



## GENERAL LIABILITY AND PRODUCTS/COMPLETED OPERATIONS LIABILITY CLAIMS MADE INSURANCE

**NOTICE:** This is a Claims Made **Policy**. Except to such extent as may otherwise be provided herein, the coverage afforded under this **Insurance** is limited to those **Claims** which are first made against the **Insured** during the **Policy Period**. **Damages** and **Claims Expenses** shall be applied against the Deductible. Certain words and phrases which appear in bold type have the special meaning agreed by the parties in Clause V., Definitions. Words with capitalized first letters only shall have the further meaning provided in the Declarations or as the context may require. Please review the coverage provided by this **Insurance** carefully and discuss it with your insurance agent or broker.

In consideration of the payment of premium and in reliance upon the statements, representations and warranties made in the application forming part of this **Insurance**, the Underwriters agree with the **Named Insured** as follows:

### I. INSURING AGREEMENTS

Subject to the Limit of Liability, exclusions, conditions, limitations and other terms of this **Insurance**, the Underwriters shall pay a **Claim** only if that **Claim**:

1. arises out of an **Accident** or negligent act, error or omission that takes place after the Retroactive Date and before the Expiration Date;
2. is first made against any **Insured** during the **Policy Period**; and
3. falls within one of the Insuring Agreements A.1-6 below and coverage under that Insuring Agreement has been purchased by the **Insured**.

#### A. Coverage

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses** which the **Insured** shall become legally obligated to pay in respect of any **Claim**:

1. General Liability (Bodily Injury and Property Damage)  
for **Bodily Injury** and **Property Damage** caused by an **Accident**;
2. General Liability (Personal Injury or Advertising Liability)  
for **Personal Injury** or **Advertising Liability** caused by an **Accident**;

3. Products/Completed Operations Liability

for Products/Completed Operations Liability caused by an **Accident** arising out of the **Products/Completed Operations Liability Hazard** involving a **Nutraceutical**;

4. Employee Benefits Liability

for Employee Benefits Liability caused by any negligent act, error or omission of the **Insured** in the **Administration** of the **Insured's Employee Benefits Program**;

5. Medical Expenses

for **Medical Expenses** for **Bodily Injury** arising out of any **Accident**; provided that such **Accident** occurs:

(a) on premises the **Named Insured** owns or rents;

(b) on ways next to the premises the **Named Insured** owns or rents;  
or

(c) during the course of the **Named Insured's** operations; and

(d) the injured person submits to examination, at the Underwriters' expense, by physicians of the Underwriters' choice as often as the Underwriters reasonably require. The Underwriters' rights of examination are discretionary and not obligatory.

Subject to the above the Underwriters will pay such **Medical Expenses** regardless of fault.

6. Products Recall Expense

for **Products Recall Expense**, incurred by the **Named Insured** for the withdrawal of the **Named Insured's Products** which were manufactured on or after the Retroactive Date, where such withdrawal is made necessary by reason of:

(a) a determination by the **Insured** during the **Policy Period** that the use or consumption of such products is reasonably likely to result in **Bodily Injury** or **Property Damage** caused by a **Recall Occurrence**; or

(b) by order of a Federal or other regulatory body;

provided that any such expenses are incurred and reported to the Underwriters within 180 days of the date on which the **Recall Occurrence** was initiated by the first of the above two events.

B. Defense and Settlement

1. The Underwriters shall have the right and duty to defend the **Insured** for any **Claim** first made against the **Insured** and notified to the Underwriters in accordance with Clause X., even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Underwriters shall choose defense counsel in conjunction with the **Insured**, but in the event of disagreement, the decision of the Underwriters is final and binding.
2. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Deductible.
3. The Underwriters shall have the right to conduct any investigation they deem necessary, including any investigation with respect to coverage and statements made in the application.
4. The Underwriters shall pay all premiums on bonds to release attachments, all premiums on appeal bonds required in any such defended suit (but without any obligation to apply for or furnish such bonds), all costs taxed against the **Insured** in any suit, and all interest accruing after entry of judgment until the Underwriters have paid, tendered or deposited in court part of such judgment as does not exceed the Limit of Liability.
5. The Underwriters shall reimburse the **Insured** for all reasonable expenses, other than loss of earnings, incurred at the Underwriters' request and within the Limit of Liability.
6. The Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue the defense of any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses** or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense of the **Claim** without further liability by tendering control of such defense to the **Insured**.

