HISCOX

# Umbrella Coverage Section

Policy wording

The terms and conditions of the Entertainment Policy Jacket and the following terms and conditions all apply to this Coverage Section.

## I. WHAT IS COVERED

**COVERAGE A: Follow-Form Excess Commercial Liability**

A. **We** will pay **damages** to which Coverage A applies in excess of the applicable **underlying limits** of insurance provided that such **damages**:

1. are **covered amounts** in **underlying insurance** described in the Schedule of Commercial Underlying Insurance and Limits in the Declarations; and
2. are sustained anywhere that the applicable **underlying insurance** applies.

This coverage applies only if the triggering event that must happen during the policy period of the **underlying insurance** happens during the **policy period** of this Policy.

This coverage will follow the terms and conditions of **underlying insurance** described in the Schedule of Commercial Underlying Insurance and Limits stated in the Declarations, except if a term contained in this Coverage A or the conditions contained in this Policy:

1. differs from any term or condition in the applicable **underlying insurance**; or
2. is not contained in the applicable **underlying insurance**.

In the event that one or both of the exceptions described above apply, the terms contained in this Coverage A and the conditions contained in this Policy will apply to the extent that they provide less coverage or different requirements than the terms and conditions of the applicable **underlying insurance**.

**We** will not make any payment under this Coverage A unless such **underlying limits** have been exhausted by the payment of **covered amounts**. In the event of exhaustion of the **underlying limits** by payment of **covered amounts**, then this Coverage A will apply in the same manner as the applicable **underlying insurance** would have applied but for such exhaustion.

Other than as provided under the Defense and Supplementary Payments provision of HOW MUCH WE WILL PAY of this Coverage Section, **we** have no obligation or liability to pay sums or perform acts or services under this Coverage A.

**COVERAGE B: Commercial Umbrella**

B. If, as a result of **your** business operations, any party makes a **claim** or brings a **suit** aganst the **insured** as a result of:

Bodily Injury or Property Damage

1. **bodily injury** (including **damages** claimed by a person or organization for care or loss of services resulting from the **bodily injury**) or **property damage** occurring during the **policy period** and arising out of an **occurrence** to which this Coverage Section applies, **we** will:
   a. pay **damages** that the **insured** become legally obligated to pay by reason of liability imposed by law or assumed in an **insured contract**; and
   b. defend the **insured** against any **suit** seeking such **damages**, as set forth in the Defense and Supplementary Payments provision of HOW MUCH WE WILL PAY of this Coverage Section.

Personal Injury and Advertising Injury

2. **personal injury** or **advertising injury** arising out of an offense to which this Coverage Section applies that is first committed in the

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**coverage territory** and during the **policy period**, **we** will:

a. pay **damages** that the **insured** become legally obligated to pay by reason of liability imposed by law or assumed in an **insured contract**; and

b. defend the **insured** against any **suit** seeking such **damages**, as set forth in the Defense and Supplementary Payments provision of HOW MUCH WE WILL PAY of this Coverage Section.

This Coverage B is not excess coverage and does not apply to any part of:

1. **damages** to which **underlying insurance** would apply, regardless of whether:
   a. **underlying insurance** is available; and
   b. the applicable **underlying limits** have been exhausted;
2. **damages** to which **underlying limits** apply; or
3. any cost or expenses related to **damages** as described in paragraphs 1 or 2 immediately above.

Other than as provided under the Defense and Supplementary Payments provision of HOW MUCH WE WILL PAY of this Coverage Section, **we** have no other obligation or liability to pay sums or perform acts or services under this Coverage B.

## II. WHEN WE HAVE A DUTY TO DEFEND

**We** have the right and duty to defend the **insured** under:

**Follow-Form Excess Commercial Liability**

A. Follow-Form Excess Commercial Liability Coverage A against a **suit** to which this Coverage A applies, if the applicable **underlying limits** have been exhausted by payment of **covered amounts**.

**Commercial Umbrella**

B. Commercial Umbrella Coverage B against a **suit** to which this Coverage B applies, even if such **suit** is false, fraudulent or groundless, but only:

1. if Coverage A or **underlying insurance** does not apply or owe a duty of defense against such a **suit**; and
2. if no **other insurance** affording a defense or indemnity against such a **suit** is available to any **insured**.

**Applicable to All Excess and Umbrella Coverage**

**We** have no duty to defend any person or organization against any **suit**:

A. to which this Coverage Section does not apply;

B. if any other insurer has a duty to defend;

C. after our applicable Limits of Insurance have been exhausted by the payment of judgments or settlements, or exhausted by the payments of defense expenses in the same manner as the terms of **other insurance**; or

D. to which any **other insurance**, by its terms, has no duty to defend provided that such **other insurance** does not defend for reasons other than the exhaustion of its limits of insurance.

