

LIBERTY INSURANCE UNDERWRITERS INC.

(A Stock Insurance Company, hereinafter the "Company")

THIS IS AN OCCURRENCE POLICY. PLEASE REVIEW THE POLICY CAREFULLY.

PROFESSIONAL LIABILITY OCCURRENCE INSURANCE POLICY FOR PROFESSIONAL COUNSELORS AND HUMAN DEVELOPMENT PRACTITIONERS - INDIVIDUAL

The Company agrees with the **Named Insured**, in consideration of the payment of the premium, and in reliance upon the statements in the Declarations and in the application and subject to the limit of liability, exclusions, conditions and other terms of this policy, as follows:

INSURING AGREEMENTS

I. COVERAGES

A. COVERAGE A, PROFESSIONAL LIABILITY COVERAGE

If indicated by a specific premium on the Declarations Page, the Company will pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **Damages** because of **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** to which this insurance applies in the operation of the business or conduct of the profession of the **Named Insured** stated in the Declarations, caused by an **Incident** which occurs during the **Policy Period**.

B. COVERAGE B, GENERAL LIABILITY COVERAGE

If indicated by a specific premium on the Declarations Page, the Company will pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **Damages** because of **Bodily Injury** or **Property Damage** to which this insurance applies in the operation of the business or the conduct of the profession of the **Named Insured** stated in the Declarations, caused by an **Occurrence** during the **Policy Period**. This coverage specifically includes the following extensions:

1. Contractual Liability: **Bodily Injury** or **Property Damage** resulting from any **Incidental Contract** relating to the conduct of the **Named Insured's** business, except if such injury or **Damage** occurred prior to the execution of the **Incidental Contract**;
2. Host Liquor Liability: **Bodily Injury** or **Property Damage** arising out of the giving or serving of alcoholic beverages at functions incidental to the **Named Insured's** business; providing the **Named Insured** is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages;
3. Damage To Premises Rented To You: **Property Damage** to structures or portions thereof rented to or leased to the **Named Insured**, including fixtures permanently attached thereto, if such **Property Damage** arises out of fire. Solely as respects Damage To Premises Rented To You coverage, all the exclusions of the policy, other than Exclusions 11, 18 and 27 and the Nuclear Energy Liability Exclusion (Broad Form) are deleted.

As respects coverage(s) indicated on the Declarations Page, the Company shall have the right and duty to defend any **Suit** against the **Insured** seeking **Damages** on account of such **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury**, even if any of the allegations of the **Suit** are groundless, false or fraudulent, but the Company shall not be obligated to pay any claim or judgment or continue to defend any **Suit** after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

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The Company, at its option, shall select and assign defense counsel; however, the **Named Insured** may engage additional counsel, solely at their expense, to associate in their defense of any claim covered hereunder. **Claims Expenses** incurred by the Company shall be paid in addition to the applicable Limits of Liability. The Company shall also have the right to investigate any claim and/or negotiate the settlement thereof, as it deems expedient, but the Company shall not commit the **Named Insured** to any settlement without their written consent. If the **Named Insured** refuses to consent to any settlement recommended in writing by the Company which is acceptable to the claimant and elects to contest the claim or continue any legal proceedings in connection with such claim, then the Company shall be relieved of any further duty to defend the claim, and the liability of the Company for **Damages** and **Claims Expenses** shall not exceed the amount for which the claim could have been settled as well as the **Claims Expenses** incurred by the Company or with the Company's consent up to the date of such refusal. The **Insured** shall not assume any obligations, incur any costs, charges, or expenses or enter into any settlement without the Company's written consent.

II. PERSONS INSURED

Each of the following is an **Insured** under this policy to the extent set forth below:

- A. The **Named Insured** is an individual, the **Named Insured** so designated in the Declarations; and
- B. Any professional serving as a temporary replacement or substitute for the **Named Insured**, but solely while such person was acting within their duties for, and on behalf of, the **Named Insured**. During the term of such replacement, the person who is replaced by, or substituted for, shall not be an **Insured** under this policy, as respects COVERAGES A. and B.

