss. If the **Insured** recovers from anyone liable for a loss, **we** shall be reimbursed first from such recovery to the extent of **our** payments to the **Insured**. The **Insured** expressly waives any rights it may have to recoup any uninsured portions of any loss prior to **our** recovery of the full amounts **we** paid hereunder.
2. If the **Insured** does not commence an action or proceeding to recover damages from anyone liable for a loss paid by **us**, the **Insured** agrees to timely assign all of its rights of recovery to **us** and also agrees that **we** have the rights of the **Insured** to recover from anyone liable for a loss. The **Insured** will do everything necessary to protect those rights and help **us** to enforce them.
3. Any such recovery will be allocated in the following order:
  - a. First, to reimburse any insurer for insurance coverage in excess of this policy's relevant **Limit(s) of Insurance** set forth on the **Declarations Page** or any endorsement, or to reimburse the **Insured** to the extent there is no such insurance;
  - b. Then, **we** will be reimbursed for all of **our** payments under this policy;
  - c. Finally, any balance of the recovery which remains after **we** have been reimbursed will be paid to the **Insured**.
4. Expenses of all proceedings to recover from anyone liable for loss covered by this policy will be deducted from any amount which has been recovered prior to the allocation in accordance with paragraph 3. above.
5. If such action is commenced by the **Insured**, with **our** prior approval, and the expenses incurred in obtaining recoveries exceeds the amount recovered, if any, the excess expense shall be apportioned between the parties in proportion to the liability of each party for the loss before the recovery was obtained. If such an action or proceeding undertaken solely by **us** results in no recovery, **we** will pay all related expenses.

6. Notwithstanding anything to the contrary in paragraphs 1. through 5. above, in the event **we** make any payment under this policy, **we** will waive **our** right of recovery against any person or organization with whom the **Insured** has:
- a. A written contract that is effective and executed prior to the date of an **occurrence** or **wrongful act(s)**, if such contract requires the **Insured** to waive its subrogation, contribution, or indemnity rights; or
  - b. Performed or received work under a letter of intent, work order, or other letter of understanding provided that the **Insured** can demonstrate that such letter of intent, work order, or other letter of understanding would customarily be reduced to a written contract that requires the **Insured** to waive its subrogation, contribution, or indemnity rights.

**Q. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

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

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