**We** may, at **our** discretion, investigate any **occurrence** or **claim** and settle any **claim** or **suit** or participate in the investigation, defense and settlement of any **claim** or **suit.**

**Our** duty to defend any person or organization ends when the applicable Limit(s) of Insurance has been exhausted.

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## III. WHO IS COVERED

In addition to **you**, other persons or organizations may qualify as **insureds**. Such persons or organizations and the conditions under which they qualify are stated below:

**Follow-Form Commercial Excess Liability**

A. With respect to Coverage A, other persons or organizations qualifying as an insured in **underlying insurance**.

**Commercial Umbrella**

B. With respect to Coverage B:

Sole Proprietorships

1. If **you** are 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. However, if **you** die:

   a. persons or organizations having proper temporary custody of **your** property are **insureds** but only with respect to the maintenance or use of such property and only for acts until **your** legal representative has been appointed; and

   b. **your** legal representative is an **insured** but only with respect to his or her duties as **your** legal representatives. As such they will assume the **insured's** legal right and duties under this Coverage Section.

Partnerships or Joint Ventures

2. If **you** are a duly organized partnership (including a limited liability partnership) or a joint venture, **your** members, partners, joint venturers and their spouses are **insureds**, but only with respect to the conduct of **your** business.

Limited Liability Companies

3. If **you** are a duly organized limited liability company, **your** members and their spouses are **insureds**, but only with respect to the conduct of **your** business. **Your** managers are **insureds**, but only with respect to their duties as **your** managers.

Other Organizations

4. If **you** are an organization (including a professional corporation) other than a partnership, joint venture or limited liability company, **your** directors and **officers** are **insureds**, but only with respect to their duties as **your** directors or **officers**. **Your** stockholders and their spouses are **insureds**, but only with respect to their liability as **your** stockholders.

Employees

5. **Your employees** are **insureds**, but they are **insureds** only for acts within the scope of their employment by **you** or while performing duties related to the conduct of **your** business.

Volunteers

6. Persons who are volunteer workers for **you** are **insureds**, but only for acts within the scope of their activities for **you** and at **your** direction.

Real Estate Managers

7. Persons (other than **your employees**) or organizations while acting as **your** real estate managers are **insureds**, but only with respect to their duties as **your** real estate managers.

Subsidiary or Newly Acquired or Formed Organizations

8. If there is no **other insurance** available, a subsidiary organization that the first named **insured** in the Declarations acquires or forms during the **policy period** will qualify as an **insured**, if at the time of loss such first named **insured** controls, either directly or indirectly, more than 50 percent of the interests entitled to vote generally in the election of the governing body of such organization. This coverage is effective on the acquisition or formation date and is afforded only until the 90th day after **you** acquire or form the organization or the end of the **policy period,** whichever is earlier.

   However, no person or organization is an **insured** with respect to the:

   a. conduct of any person or organization that is not stated as an **insured** in the Declarations.

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b. ownership, maintenance or use of any assets **you** acquire, either directly or indirectly, for any:

(1) **bodily injury** or **property damage** that occurred; or

(2) **advertising injury** or **personal injury** arising out of an offense first committed,

in whole or in part, before **you**, directly or indirectly, acquired such assets, business or organization.

## IV. HOW MUCH WE WILL PAY

The Limits of Insurance stated in the Declarations and the rules below set forth the most **we** will pay regardless of the number of:

A. **insureds** covered under this Coverage Section;

B. **claims** made or **suits** brought;

C. individuals or entities making **claims** or bringing **suits**; or

D. vehicles involved.

**Each Occurrence Limit**

The Each Occurrence Limit of Insurance stated in the Declarations is the most **we** will pay under Coverage A and B combined for all **damages** arising out of any one occurrence.

Coverage A applies only in excess of the Limit of Insurance stated in the Schedule of Commercial Underlying Insurance and Limits. However, if the **underlying insurance** has a limit of insurance greater than the amount stated, this Coverage Section will apply in excess of such greater amount.

Any amount **we** pay for **damages** arising out of an occurrence will reduce or exhaust the amount of the Aggregate Limit of Insurance available for payment of **damages** arising out of any other occurrence**.**

**Aggregate Limit**

Subject to the Each Occurrence Limit, the Aggregate Limit stated in the Declarations:

A. is the most **we** will pay under Coverage A for the sum of all **damages**. However, this limitation only applies when the **underlying insurance** is also subject to an aggregate limit.

B. applies separately for each of the following under Coverage B and is the most **we** will pay for:

1. all **damages** subject to the General Aggregate, except **damages** as noted in 2 and 3 directly below.
2. all **damages** subject to the Products-Completed Operations Aggregate Limit.
3. all **damages** subject to the Advertising Injury and Personal Injury Limit.