III. LIMITS OF LIABILITY

Regardless of the number of Coverage Parts purchased, the number of **Insureds** under this insurance, the number of persons or organizations who sustain **Bodily Injury, Property Damage, Personal Injury and Advertising Injury**, or the number of claims made or **Suits** brought, the Company's liability is limited as follows:

- A. The Limit of Liability stated in the Declarations as applicable to "each **Incident**" or "each **Occurrence**" is the total limit of the Company's liability for all **Damages** for each **Incident** and/or **Occurrence** covered by the policy. All claims arising from the same or related **Incident, Occurrence** and/or **Personal and Advertising Injury** offense shall be considered a single claim for the purpose of this insurance and shall be subject to the same limit of liability.
- B. The Limit of Liability stated in the Declarations as "Aggregate" is, subject to the above provisions involving "each **Incident**" or "each **Occurrence**", the total limit of the Company's liability under this policy for all **Damages**.

Notwithstanding the foregoing, the Limit of Liability stated in the Declarations as "Aggregate" shall apply separately to any individual defined as an **Insured** under Section II. PERSONS INSURED.

IV. POLICY TERRITORY

This insurance applies to **Bodily Injury, Property Damage, Personal and Advertising Injury** which occurs anywhere in the world, provided that claim is made or **Suit** is brought within the United States of America, its territories or possessions, Puerto Rico or Canada.

V. SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable Limit of Liability:

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- A. up to \$250 for loss of earnings to each individual **Insured** for each day or part of a day of such **Insured's** attendance at the Company's request at a trial, hearing or arbitration proceeding involving a civil suit against such **Insured** for covered **Damages**, but the amount so payable for any one or series of trials, hearings or arbitration proceedings arising out of the same **Incident, Occurrence** and/or **Personal and Advertising Injury** offense shall in no event exceed \$5,000; and
- B. up to \$2,500 per **Policy Period** per **Insured** for attorney fees, and other costs, expenses or fees resulting from the investigation or defense of a proceeding before a state licensing board or governmental regulatory body incurred as the result of a notice of a proceeding first received by the **Insured** during the **Policy Period**. All such proceedings arising out of the same or related **Incident** shall be considered as having been first made at the time the notice of proceeding is first received by the **Insured** and the amount so payable shall not exceed \$2,500.

VI. EXCLUSIONS

This insurance does not apply:

- 1. with respect to **Personal and Advertising Injury**, to any injury arising out of
 - a. any act committed by the **Insured** with actual malice;
 - b. failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract;
 - c. infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised;
 - d. knowingly incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
 - e. the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the **Insured**;
 - f. the publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy if the first injurious publication or utterance of the same or similar material by or on behalf of the **Named Insured** was made prior to the effective date of this coverage,
 - g. libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the **Insured** with knowledge of the falsity thereof;
- 2. to **Property Damage** to premises alienated by the **Named Insured** arising out of such premises or any part thereof;
- 3. to **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:
 - a. any **Automobile** or aircraft owned or operated by or rented or loaned to any **Insured**; or
 - b. any other **Automobile** or aircraft operated by any person in the course of their employment by any **Insured**;

but this exclusion does not apply to the parking of an **Automobile** on premises owned by, rented to or controlled by the **Named Insured** or the ways immediately adjoining, if such **Automobile** is not owned by or rented or loaned to any **Insured**;
- 4. to any claim brought by, or on behalf of, any **Insured** under this policy against any other **Insured** under this policy, except if such claim results from services rendered in a patient or client relationship;
- 5. to **Property Damage** to the **Named Insured's Products** arising out of such products or any part of such products;