## II. PERSONS INSURED

Each of the following is an **Insured** under this **Insurance** to the extent specified below:

- (a) the **Named Insured** identified in Item 1. of the Declarations;
- (b) if the **Named Insured** is an individual, the person so designated but only with respect to the conduct of the business of which he is the sole proprietor, and the spouse of the **Named Insured** with respect to the conduct of such a business, and any **Employee** while acting within the scope of his duties;
- (c) if the **Named Insured** is a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability and any **Employee** while acting within the scope of his duties;
- (d) if the **Named Insured** is a limited liability company, the limited liability company so designated and any manager thereof but only with respect to his liability and any **Employee** while acting within the scope of his duties;
- (e) if the **Named Insured** is other than an individual, partnership or joint venture, the organization so designated and any executive officer, director, stockholder or **Employee** of such organization thereof while acting within the scope of his duties;

provided, however, that coverage afforded under II. (b) - (e) above to such **Employee** does not apply:

- (1) to **Bodily Injury, Personal Injury or Advertising Liability**
  - (i) to the **Named Insured**, the **Named Insured's** partners, the **Named Insured's** members, or to a co-employee while in the course of his employment or performing duties related to the conduct of the **Named Insured's** business;
  - (ii) to the spouse, child, parent, brother or sister of that co-employee as a consequence of clause II. (e) (1) (i) above; or
  - (iii) for which there is any obligation to share **Damages** with or repay someone else who must pay **Damages** because of the injury described in clause II. (e) (1) (i) or (ii) above.
- (2) to **Property Damage** to property:
  - (i) owned, occupied or used by; or

- (ii) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by:

the **Named Insured**, any **Employee** or any partner or member of the **Named Insured**;

- (f) with respect to the operation, for the purpose of locomotion upon a public highway, of **Mobile Equipment** registered in the name of the **Named Insured** under any applicable motor vehicle registration law;
  - (1) an **Employee** of the **Named Insured** while operating any such equipment in the course of his employment by the **Named Insured**;  
or
  - (2) any other person while operating with the permission of the **Named Insured** any such equipment and any person or organization legally responsible for such person but only with respect to liability arising out of such operation and where there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;

provided, however, that no person or organization shall be an **Insured** under this clause II. (f) with respect to:

- (i) **Bodily Injury** to any co-employee of such person operating any such equipment; or
  - (ii) **Property Damage** to property owned by, rented to, in the charge of or occupied by the **Named Insured** or the employer or any person described in subclause (f) (2) above;
- (g) solely with respect to the coverage provided under Insuring Agreement I.A.3., any person or organization that is a vendor of the **Named Insured** (hereafter referred to as "Vendor"), but only with respect to the sale in the regular course of the Vendor's business of the **Named Insured's Products** if the **Named Insured** is required, pursuant to a written contract or agreement executed prior to such sale, to provide such person or organization with such coverage. However, such coverage shall not apply to any liability arising out of:
    - (1) any warranty or representation unauthorized by the **Named Insured**;
    - (2) any act of the Vendor which changes the condition or composition of the **Named Insured's Products**;
    - (3) any failure to maintain the **Named Insured's Products** in a merchantable condition;

- (4) any assumption of liability by the Vendor in any contract or agreement, provided, however, that this provision shall not apply to any liability for **Damages** that the Vendor would have in the absence of such contract or agreement;
- (5) any failure to make such inspections, adjustments, tests or servicing as the Vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the **Named Insured's Products**, or any failure to remove from sale or distribution the **Named Insured's Products** once the shelf life or expiration date of such product has been reached;
- (6) any **Named Insured's Products** which after distribution or sale by the **Named Insured** have been labeled, repackaged or relabeled or used as a container, part or ingredient of any other product, thing or substance by or for the Vendor; or
- (7) the negligence of the Vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf, including the formulation, devising, methodology, or organization or combination of techniques or ingredients, in the production of the **Named Insured's Products** by the Vendor;

The coverage provided herein does not apply to any person or organization from whom the **Named Insured** has acquired such products or any ingredient, part or container, entering into, accompanying or containing such products.