**Defense and Supplementary Payments**

Subject to the Defense for Suits Against You provision in the Entertainment Policy Jacket, **we** will pay reasonable attorney fees and necessary litigation expenses **we** incur with counsel of **our** choice to defend the **insured** and any indemnitees of the **insured**, provided the **insured** assumed the obligation to defend or the cost of defense under an **insured contract**.

**We** will also pay with respect to a **suit we** defend:

A. the expenses **we** incur;

B. the cost of:

1. bail bonds; or
2. bonds required to appeal judgments or release attachments,

but only for bond amounts within the available Limit of Insurance. **We** will not apply for or furnish these bonds;

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C. reasonable expenses incurred at **our** request by any **insured we** are defending to assist **us** in the investigation or defense of such **suit**, including actual loss of earnings up to $1,000 a day because of time off from work;

D. costs taxed against the **insured we** are defending, except any cost in connection with any injunction or other equitable relief. However, '"costs" do not include attorney fees;

E. prejudgment interest awarded against the **insured** on that part of a judgment **we** pay. If **we** make an offer to pay the applicable Limits of Insurance, **we** will not pay any prejudgment interest based on the period of time after the offer; and

F. interest on the full amount of a judgment that accrues after entry of the judgment and before **we** have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limits of Insurance.

In addition, **we** will pay, with respect to a **claim we** investigate or settle:

A. the expenses **we** incur; and

B. reasonable expenses incurred at **our** request by any **insured** with respect to the **claim** to assist **us** in the investigation of such **claim**, including actual loss of earnings up to $1,000 a day because of time off work.

**Our** obligation to make these payments ends when **we** have used up the applicable Limits of Insurance; however, these payments will not reduce the Limits of Insurance.

If **we** are prevented by law from investigating or settling any **claim** or defending any **insured** against any **suit**, **we** will pay any expense incurred by any **insured** with **our** consent.

## V. WHAT IS NOT COVERED

**Coverage A Exclusions**
**(Follow Form Excess Commercial Liability)**

**We** will not make payment under Coverage A for:

Obligations of Underlying Insurance

A. any liability or obligation under any **covered amount** under **underlying insurance** which is, by law, unlimited.

Underlying Insurance Exclusions

B. any **damages** which are not a **covered amount** under **underlying insurance**.

Changes to Underlying Insurance

C. any changes to the **underlying insurance** after the inception date of this Policy, unless expressly agreed to by **us** in writing by endorsement to this Policy and **you** have paid to **us** any additional premium **we** may require in connection with such change.

**Coverage B Exclusions**
**(Commercial Umbrella)**

**We** will not make payment under Coverage B for:

**Advertising Injury or Personal Injury Exclusions**

A. any **claim** or **suit** (including **defense costs**) for **advertising injury** or **personal injury** arising out of or due to:

Breach of Contract

1. breach of contract. However, this exclusion will not apply to breach of an implied contract for the use of a third party's idea in **your advertisement**.

Continuing Offenses

2. that part of an offense that continues or resumes after the later of the end of the **policy period** of:

   a. this Policy; or

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b. a subsequent, continuous renewal or replacement of this Policy that:

(1) is issued to **you** by **us** or by an affiliate of **ours**;

(2) remains in force while the offense continues; and

(3) would otherwise apply to **advertising injury** and **personal injury**;

whichever is latest.

Contracts

3. **damages** which **you** are obligated to pay by reason of liability assumed in a contract or agreement. However, this exclusion does not apply to liability for **damages**:

a. that the **insured** would have in the absence of such contract or agreement; or

b. assumed in a written contract or agreement that is an **insured contract**, provided the **advertising injury** or **personal injury** to which this Coverage Section applies is caused by an offense first committed after such contract or agreement has been fully executed.

Crime or Fraud

4. any criminal or fraudulent conduct or act committed by or with the consent or knowledge of an **insured**.

Expected or Intended

5. an offense committed by, at the direction of or with the consent or acquiesence of an **insured** with the intent or expectation of causing such **advertising injury** or **personal injury**.

Failure to Conform to Representations or Warranties

6. the failure of goods, **your product** or services to conform to any electronic, oral, written or other statement, representation or warranty of durability, fitness, performance, quality or use whether express or implied.

Insureds in Media and Internet-Type Business

7. acts committed by any **insured** whose business is:

a. advertising, broadcasting or publishing;

b. designing or determining content of websites for others; or

c. an internet search, access, content or service provider.

However, this exclusion does not apply to **personal injury** caused by:

a. false arrest, detention or imprisonment;

b. malicious prosecution;

c. 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, committed by or on behalf of its owner, landlord or lessor.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for **you** or others anywhere on the internet is not, by itself, considered the business of advertising, broadcasting or publishing.

Intellectual Property Law or Right

8. any actual or alleged injury arising out of, giving rise to or in any way related to a **claim** of infringement or violation by any individual or entity (including **you**) of any **intellectual property law or right**, regardless of whether this Coverage Section would otherwise apply to all or part of such injury or damage in the absence of such **claim**, infringement or violation.