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6. to **Bodily Injury, Personal and Advertising Injury** to any employee of the **Insured** arising out of and in the course of his/her employment by the **Insured** or to any obligation of the **Insured** to indemnify another because of **Damages** arising out of such injury; to any obligation for which the **Insured** or any carrier as his/her insurer may be held liable under any worker's compensation, unemployment compensation, disability benefits law or under any similar law;
7. to **Property Damage** included within:
 - a. the **Explosion Hazard**;
 - b. the **Collapse Hazard**;
 - c. the **Underground Property Damage Hazard**;
8. to any fraudulent, criminal, malicious, or materially dishonest acts or omissions of the **Insured** except, however, this exclusion shall not apply to any claim alleging malicious prosecution;
9. to **Damages** arising out of actual or alleged infringement of copyright or actual plagiarism;
10. to acts or omissions by any **Insured** expected or intended to cause physical injury or **Property Damage**, regardless of whether or not such act or omission was intended to cause the specific injury or **Property Damage** sustained. This exclusion shall not apply to any intentional act by or at the direction of the **Insured** which results in injury or **Property Damage**, if such injury or **Damage** arises solely from the use of reasonable force or other measures for the purpose of protecting persons or property;
11. to **Bodily Injury** or **Property Damage** for which the **Insured** or the **Insured's** indemnitee may be held liable:
 - a. as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages; or
 - b. if not so engaged, as an owner lessor of premises, used for such purposes, if such liability is imposed by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, including the selling, serving or giving of any alcoholic beverage to a minor;
12. to loss of use of tangible property which has not been physically injured or destroyed resulting from:
 - a. a delay in or lack of performance by or on behalf of the **Named Insured** or any contract or agreement; or
 - b. the failure of the **Named Insured's Products** or work performed by or on behalf of the **Named Insured** to meet with the level of performance, quality, fitness or durability warranted or represented by the **Named Insured**;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **Named Insured's Products** or work performed by or on behalf of the **Named Insured** after such products or work have been put to use by any person or organization other than an **Insured**;
13. to **Bodily Injury** or **Property Damage** arising out of:
 - a. the ownership, maintenance, operation, use, loading or unloading of any **Mobile Equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
 - b. the operation or use of any snowmobile or trailer designed for use therewith;
14. to **Bodily Injury** or **Property Damage** arising out of and in the course of the transportation of **Mobile Equipment** by an **Automobile** owned or operated by or rented or loaned to any **Insured**;
15. to any claims made or **Suits** brought against any **Insured** alleging in whole or part sexual assault, abuse, molestation, or licentious, immoral, amoral or other behavior which threatened, led to or culminated in any sexual act whether committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent thereto, that

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was committed, or alleged to have been committed, by the **Insured** or by any other person for whom the **Insured** is legally responsible.

This exclusion applies regardless of the legal theory or basis upon which the **Insured** is alleged to be legally liable or responsible, in whole or in part, for any **Damages** arising out of such actual or alleged behavior including, but not limited to assertions of improper or negligent hiring, employment or supervision, failure to protect the other party, failure to prevent the sexual misconduct, failure to prevent assault and battery or failure to discharge the employee.

However, notwithstanding the foregoing exclusion, the **Insured** shall be entitled to a defense as provided under the terms of the policy as to any claim upon which **Suit** is brought for any such alleged behavior, unless a judgment or final adjudication adverse to any **Insured**, or an admission by any **Insured** accused of such behavior, shall establish that such behavior caused, in whole or part, the injury claimed in such **Suit**. The Company shall not be required to appeal a judgment or final adjudication adverse to the **Insured**.

If, however, the **Insured** elects to appeal such judgment or final adjudication, and the judgment or final adjudication results in a reversal on the issue of liability, the Company shall reimburse the **Named Insured** for all reasonable **Claims Expenses** incurred in the appeals process;

16. to any claim, action, judgment, liability, settlement, loss, defense, cost or expense in anyway arising out of actual, alleged or threatened pollution, contamination or any environmental impairment resulting from seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or radioactive matter including, but not limited to, smoke, vapors, soots, fumes, acids, alkalis, chemicals or toxic matter; or waste material (including materials to be recycled, reconditioned or reclaimed); or oil or other petroleum substances or derivatives (including any oil refuse or oil mixed with waste), or thermal or vibratory effect including, but not limited to, sound or noise, heat or cold, into or upon land, the atmosphere or any water course or body of water, underground water or water table supplies, whether such results directly, indirectly or in concurrence or in any sequence from the **Insured's** activities or the activities of others and whether or not such is sudden, gradual, accidental, intended, foreseeable, expected, fortuitous or inevitable and wherever or however such occurs.

But this exclusion shall not apply to **Bodily Injury** or **Property Damage** caused by heat, smoke or fumes from a "**Hostile Fire**" unless such fire involves:

- a. materials which are or were at any time used for the handling, storage, disposal, processing or treatment of waste; or
 - b. any premises, site, or location:
 - i. which is or was at any time used for handling, storage, disposal, processing or treatment of waste; or
 - ii. on which any **Insured** or contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants;
17. to **Bodily Injury** or **Property Damage** included within the **Products Hazard** or **Completed Operations Hazard**;
 18. to **Damage** to property owned or occupied by or rented to the **Insured**, or to property held by the **Insured** for sale or entrusted to the **Insured** for storage or safekeeping;
 19. to claims arising out of services performed by any **Insured** as a physician, surgeon, physician's assistant or surgeon's assistant;
 20. to claims brought against the **Insured** as a proprietor, owner, partner, manager, superintendent or officer of any hospital, sanitarium, medical clinic, health maintenance organization, managed care facility or any other facility not specified in the Declarations or any endorsements thereto;