- (h) any person or entity who previously qualified as an **Insured** prior to the termination of the required relationship with the **Named Insured**, but solely with respect to an **Accident** or negligent act, error or omission that occurred prior to the termination of the required relationship with the **Named Insured**;
- (i) the estate, heirs, executor, administrators, assigns and legal representatives of any **Insured** in the event of the **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided with coverage under this **Policy**; or
- (j) solely with respect to the coverage provided under Insuring Agreement I.A.1., any person or organization that is a landlord or lessor that might be held vicariously liable solely because such liability arose as a result of the ownership or possession of property or premises on or at which any such liability arose in the regular course of the business of the **Named Insured** (including trade shows or fairs) if the **Named Insured** is required, pursuant to a written contract or agreement executed prior to such sale, to provide such person or organization with such coverage.

### III. TERRITORY

This **Insurance** applies to **Claims** brought anywhere in the world regardless of where the negligent act, error, omission or **Accident** takes place or where a **Claim** is brought, except that **Products Recall Expense** applies only to those **Products Recall Expenses** incurred in the United States of America, its territories or Canada.

### IV. EXCLUSIONS

#### 1. Exclusions applicable to Insuring Agreement I.A.1, General Liability

The coverage under Insuring Agreement I.A.1 **General Liability** of this **Policy** does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- (a) arising out of **Property Damage** to:
  - (1) property owned or occupied by or rented to the **Insured**;
  - (2) property loaned to the **Insured**;
  - (3) personal property in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising physical control;
  - (4) that particular part of any property:
    - (i) upon which operations are being performed by or on behalf of the **Insured** if the **Property Damage** arises out of those operations; or
    - (ii) the restoration, repair or replacement of which has been made or is necessary owing to faulty workmanship thereon by or on behalf of the **Insured**; provided, however, that this subclause shall not apply with respect to **Property Damage** included in the **Products/Completed Operations Liability Hazard**;
  - (5) premises that the **Named Insured** sells, gives away or abandons, if the **Property Damage** arises out of any part of those premises; provided, however, that this subclause shall not apply if the premises are included in the **Products/Completed Operations Liability Hazard** and were never occupied, rented or held for rental by the **Named Insured**; or
  - (6) work performed by the **Insured** arising out of such work or any portion thereof, or out of such materials, parts or

equipment furnished in connection therewith with respect to the **Products/Completed Operations Liability Hazard**;

provided, however, that subclauses (2), (3) and (4) of this clause (a) shall not apply with respect to liability under a written sidetrack agreement;

Further, subclauses (1), (2) and (3) of this clause (a) shall not apply to **Property Damage** to premises, including the contents of such premises, rented to the **Insured** for a period of seven (7) or fewer consecutive days. Subclauses (1), (2) and (3) shall not apply to damage by fire to premises while rented by the **Named Insured**, or occupied by the **Named Insured** with the permission of the owner of the premises. A Limit of Liability applies to this coverage under IV. 1. A, as described in clause VI. Limit of Liability, A.4.8. Damage to Premises and Item 4. 8. of the Declarations.

(b) for liability arising out of **Bodily Injury** or **Property Damage** arising out of ownership, maintenance, operation, use or entrustment to others, **Loading or Unloading** of:

(1) any **Automobile**, aircraft or watercraft owned or operated by or rented or loaned to any **Insured**; or

(2) any other **Automobile**, aircraft or watercraft operated by any person in the course of their employment for any **Insured**;

provided, however, that this exclusion shall not apply to:

(i) the parking of an **Automobile** on premises owned by, rented to or controlled by the **Named Insured** or on ways next to such premises, if such **Automobile** is not owned or rented or loaned to any **Insured**;

(ii) a watercraft while ashore on premises owned by, rented to or controlled by the **Named Insured**; or

(iii) a watercraft that is less than twenty-six (26) feet in length, that is not owned by the **Named Insured** and that is not being used to carry persons or property for a charge;

(c) arising out of **Bodily Injury** or **Property Damage** arising out of:

(1) 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 such contest or activity; or



- (2) the operation or use of any snowmobile, motorcycle, moped or motorized bicycle, or trailer designed for use therewith; or
- (d) arising out of **Bodily Injury** or **Property Damage** arising out of and in the course of the transportation of **Mobile Equipment** by any **Automobile** owned or operated by or rented or loaned to any **Insured**.