This exclusion applies unless such injury:

a. is caused by an offense described in the definition of **advertising**

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**injury**; and

b. does not arise out of, give rise to or in any way relate to any infringement or violation of any **intellectual property law or right** other than one described in the definition of **advertising injury**.

Internet

9. a. an electronic chatroom or bulletin board that an **insured** hosts or owns or over which the **insured** exercises control;

b. the unauthorized use of another's name or product in an **insured's** e-mail address, domain name or metatag, or any other similar tactic to mislead another's potential customers.

Material Published

10. any electronic, oral, written or other publication of content or material by or with an **insured's** consent:

a. with knowledge of its falsity; or

b. if a reasonable person in the insured's circumstances would have known such content or material to be false.

Prior Offenses

11. any offense first committed prior to the beginning of the **policy period**.

Wrong Description of Prices

12. the wrong description of the prices of goods, **your** products or services.

**Bodily Injury or Property Damage Exclusions**

B. any **claim** or **suit** (including **defense costs**) for **bodily injury** or **property damage** arising out of or due to:

Advertising and Personal Injury

1. any **bodily injury** arising out of **advertising injury** or **personal injury**.

Aircraft

2. the ownership, maintenance, use (use includes **loading or unloading**) or entrustment to others of any aircraft.

Alcoholic Beverages

3. **bodily injury** or **property damage** for which any **insured** may be held liable by reason of:

a. causing or contributing to the intoxication of any individual;

b. furnishing alcoholic beverages to an individual under the legal drinking age or under the influence of alcohol; or

c. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

However, this exclusion only applies if such **insured** are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

Auto

4. the ownership, maintenance, use (use includes **loading or unloading**) or entrustment to others of any **auto**. However, this exclusion does not apply to **bodily injury** or **property damage** caused by a covered **auto** arising out of an **occurrence** that takes place outside of the United States of America (including its possessions or territories), Canada and Puerto Rico.

Contracts

5. **damages** that an **insured** is legally obligated to pay by reason of liability assumed in a contract or agreement. However, this exclusion does not apply to liability for **damages**:

a. that such **insured** would have in the absence of such contract or agreement; or

b. assumed in an oral or written contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage** occurs after such contract or agreement has been fully executed.

Expected or Intended Injury

6. **bodily injury** or **property damage** intended by or which may reasonably be expected to result from intentional acts or failure to act of an **insured**, even if the actual **bodily injury** or **property damage** is

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a different degree or type than intended or expected. However, this exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect person or property.

Loss in Progress

7. a change, continuation or resumption of any **bodily injury** or **property damage** known by **you**, prior to the beginning of the **policy period**, to have occurred.

   **Bodily injury** or **property damage** will be deemed to be known by **you**:

   a. if such injury or damage is, or with reasonable diligence should have been known, by:

      (1) **you**;

      (2) any of **your** directors, managers, members, **officers** (or their designees), joint venturers or partners (whether or not an **employee);** and

   b. when any person described in paragraph 7.a above:

      (1) reports all, or any part, of any such injury or damage to **us** or any other insurer;

      (2) receives a **claim** or a demand for **damages** because of such injury or damage; or

      (3) becomes aware that such injury or damage has occurred or has begun to occur.

Watercraft

8. the ownership, maintenance, use (including **loading or unloading**) or entrustment to others of any watercraft. However, this exclusion does not apply to a watercraft:

   a. while ashore on premises owned by or rented to **you**; or

   b. that is not owned, in whole or in part, by **you**, provided that it:

      (1) is less than 55 feet long; and

      (2) does not transport individuals or cargo for a charge;

Employers Liability

9. a. **bodily injury** to an **employee** or **temporary worker** of an **insured** arising out of and in the course of:

      (1) employment by such **insured**; or

      (2) performing duties related to the conduct of **your** business.

   b. **bodily injury** to the brother, child, parent, sister or spouse of such injured person, as a consequence of any injury or damage described in paragraph B8a above.

   This exclusion applies:

   a. whether an **insured** may be liable as an employer or in any other capacity; and

   b. to any obligation to share **damages** with or repay someone else who must pay **damages** because of any injury or damage described in paragraphs B.9.a or B.9.b above.

**Property Damage Exclusions**

C. any **claim** or **suit** (including **defense costs**) for **property damage** arising out of or due to:

Damage to Alienated Premises

1. any premises **you** sell, give away or abandon if the **property damage** arises out of any part of those premises. However, this exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by **you.**

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Damage to Impaired Property or Property Not Physically Injured

2. arising out of defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**, or delay or failure by **you** or anyone acting on **your** behalf to perform a contract or agreement in accordance with its terms and conditions, to:

   a. **impaired property;** or

   b. property that has not been physically injured.