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21. to **Bodily Injury** or **Property Damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
22. to **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:
 - a. any watercraft owned or operated by or rented or loaned to any **Insured**; or
 - b. any other watercraft operated by any person in the course of their employment by any **Insured**;but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the **Named Insured**;
23. to claims or **Suits** brought for the withdrawal, inspection, repair, replacement, or loss of use of the **Named Insured's Products** or work completed by or for the **Named Insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
24. to **Bodily Injury** or **Property Damage** based on or arising out of the practice of the **Insured's** professional occupation unless the **Insured** is properly licensed, exempted or certified by the laws of the state(s) in which the **Insured** practices, or is otherwise qualified to practice the **Insured's** professional occupation in the absence of such laws;
25. to liability assumed by the **Insured** under any contract or agreement, except to the extent:
 - a. such **Insured** would be liable in the absence of such contract agreement; or
 - b. the contract or agreement is an **Incidental Contract** pursuant to the Contractual Liability Coverage Part;
26. to any claim based upon or arising out of restraint of trade, price fixing or violation of any anti-trust law;
27. to any claims brought by or on behalf of any person employed by the **Named Insured**, any person who had been employed by the **Named Insured** or any person seeking employment with the **Named Insured** alleging any act or omission by an **Insured** with respect to the hiring, termination, compensation, or the tenure, term, condition, benefits or privilege of employment of any person.

VII. DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"Advertising Injury" means injury arising out of an offense committed during the **Policy Period** occurring in the course of the **Named Insured's** advertising activities, if such injury arises out of libel, slander, defamation, violation or right of privacy, unfair competition, or infringement of copyright, title or slogan;

"Automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"Bodily Injury" means any injury sustained by any person including, but not limited to:

1. physical injury, sickness, disease, mental anguish or emotional distress, including death at any time resulting there from;
2. psychological injury, harm or impairment, including death at any time resulting there from; and
3. loss of consortium or impairment of domestic or personal relations;

"Bodily Injury" shall not include any injury, damage or loss defined as **Personal Injury, Advertising Injury** or **Property Damage**;

"Claims Expenses" means:

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1. fees charged by an attorney(s) and/or an independent adjustor(s) designated by the Company and all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, **Suit** or proceedings arising in connection therewith, if incurred by the Company, or by the **Insured** with written consent of the Company, but does not include salary charges or expenses of regular employees or officials of the Company;
2. all costs taxed against the **Insured** in such **Suits** and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid, tendered or deposited, whether in court or otherwise, the part of the judgment which does not exceed the limit of the Company's liability;
3. premiums on appeal bonds and premiums on bonds to release attachments in such **Suits**, but not for bond amounts in excess of the applicable Limit of Liability of this policy, but the Company shall have no obligation to apply for or furnish any such bond;

"**Collapse Hazard**" includes "**Structural Property Damage**" as defined herein and **Property Damage** to any other property at any time resulting there from. "**Structural Property Damage**" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The **Collapse Hazard** does not include **Property Damage** (1) arising out of operations performed for the **Named Insured** by independent contractors, or (2) included within the **Completed Operations Hazard** of the **Underground property Damage Hazard**, or (3) for which liability is assumed by the **Insured** under an **Incidental Contract**;

"**Completed Operations Hazard**" includes **Bodily Injury** and **Property Damage** arising out of operations or reliance upon a representation or warranty made by anytime with respect thereto, but only if the **Bodily Injury** or **Property Damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **Named Insured**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following time:

1. when all operations to be performed by or on behalf of the **Named Insured** under the contract have been completed;
2. when all operations to be performed by or on behalf of the **Named Insured** at the site of the operations have been completed; or
3. when the portion of the work of which the injury or **Damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service, maintenance work, correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **Completed Operations Hazard** does not include **Bodily Injury** or **Property Damage** arising out of:

1. operations in connection with the transportation of property, unless the **Bodily Injury** or **Property Damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof,
2. the existence of tools, uninstalled equipment or abandoned or unused materials, or
3. operations for which the classification stated in the policy or in the Company's manual specified "including completed operations";

"**Damages**" means compensatory judgments, settlements, or awards but does not include punitive or exemplary **Damages**, fines or penalties, the return of fees or other consideration paid to the **Insured**, or the portion of any award or judgment caused by the multiplication of actual **Damages** under federal or state law. However, if a **Suit** is brought against the **Insured** with respect to a Claim for alleged acts or omissions falling within the scope of coverage afforded by this insurance seeking both compensatory and punitive or exemplary **Damages**, then the Company will afford a defense to such action, without liability however, for payment of such punitive or exemplary **Damages**;