**2. Exclusions applicable to Insuring Agreement I.A.2, General Liability Personal Injury or Advertising Liability**

The coverage under Insuring Agreement I.A.2 **General Liability Personal Injury or Advertising Liability** of this **Policy** does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- (a) related to **Advertising Liability** arising out of:
  - (1) failure of performance of contract; provided, however, that this exclusion shall not apply to the unauthorized appropriation of ideas based upon alleged breach of an implied contract;
  - (2) actual or alleged plagiarism, misappropriation of likeness, breach of confidence, infringement of any intellectual property right including patent, copyright, trademark, service mark, trade secret, trade dress and 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; or
  - (3) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- (b) arising out of **Personal Injury** or **Advertising Liability** caused by or at the direction of the **Insured** with the knowledge that the act would be likely to violate the rights of another and would inflict **Personal Injury** or **Advertising Liability**;
- (c) based upon or arising out of **Personal Injury** or **Advertising Liability** arising out of oral or written publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity;
- (d) based upon or arising out of **Personal Injury** or **Advertising Liability** arising out of oral or written publication of material whose first publication took place before the Retroactive Date;
- (e) based upon or arising out of **Personal Injury** or **Advertising Liability** arising out of an electronic chat room or bulletin board

which the **Insured** hosts, owns or over which the **Insured** exercises control;

- (f) arising out of the unauthorized use of another's name or product in any **Insured's** e-mail address, domain name, metatag, or any other similar tactics to mislead another's potential customers;
- (g) based upon or arising out of any **Advertising Liability** attributable to any **Insured** whose business is:
  - (1) advertising, broadcasting, publishing or telecasting;
  - (2) designing or determining content for websites for others; or
  - (3) an internet access, content search or service provider; or
- (h) for **Bodily Injury** arising out of **Personal Injury** (except for consequential **Bodily Injury**) or **Advertising Liability**.

**3. Exclusions applicable to Insuring Agreement I.A.3, Products/Completed Operations Liability**

The coverage under Insuring Agreement I.A.3 **Products/Completed Operations Liability** of this **Policy** does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- (a) based upon an express or implied warranty or guarantee, or breach of contract in respect of any agreement to perform work for a fee;
- (b) arising out of loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (1) a delay in or lack of performance by or on behalf of the **Named Insured** of any contract or agreement; or
  - (2) the failure of the **Named Insured's Products** or work performed by or on behalf of the **Named Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Named Insured**;

provided that 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**;

- (c) arising out of **Property Damage** to the **Named Insured's Products**, or for the cost of inspecting, repairing or replacing any

defective or allegedly defective product or part thereof or for loss of use of any defective or allegedly defective product;

- (d) arising out of **Property Damage** to work performed by or on behalf of the **Named Insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (e) arising out of the withdrawal, recall, inspection, repair, replacement, adjustment, removal, disposal 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 or alleged defect, deficiency, inadequacy or dangerous condition therein;
- (f) arising out of any **Named Insured's Products** manufactured, handled, sold, developed, designed, created, tested, leased, licensed, rented, handled, marketed, disposed of or distributed, or work completed, by the **Insured** or by others operating under the direction or control of the **Insured** in violation of any law;
- (g) arising out of the actual, alleged or threatened, inhalation of, ingestion of, contact with, exposure to, existence of, or presence of latex allergens;
- (h) arising out of or resulting from the manufacturing, handling, distribution, advertising, labeling, sale, application, ingestion, consumption, testing, exposure to or any use of any product or substance known as, made of or containing any tobacco, nicotine or any tobacco products (or ingredients of, or used in the manufacture or production of, such products);
- (i) arising out of, related to, caused by, contributed to, or in any way connected with any **Prescription Drug**, any product containing a **Prescription Drug Active Ingredient**, or any **Biologic**, manufactured, handled, distributed, or tested by the **Insured**, or anyone acting on its behalf, including any use, manufacturing, processing or relabeling thereof.

#### **4. Exclusions applicable to Insuring Agreement I.A.4, Employee Benefits Liability**

The coverage under Insuring Agreement I.A.4 **Employee Benefits Liability** of this **Policy** does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- (a) arising out of **Personal Injury, Property Damage** or **Advertising Liability**;

- (b) arising out of the actual or alleged publication or utterance of libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right to privacy;
- (c) arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress and copyright;
- (d) for failure of performance of contract by any **Insured**, including failure or insolvency of any **Employee Benefits Program**;
- (e) based upon the:
  - (1) failure of stock to perform as represented by an **Insured**;
  - (2) advice given by an **Insured** to an **Employee** to participate or not to participate in stock subscription plans; or
  - (3) investment or non-investment of funds or the income yield therefrom;
- (f) for benefits to the extent such benefits are available, with reasonable effort and cooperation of the **Insured**, from the applicable funds accrued or other collectible insurance; or
- (g) arising out of wrongful termination of employment, discrimination, or other employment related practices.