   However, this exclusion does not apply to the loss of use of other tangible property resulting from sudden and accidental physical injury to your product or **your work** after it has been put to its intended use.

Damage to Property

3. any property:

   a. owned by an **insured**;

   b. loaned to an **insured**;

   c. rented to an **insured**; or

   d. any personal property in the care, custody or control of an **insured**.

Damage to Your Product, Work or Related Property

4. any part of:

   a. **your product**;

   b. **your work**, including without limitation:

      (1) that particular part of real property on which **you** or any contractor working on **your** behalf is performing operations, if the **property damage** arises out of those operations; or

      (2) that particular part of any property that must be restored, repaired or replaced because **your** work was incorrectly performed on it.

      However, this exclusion does not apply if the damaged work or the work causing the damage was performed on **your** behalf by a subcontractor.

Recall of Products

5. any **damages** claimed for any **claim**, cost or expense incurred by **you** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

   a. **your product**;

   b. **your work**; or

   c. **impaired property**;

   if such product, work or property is withdrawn or recalled from the market or from use by any individual or entitity because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**Coverage A and Coverage B Exclusions**

A. **We** will not make payment under Coverage A or Coverage B for an **insured's** actual or alleged liability:

Biological Agents

1. a. arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of biological agents; or

   b. arising out of any:

      (1) request, demand, order or regulatory or statutory requirement that **you** 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 biological agents; or

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(2) claim or proceeding by or on behalf of a governmental authority or others for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of any biological agents.

ERISA

2. under the United States Employees' Retirement Income Security Act (ERISA) of 1974 or any similar federal or state law as now constituted or hereafter enacted or amended.

Distribution of Material in Violation of Statutes

3. arising directly or indirectly out of any act or failure to act that violates or is alleged to violate:
   a. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
   b. the CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
   c. any other statute, ordinance or regulation that prohibits or limits the sending, transmitting, communication or distribution of material or information.

Electronic Data

4. arising out of or due to the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

Employment-Related Practices

5. arising out of any employment-related or personnel practices, policies, acts or failure to act. This includes but is not limited to:
   a. failure or refusal to advance, compensate, employ or promote;
   b. termination of employment;
   c. coercion, criticism, humiliation, prosecution or retaliation;
   d. demotion, discipline, evaluation or reassignment;
   e. defamation or disparagement;
   f. discrimination, harassment or segregation;
   g. libel or slander;
   h. arrest, detention or imprisonment;
   i. invasion or other violation of any right of privacy or publicity; or
   j. any other employment-related act, failure to act, policy, practice, representation or relationship in connection with you at any time.

   This exclusion applies:
   a. to all **claims**, demands, charges, complaints or suits by any person(s) or organization(s) for **damages** because of such injury or liability, including **damages** for care and loss of services;
   b. whether any **insured** may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
   c. to any obligation to share **damages** with or repay someone else who must pay **damages** because of such injury or liability.

Lead

6. arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of lead. However, this exclusion will not apply to:
   a. any request, demand or order 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 effect of lead; or

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b. any **claim** or **suit** by or on behalf of a governmental authority or others for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing or in any way responding to or assessing the effects of lead.

Pollution

7. a. or medical expenses which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:

(1) at or from any premises, site or location which is or was at any time owned or occupied by, or loaned or rented to any **insured**; however, this does not apply to **bodily injury** or **property damage** if sustained within a building and caused by the escape of gaseous irritants or contaminants from equipment used to heat the building or caused by heat, smoke or fumes from a **hostile fire**;

(2) at or from any premises, site or location which is or was at any time used by any **insured** or any other person or organization for the handling, storage, disposal, processing or treatment of waste;

(3) which are or were at any time transported, handled, stored, disposed of, processed or treated as waste by or for any **insured** or for any person or organization for whom any **insured** is legally liable;

(4) at or from any premises, site or location on which any **insured** or any contractor or subcontractor working directly or indirectly on such **insured's** behalf is performing operations if the:

(a) **pollutants** are brought on or to the premises, site or location in connection such operations by any **insured** or such **insured's** contractor or subcontractor; or

(b) 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**.

However, subparagraph (4).(a) above does not apply to **bodily injury** or **property damage** caused by 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 operating fluids escape directly from the particular part of such **mobile equipment** designed by its manufacturer to hold, store or receive them. But this exception does not apply if such **bodily injury** or **property damage** arises out of the dispersal, discharge, seepage, migration, release or escape of **pollutants** that:

(a) was intended by any **insured**;

(b) would have been expected from the standpoint of a reasonable person in any **insured's** situation;

(c) was a necessary part of operations performed by an . **insured** or an **insured's** contractor or subcontractor; or

(d). occurred during the process of fueling mobile equipment or changing or replenishing any operating fluid.

Subparagraph (4).(a) above also does not apply to **bodily injury** or **property damage** caused by heat, smoke or fumes from a **hostile fire**.