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"Explosion Hazard" includes **Property Damage** arising out of blasting or explosion. The **Explosion Hazard** does not include **Property Damage** (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the **Named Insured** by independent contractors, or (3) included within the **Completed Operations Hazard** or the **Underground Property Damage Hazard**, or (4) for which liability is assumed by the **Insured** under an **Incidental Contract**;

"Hostile Fire" means one which becomes uncontrollable or breaks out from where it was intended to be;

"Incident" means any act or omission:

1. in the rendering of or failure to render professional services by the **Insured**, or by any person for whom the **Insured** is legally responsible, in the conduct of the business or professional occupation specified in the Declarations; or
2. in the performing of services by the **Insured** as a member of a formal accreditation, ethics, peer review, licensing, standards review or similar professional board or committee of a hospital, health facility, educational institution, professional organization, health maintenance organization or health plan in the practice of the **Insured's** professional occupation stated in the Declarations; or
3. in the operation or management of the premises used in the business of the **Named Insured** stated in the Declarations.

Solely as respects any person who is defined as an **Insured** under Section II. PERSONS INSURED, paragraph A, and who is also an employee of or contracts with any private or public organization, agency, college or university, and who provides professional services as one or more of the following: a researcher, consultant, teacher, faculty member (including Department, Program or Division Chair), librarian, administrator, colleague or member of an instructional staff, the definition of **Incident** will also include the following services:

- a. original or contracted for research; or
- b. the design, development, assessment or evaluation of psychological tests or testing procedures; or
- c. the dismissal, suspension, disciplinary sanction or layoff of a faculty member prior to the expiration of a term appointment; or
- d. the non-reappointment of a probationary faculty member; or
- e. decisions relating to the salary, other compensation, promotion, rank, leaves of absence, work assignment, resignation, or other rights, duties and responsibilities of fellow faculty, researchers or staff employees; or
- f. research on animals or humans.

Any such act or omission together with all related acts or omissions in the furnishing of such services to any one person shall be considered one **"Incident"** and be subject to the same Limit of Liability;

"Incidental Contract" means any oral or written contract or agreement relating to the conduct of the **Named Insured's** business, except as respects Fire Legal Liability coverage;

"Insured" means any person or organization qualifying as an **Insured** under Section II. PERSONS INSURED provision;

"Mobile Equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **Named Insured**, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"Named Insured" means the person named in Item 1. of the Declarations of this policy.

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"Named Insured's Products" means goods or products manufactured, sold, handled or distributed by the **Named Insured** or by others trading under the name of the **Named Insured**, including any container thereof;

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general conditions, which results in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of any **Insured**;

"Personal Injury" means any injury arising out of:

1. false arrest, detention or imprisonment, or malicious prosecution;
2. the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy;
3. wrongful entry or eviction, or other invasion of the right of private occupancy;

"Policy Period" means, whenever used in this policy, the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any;

"Products Hazard" includes **Bodily Injury** and **Property Damage** arising out of the **Named Insured's Products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Bodily Injury** or **Property Damage** occurs away from premises owned by or rented to the **Named Insured** and after physical possession of such products has been relinquished to others;

"Property Damage" means (1) physical injury to or destruction of tangible property which occurs during the **Policy Period**, including the loss of use thereof at any time resulting there from, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **Occurrence** during the **Policy Period**, or (3) other loss, whether or not resulting from physical injury or damage to person or property;

"Suit" includes arbitration proceedings to which the **Insured** is required to submit or to which the **Insured** has submitted with the Company's consent;

"Underground Property Damage Hazard" includes **Underground Property Damage** as defined herein and **Property Damage** to any other property at any time resulting there from. **"Underground Property Damage"** means **Property Damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The **Underground Property Damage Hazard** does not include **Property Damage** (1) arising out of operations performed for the **Named Insured** by independent contractors, or (2) included within the **Completed Operations Hazard**, or (3) for which liability is assumed by the **Insured** under an **Incidental Contract**.

VIII. CONDITIONS

A. ACTION AGAINST COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impeded by the **Insured** or the **Insured's** legal representative.

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B. ASSIGNMENT

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the **Named Insured** shall die, such insurance is afforded by this policy shall apply (1) to the **Named Insured's** legal representative as the **Named Insured**, but only while acting within the scope of his/her duties as such, and (2) with respect to the property of the **Named Insured**, to the person having proper temporary custody thereof, as **Insured**, but only until the appointment and qualification of the legal representative.