## 5. Exclusions applicable to Insuring Agreement I.A.5, Medical Expenses

The coverage under Insuring Agreement I.A.5 **Medical Expenses** of this **Policy** does not apply to expenses for **Bodily Injury** incurred with respect:

- (a) to any **Insured**;
- (b) to a person hired to do work for or on behalf of any **Insured** or a tenant of the **Insured**;
- (c) to a person injured on that part of the premises the **Named Insured** owns or rents that the person normally occupies;
- (d) to a person, whether or not an **Employee** of any **Insured**, if benefits for the **Bodily Injury** are payable or must be provided under a Workers' Compensation, unemployment compensation or Disability Benefits law, or a similar law;

- (e) to a person injured while taking part in athletics;
- (f) to any prisoner; or
- (g) to any **Claim** for **Medical Expenses** if the **Insured** is engaged in the business or occupation of providing any of the following services:
  - (1) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
  - (2) the furnishing or dispensing of **Drugs** or medical, dental or surgical supplies or appliances.

**6. Exclusions applicable to Insuring Agreement I.A.6, Product Recall Expense**

The coverage under Insuring Agreement I.A.6 **Product Recall Expense** of this **Policy** does not apply to expenses for **Product Recall** incurred with respect to:

- (a) the withdrawal of products by reason of:
  - (1) their being kindred products of the **Insured**; or
  - (2) their being of the same trade or brand name but of different batches than that which has been determined to possibly or likely become a cause of loss under this **Policy** if the **Insured** has represented at time of application for this **Policy** that the products are identifiable by batch;
- (b) loss of customer faith, or approbation, or any costs incurred to regain customer approval, or other consequential loss;
- (c) redistribution or replacement of the withdrawn products by like products, or substitution therefor;
- (d) the withdrawal of the **Named Insured's Products** if at the inception of this policy the **Insured** had knowledge of any condition of such products which would indicate a possibility or likelihood of such product being withdrawn; or
- (e) any loss of revenue or profits.

**7. Exclusions applicable to all Insuring Agreements**

The coverage under any Insuring Agreement of this **Policy** does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- (a) arising out of the rendering of or failure to render any professional services by any **Insured** or by any person or organization for whose acts or omissions the **Named Insured** is legally responsible;
- (b) based upon or arising out of the **Insured's** activities as a fiduciary under the Employee Retirement Income Security Act of 1974;
- (c) arising out of any **Insured's** activities as a trustee, partner, officer, director or employee of any trust, charitable organization, corporation, company or business other than that of the **Named Insured**;
- (d) arising out of failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture;
- (e) arising out of any criminal, dishonest, fraudulent or malicious act, error or omission of any **Insured**, committed with actual criminal, dishonest, fraudulent or malicious purpose or intent; provided, however, that this **Insurance** shall apply to **Claims Expenses** incurred in defending any such **Claim** (which **Claims Expenses** shall be repayable by the **Insured** following any admission or non-appealable adjudication relating to such culpability), but shall not apply to any **Damages** which the **Insured** might become legally obligated to pay;
- (f) based on the willful non-compliance of any **Insured** with any Food and Drug Administration ("FDA") rules, regulations, and statutes found at Food and Drugs, 21 C.F.R. Chapter 1 § 1.1 to § 1299, or treating a patient with any drugs, medical devices, **Biologics** or radiation-emitting products that have been disapproved or are not then approved by the FDA or equivalent;
- (g) based upon or arising out of any actual or alleged unfair or deceptive trade practice or violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, or price fixing law, or consumer protection;
- (h) based upon or arising out of any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- (i) arising out of the insolvency or bankruptcy of any **Insured** or of any other entity including the failure, inability, or unwillingness to pay **Claims**, losses or benefits due to the insolvency, liquidation or bankruptcy of any such individual entity;
- (j) made by or against or in connection with any business enterprise (including the ownership, maintenance or care of any property in

connection therewith), not named in the Declarations, which is owned by any **Insured** or in which any **Insured** is a trustee, partner, officer, director or **Employee**;