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b. 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, neutralize or in any way respond to or assess the effects of **pollutants.** However, this subparagraph does not apply to liability for **bodily injury** or **property damage** that the **insured** would have in the absence of such request, demand, order or regulatory or statutory requirement, or such **claim** or proceeding on or on behalf of a governmental authority; or

(2) **claim** or **suit** by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing or in any way responding to or assessing the effects of **pollutants**.

B. **We** will not make payment under Coverage A or Coverage B for any **claim** or **suit** (including **defense costs**) for:

Enhancement, Maintenance or Prevention Expenses

1. any loss, cost or expense incurredy by **you** or others for any:
   a. enhancement or maintenance of any property; or
   b. prevention of any injury or damage to any individual or entity or property the **insured** owns, rents or occupies.

Uninsured Motorist / No Fault Laws

2. any **damages** an **insured** sustains or costs, expenses or obligations the **insured** incurs under any:
   a. medical expenses or payments coverage;
   b. no-fault law;
   c. personal injury protection coverage;
   d. underinsured or uninsured financial responsibility law; or
   e. similar coverage or law.

Workers' Compensation or Disability

3. any **damages** or benefits an **insured** is legally required to provide or voluntarily provides under any:
   a. workers' compensation law;
   b. unemployment compensation law;
   c. disability benefits law;
   d. occupational disease law;
   e. United States Longshoreman & Harbor Workers' Compensation Act (USL&H);
   f. Federal Merchant Marine Act (i.e., Jones Act); or
   g. Death on the High Seas Act; or
   h. other similar laws.

## VI. BASIS OF SETTLEMENT

This Coverage Section will not apply until **you** or the underlying insurance company is obligated to pay the full amount of the **underlying insurance** limits of insurance with **covered amounts**. When the amount of judgment or settlement has finally been determined, **we** will pay on **your** behalf the amount of **damages** which falls within the terms of this Coverage Section.

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## VII. YOUR OBLIGATIONS

Additional Duties in the Event of a Claim or Suit Against You

A. In addition to your duties in the Entertainment Policy Jacket, **you** must see to it that **we** and any **underlying insurance** companies are notified as soon as practicable of any **occurrence** or offense that may result in a **claim** or **suit.**

B. If a **claim** or loss does not reasonably appear to involve either this insurance or any **underlying insurance**, but it later develops into a **claim** or **suit** to which this coverage applies, the failure to report it to **us** will not violate **your** duties, provided **you** give **us** immediate notice as soon as **you** are aware that this coverage may apply to such **claim** or **suit**.

## VIII. SPECIAL CONDITIONS

Appeals

**We** may, at **our** discretion, initiate or participate in an appeal of a judgment, if such judgment may result in a payment under this Coverage Section.

If **we** initiate or participate in an appeal, **we** will pay **our** costs of the appeal, but in no case will the amount **we** pay for **damages** exceed the applicable Limit(s) of Insurance.

Bankruptcy

A. Bankruptcy or insolvency of **you** or **your** estate shall not relieve **us** of any of **our** obligations under this Coverage Section.

B. If any underlying insurance company becomes bankrupt or insolvent, this Coverage Section:

1. does not replace such **underlying insurance**; and
2. applies as though such **underlying insurance** were available and collectible.

Maintenance of Underlying Insurance and Underlying Limits

**We** have issued this Coverage Section based on representations made by **you** about **underlying insurance**. **You** must ensure that:

A. the **underlying insurance** as scheduled in the Schedule of Commercial Underlying Insurance and Limits in the Declarations remain in full force during the **policy period**. **We** shall have no obligation to pay any **covered amounts** unless and until the limits of liability of all **underlying insurance** and any applicable retentions or deductibles have been fully paid.

B. **underlying insurance** will not be cancelled, non-renewed or rescinded without replacement coverage unless expressly agreed to by **us** in writing by endorsement to this Coverage Section.

C. the terms and conditions of **underlying insurance** will not materially change, unless expressly agreed to by **us** in writing by endorsement to this Coverage Section and **you** have paid to **us** any additional premium **we** may require in connection with such change.

D. the terms and conditions of renewals or replacements of **underlying insurance**, shown in the Schedule of Commercial Underlying Insurance and Limits will be materially the same as the prior coverage, unless expressly agreed to by **us** in writing by endorsement to this Coverage Section.

E. the **underlying limits** are and remain available. **We** shall have no obligation to pay any amounts unpaid by any of the **underlying insurance** due to the insolvency, bankruptcy, conservatorship, rehabilitation, liquidation, or any similar condition or proceeding as to any such underlying insurance company. Any such unpaid amounts shall remain the obligation and responsibility of **you** and the other persons or entities insured by the **underlying insurance**.