C. ASSISTANCE AND COOPERATION OF INSURED

The **Insured** shall give written notice to the Company as soon as practicable of any claim made against the **Insured** or of any specific circumstances involving a particular person likely to result in a claim. The notice shall identify the **Insured** and contain reasonably obtainable information with respect to the time, place and circumstances of the injury, including the names and addresses of the injured and of available witnesses and the extent of the type of claim anticipated. If a claim is made or **Suit** is brought against the **Insured**, the **Insured** shall immediately forward to the Company every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative.

The **Insured** and each of its employees shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of **Suits** and enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of injury or **Damage** with respect to which this insurance is afforded under this policy; and the **Insured**, and any of its members, partners, officers, directors, stockholders and employees that the Company deems necessary shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses; and the Company shall reimburse the **Insured** for reasonable expenses incurred at the Company's request. The **Insured** shall not, except at the **Insured's** own cost, voluntarily make any payments, assume any obligations or incur any expense.

D. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

E. CANCELLATION AND NONRENEWAL

1. **CANCELLATION:** This insurance may be cancelled on the customary short-rate basis by the **Named Insured** at any time by written notice or by surrender of this insurance to the Company or its authorized representative and the Company shall refund the paid premium less the earned portion thereof within thirty (30) days of the latter of the effective date of cancellation or the date of delivery of the **Insured's** notice of intent to cancel. This insurance may also be cancelled, with or without the return or tender of the unearned premium, by the Company or by its authorized representative on its behalf, by sending to the **Named Insured**, by first-class registered or certified mail, at **Named Insured's** address last known to the Company or its authorized agent, but not less than ninety (90) days written notice stating the specific reason for such cancellation and when the cancellation shall be effective. In such case, the Company shall refund the paid premium less the earned portion thereof within ten (10) business days after the effective date of cancellation, subject always to the retention by the Company of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by the Company or the **Named Insured**. In case of nonpayment of premium, only thirty (30) days written notice of cancellation must be given by the Company. Cancellation by the Company shall only be effective if based on one or more of the following reasons:

- a. nonpayment of premium;
- b. the policy was obtained through material misrepresentation;

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- c. violation of any term or condition of this policy;
- d. the risk originally accepted has measurably increased; or
- e. loss by the Company of reinsurance which provided coverage for all or a substantial part of the risk insured.

2. **NONRENEWAL:** The Company will renew this policy unless written notice of the Company's intent not to renew, stating the specific reasons for nonrenewal, is mailed to the **Named Insured** not less than sixty (60) days before the policy expires.

Any notice of nonrenewal will be mailed by first-class registered or certified mail to the **Named Insured** at the last mailing address known to the Company. Proof of mailing will be sufficient proof of notice.

F. CHANGES

The terms of this policy shall not be waived or changed, except by endorsement issued to form part of this policy.

G. DECLARATIONS

By acceptance of this policy, the **Insured** agrees that the statements in the Declarations are the **Insured's** agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

H. OTHER INSURANCE

If there is other valid insurance (whether primary, excess, contingent or self-insurance) which may apply against a loss or claim covered by this policy, the insurance provided hereunder shall be deemed excess insurance over and above the applicable limit of all other insurance or self-insurance.

When this insurance is excess, the Company shall have no duty under this policy to defend any claim or **Suit** that any other insurer or self-insurer has a duty to defend. If such other insurer or self-insurer refuses to defend such claim or **Suit**, the Company shall be entitled to the **Insured's** rights against all such other insurers or self-insurers for any defense costs incurred by the Company.

When both this insurance and other insurance or self-insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss or defense costs than the applicable Limit of Liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss. Subject to the foregoing, if a loss occurs involving two or more policies, each of which provides that its insurance shall be excess, each will contribute pro-rata.

I. REIMBURSEMENT

If the Company pays any amount

- a. within the amount of the applicable Deductible, and/or
- b. in excess of the Limit of Liability stated in the Declarations,

all **Insureds** shall be jointly and severally liable to the Company for such amounts. Payment will be made to the Company within thirty (30) days of demand for reimbursement.

J. SUBROGATION

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In the event of any payment under this policy, the Company shall be subrogated to all the rights of recovery therefore against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after to prejudice such rights.

K. LIBERALIZATION CLAUSE

If the Company adopts any revision that would broaden the coverage under the policy without additional premium at any time during the **Policy Period**, the broadened coverage will immediately apply to this policy.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary.



President



Secretary