- (k) based upon or arising out of a violation or alleged violation of the Securities Act of 1933, or the Securities Exchange Act of 1934, or any State Blue Sky or securities law;
- (l) based upon or arising out of a violation or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq.;
- (m) based upon, arising out of, or resulting from any actual or alleged:
  - (1) failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond;
  - (2) commingling, mishandling of or liability to pay, collect or safeguard funds; or
  - (3) failure to collect or pay premiums, commissions, brokerage charges, fees or taxes;
- (n) arising out of or relating to any liability under any contract or agreement, whether written or oral, unless:
  - (1) such liability would have attached to the **Insured** in the absence of such contract or agreement; or
  - (2) such liability was assumed by the **Insured** in an **Insured Contract** (subject to clause IV. 7 (aa));
- (o) or **Circumstance** in respect of which any **Named Insured** has given notice to any insurer of any other policy or self insurance in force prior to the Inception Date of this **Policy**;
- (p) or **Circumstance** known to any **Named Insured** prior to the Inception Date of this **Policy** and not disclosed to the Underwriters at that Inception Date;
- (q) or **Circumstance** arising out of any act, error or omission which first took place, or is alleged to have taken place, prior to the Retroactive Date;
- (r) arising out of discrimination including discriminatory employment practices, allegations of actual or alleged violations of civil rights or acts of discrimination based entirely or in part on the race, gender, pregnancy, national origin, religion, age or sexual orientation;
- (s) directly or indirectly arising out of:

- (1) the actual, alleged or threatened discharge, dispersal, release or escape or failure to detect the presence of **Pollutants**, except that this exclusion shall not apply to:
    - (i) the **Products/Completed Operations Liability Hazard**;
    - (ii) **Bodily Injury** or **Property Damage** arising out of heat, smoke or fumes from **Hostile Fire**; or to damage arising out of heat, smoke or fumes from **Hostile Fire** at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **Insured**;
  - (2) the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to or testing for **Pollutants** contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever; or
  - (3) any governmental or regulatory directive or request that the **Insured** or anyone acting under its direction or control to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize said **Pollutants**;
- (t) caused directly or indirectly, in whole or in part, by:
- (1) any fungus(es) or spore(s);
  - (2) any substance, vapor or gas produced by or arising out of any fungus(es) or spore(s); or
  - (3) any materials, product, building component, building or structure that contains, harbors, nurtures or acts as a medium for any fungus(es) or spore(s);

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that injury or **Damages**;

provided that this exclusion shall not apply to **Claims** arising out of or resulting from the **Products/Completed Operations Hazard** for third party **Bodily Injury** arising from actual or alleged mold contamination from the **Named Insured's Products**, but solely where the **Insured** can demonstrate that the product which caused injury was subjected to the **Insured's** quality control, sterile manufacturing and testing procedures.



For the purposes of this exclusion:

“Fungus(es)” includes any form of mold, mushroom or mildew.

“Spore(es)” means any reproductive body produced by or arising out of any fungus(es).

- (u) relating to or arising out of any (1) asbestos; (2) lead; or (3) silica, unless the **Bodily Injury** or **Property Damage** caused by silica and forming the subject of the **Claim** is caused by the **Named Insured’s Products** that are in compliance with Title 21 Code of Federal Regulations, Part 172, Subpart E;
- (v) arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person, or the environment, or that affects the value, marketability, condition or size of any property;
- (w) arising out of:
  - (1) any conduct, physical act, gesture, or spoken or written words of a sexual or physically violent nature by any **Insured**, including sexual intimacy (whether or not consensual), sexual molestation, sexual or physical assault or battery, sexual abuse, sexual harassment or exploitation; or
  - (2) the **Insured’s** actual or alleged negligent employment, investigation, supervision, hiring, training or retention of any **Employee, Insured** or person for whom the **Insured** is legally responsible and whose conduct falls within exclusion (w) (1) above;
- (x) arising out of **Bodily Injury** or **Personal Injury** to any **Employee** or volunteer worker of the **Insured** arising out of and in the course of his employment by the **Insured**, or under any obligation for which the **Insured** or any carrier as his insurer may be liable, under any Workers’ Compensation, Unemployment Compensation, or Disability Benefits Law;
- (y) arising from costs of complying with physical modifications to any premises or any changes to the **Insured’s** usual business operations mandated by the Americans with Disabilities Act of 1990;
- (z) based upon or arising out of any action or proceeding brought by or on behalf of any federal, state or local governmental, regulatory or administrative agency, regardless of the name in which such action

or proceeding is brought, including the Health Insurance Portability and Accountability Act of 1996, and the Social Security Act, 42 U.S.C. §1320a, et. seq.;