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In the event of any failure to comply with this condition, **our** obligation or liability will not exceed that which would have applied absent such failure to comply.

**You** must notify **us** as soon as practicable if any **underlying insurance** is no longer valid or in full force or effect.

Other Insurance

If other valid and collectible insurance is available to **you** for a **claim we** would otherwise cover under this Coverage Section, our obligations are limited as follows:

This coverage is excess over any **other insurance,** whether primary, excess, contingent or on any other basis.

**We** will have no duty to defend **you** against any **suit** if any provider of any **other insurance** has a duty to defend **you** against such **suit**.

**We** will pay only **our** share of the amount of **suit** that exceeds the sum of the total:

A. amount that all **other insurance** would pay for **suit** in the absence of this insurance; and

B. all deductible and self-insured amounts under all **other insurance.**

This Coverage Section is not subject to the terms or conditions of any **other insurance.**

Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Section to the first named **insured**, this Coverage Section applies:

A. as if each **insured** were the only **insured**; and

B. separately to each **insured** against whom **claim** is made or **suit** is brought.

## IX. SPECIAL DEFINITIONS FOR THIS SECTION

**Advertisement**

Means a notice about the **insured's** goods, products, or services that is published or broadcast to the general public or a specific marketing segment for the purpose of attracting the general public to use such goods, products or services. For the purposes of this definition:

A. notices that are published include material placed on the internet or on other similar electronic means of communication; and

B. with regard to websites, only that part of the website that is about your goods, products or services for the purposes of attracting the general public is considered an advertisement.

**Advertising Injury**

Means injury, other than **bodily injury, property damage** or **personal injury**, sustained by any third party and caused by an offense of infringement of copyright, trademark, trade dress or slogan or the use of a third party's idea in **your advertisement**.

**Auto**

Means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But **auto** does not include **mobile equipment**.

**Biological Agents**

Means any:

A. 1. bacteria;

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2. mildew, mold or fungi;
3. other microorganisms; or
4. mycotoxins, spores or other by-products of any of the foregoing;

B. viruses or other pathogens (whether or not a microorganism); or

C. colony or group of any of the foregoing.

**Bodily Injury**

Means physical injury, sickness or disease sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

**Coverage Territory**

Means anywhere in the world, provided the **insured**'s responsibility to pay **damages** is determined in a **suit** brought in the United States (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which **we** agree.

**Covered Amounts**

Means those sums that **underlying insurance** is obligated to pay in accordance with the applicable limits of liability and other terms and conditions.

**Covered Auto**

Means only those **autos** to which **underlying insurance** applies.

**Damages**

A. Means with respect to Coverage A any monetary amounts the **insured** becomes legally obligated to pay as a result of any judgment, settlement or arbitration award in connection with a **claim** or **suit** insured under this Coverage A, but not including any civil, regulatory or criminal fines, restitution, disgorgement, sanctions, taxes or penalties, including those imposed by any federal, state or local governmental body or prejudgment interest or post-judgment interest, except as provided for in HOW MUCH WE WILL PAY.

B. Means with respect to Coverage B any monetary amounts not covered by **underlying insurance** the **insured** becomes legally obligated to pay as a result of any judgment, settlement, or arbitration award in connection with a **claim** or **suit** insured under this Coverage B, but not including any civil, regulatory or criminal fines, restitution, disgorgement, sanctions, taxes, or penalties, including those imposed by any federal, state, local governmental body or prejudgment interest or post-judgment interest, except as provided for in HOW MUCH WE WILL PAY.

C. Includes, with respect to **damages** for **bodily injury** under Coverage B, damages claimed by a person or organization for care or loss of services resulting at any time from the **bodily injury.**

D. Does not include, with respect to both Coverage A and Coverage B, sums properly deducted for recoveries or salvage.

**Employee**

Means any individual employed by **you**, including any **leased worker**; however, this does not include a **temporary worker**.

**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 or conditions 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 or conditions of the contract or agreement.

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**Insured Contract**

Means an oral or written contract or agreement pertaining to **your** business in which **you** assume the tort liability of another person or organization to pay **damages** to which this Coverage Section applies sustained by a third person or organization, provided the injury or damage occurs, or is caused by an offense that is first committed, after such contract or agreement has been fully executed.

**Intellectual Property Law or Right**

Means any:

A. common law or statutory intellectual property rights including patent, copyright, trademark, trade name, trade dress, service name, service mark, music or moral rights or an act of passing-off;

B. right to, or judicial or statutory law recognizing an interest in, any trade secret or confidential or proprietary non-personal information;

C. unauthorized use or misappropriation of any formats, ideas, characters, trade names, titles, musical compositions, performances, voices, merchandising, slogans, symbol, graphic material or artwork or other intellectual property; or

D. other judicial or statutory law concerning unfair competition or other similar practices.

**Lead**

Means the element lead in any form, including its use or presence in any alloy, compound or by-product or other material waste. Waste includes materials to be recycled, or reconditioned or reclaimed.

**Leased Worker**

Means any individual leased to an **insured** by a labor leasing firm or payroll company to perform duties related to the conduct of the **insured's** business. However, this does not include a **temporary worker.**

**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, **auto** or watercraft;

B. while it is in or on an aircraft, **auto** or watercraft; or

C. while it is being moved from an aircraft, **auto** or watercraft to the place where it is finally delivered.

Loading or unloading does not mean the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, **auto** or watercraft.

**Medical Expense**

Means reasonable expenses for necessary:

A. first aid administered at the time of an accident;

B. medical, chiropractic, naturopathic, surgical, x-ray and dental services, including prosthetic devices; and

C. ambulance, hospital, professional nursing and funeral services.

**Mobile Equipment**

Means any of the following types of land vehicles, includign any attached machinery or equipment:

A. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

B. vehicles maintained for use solely on premises owned by or rented to **you**;

C. vehicles that travel on crawler treads;

D. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

1. power cranes, shovels, loaders, diggers or drills; or

2. road construction or resurfacing equipment such as graders, scrapers or

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rollers;

E. vehicles not described in A,B,C or D above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

1. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
2. cherry pickers and similar devices used to raise or lower workers; and

F. vehicles not described in A, B, C or D above maintained primarily for purposes other than the transportation of persons or cargo.

Mobile equipment does not include self-propelled vehicles with the following types of permanently attached equipment, and such vehicles will be considered **autos:**

1. equipment designed primarily for:
   a. snow removal;
   b. road maintenance, but not construction or resurfacing; or
   c. street clearing or cleaning;
2. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
3. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**Occurrence**

Under Coverage B, occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, that occurs within the **coverage territory**.

**Officer**

Means a person holding any of the officer positions created by an organization's charter, constitution, by-laws or other similar governing documents.

**Other Insurance**

Means any insurance that is available to any **insured** affording coverage that this Coverage Section would also afford. Other insurance includes any type of self-insurance or other mechanism arranged for funding of **damages.** However, it does not include **underlying insurance** or insurance negotiated specifically to apply in excess of this Coverage Section.

**Personal Injury**

Means injury arising out of one or more of the following offenses:

A. false arrest, detention or other false imprisonment;

B. malicious prosecution;

C. 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, comitted by or on behalf of its owner, landlord or lessor;

D. oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

E. oral or writen publication, in any manner, of material that violates a person's right to privcy.

F. discrimination, harassment or segregation based on a person's age, color, national origin, race, religion or sex.

**Pollutants**

Means any solid, liquid, gaseous or thermal irritant or contaminant, including

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smoke, vapor, soot, ash, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Products-Completed Operations Hazard**

A. Includes all **bodily injury** and **property damage** taking place away from premises owned, occupied by, loaned or rented to **you** 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 completed at the earliest of the following times:

   a. when all of the work called for in **your** contract or agreement has been completed.

   b. when all of the work to be performed at the site has been completed, if **your** contract or agreement calls for work at more than one site.

   c. when that part of the work completed at a 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 results from a condition in or on a vehicle not owned or operated by or loaned or rented to **you** and that condition was created by the **loading or unloading** of that vehicle by **you**;
2. the existence of tools, uninstalled equipment or abandoned or unused materials; or
3. products or operations for which the classification in our rules indicates that such products or operations are not subject to the Products-Completed Aggregate Limit of Insurance.

**Property Damage**

Means:

A. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

B. loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.

Tangible property does not include any software, data or other information that is in electronic form.

**Temporary Worker**

Means an individual who is furnished to **you** to substitute for a permanent **employee** on leave or to meet seasonal or short-term work load conditions.

**Underlying Insurance**

Means the policy or policies of insurance stated in the Schedule of Commercial Underlying Insurance and Limits as stated in the Declarations and the next renewal or replacement insurance thereof.

**Underlying Limits**

Means the amounts:

A. stated in the Schedule of Commercial Underlying Insurance and Limits as stated in the Declarations, as applicable, consisting of amounts:

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1. available under applicable **underlying insurance**; and
2. **you** must pay because **underlying insurance**, as represented by **you**, is not available, regardless of the reason.

**Your Product**

A. Means any:

1. 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 assets or business **you** have acquired; and

B. Includes:

1. representations or warranties made at any time with respect to the durability, fitness, performance, quality or use of your product; and
2. the providing of or failure to provide instructions.

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

**Your Work**

A. Means:

1. work or operations performed by **you** or on **your** behalf or an individual or entity whose assets or business **you** have acquired; and
2. materials, parts or equipment furnished in connection with such work or operations:

B. Includes:

1. representations or warranties made at any time with respect to the durability, fitness, performance, quality or use of your work; and
2. the providing of or failure to provide instructions or warnings.

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