- (aa) arising out of any **Insured's** data processing, including:
- (1) conversion of data from source material into media for processing on the **Insured's** electronic data processing system;
  - (2) processing of data by the **Insured** on the **Insured's** electronic data processing system;
  - (3) design or formulation of an electronic data processing program or system;
  - (4) any liability arising from:
    - (i) the failure of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the manner expected or intended;
    - (ii) the transmission or receipt of any virus, program or code that causes loss or damages to any computer system and /or prevents or impairs its proper function or performance; or
    - (iii) unauthorized access to any computer system;
    - (iv) the functioning, non-functioning, improperly functioning, availability or unavailability of:
      - (a) the internet or similar facility; or
      - (b) any intranet or private network or similar facility; or
      - (c) any website, bulletin board, chat room, search engine, portal or similar third party application service.
    - (v) the alteration, corruption, destruction, distortion, erasure, theft or other loss of or damage to data, software, information repository, microchip, integrated system or similar device in any computer equipment or non-computer equipment or any kind of programming or instruction set;

- (vi) any loss of use or functionality, whether partial or entire, of data, coding, program, software, any computer or computer system or other device dependent upon any microchip or embedded logic and any ensuing inability or failure of any insured to conduct business;
  - (vii) any alteration, breach, corruption, destruction, or failure of any computer, network systems or firewalls;
  - (viii) theft, loss, or unauthorized disclosure or access to personally identifiable information including non-public personal information, medical or healthcare information (including protected health information) in the care, custody or control of the **Insured** or a third party for whose such unauthorized disclosure or access the **Insured** is legally liable, or violation of a privacy law protecting such information, including any consequential liability (including any failure to comply with any legislation requiring monitoring or notification to any person affected by any of the above, or in respect of any related regulatory proceeding or investigation); or
  - (ix) theft, loss, or unauthorized disclosure or access to information emanating from a third party that the **Insured** is required by agreement to maintain confidential.
- (bb) against any subsidiary designated in the Declarations or its past, present, or future **Employees**, directors, officers, trustees, review board, committee members or volunteers, acting in that capacity, which are based upon, arise out of, directly or indirectly result from, are in consequence of, or in any way involve any fact, circumstance, situation, transaction, event, **Accident** or acts, errors or omissions or related series of facts, circumstances, situations, transactions, events, **Accidents**, or acts, errors or omissions, happening before the date such entity became a subsidiary or after completion of its sale or disposition by the **Named Insured**;
  - (cc) arising out of **Bodily Injury, Personal Injury, Property Damage** or **Advertising Liability** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incidental to any of the foregoing;
  - (dd) arising out of or relating to any loss, damage, or cost or expense of whatsoever nature directly or indirectly caused by, resulting from happening through, arising out of or in connection with any **Act of**

**Terrorism**, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage, cost or expense;

**“Act of Terrorism”** means an act or threat of violence or an act harmful to human life, tangible or intangible property or infrastructure with the intention or effect of influencing any government or to put the public or any section of the public in fear. In any action, suit or other proceedings where the Underwriters allege that by reason of this exclusion a loss, damage, cost or expense is not covered by this **Policy**, the burden of proving that such loss, damage, cost or expense is covered shall be upon the **Insured**.

- (ee) brought against any **Insured** by another **Insured** hereunder;
- (ff) arising out of or resulting from the distribution of unsolicited email, direct mail or facsimiles, or telemarketing;
- (gg) or liability arising out of the conduct of any partnership or joint venture of which the **Insured** is a partner or member and which is not designated in this **Policy** as a **Named Insured**;
- (hh) or liability for fines, penalties, sanctions, taxes or penalties, exemplary, multiplied or punitive sums;
- (ii) arising out of or resulting from any action or omission that violates or is alleged to violate:
  - (1) the Telephone Consumer Protection Act (TCPA);
  - (2) the CAN-SPAM Act of 2003;
  - (3) the Fair Credit Reporting Act; or
  - (4) any statute, ordinance or regulation, other than TCPA, CAN-SPAM Act of 2003 or the Fair Credit Reporting Act, that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (jj) arising out of **Bodily Injury, Personal Injury or Property Damage** expected or intended from the standpoint of the **Insured**; provided, however, that this exclusion does not apply to **Bodily Injury** resulting from the use of reasonable force to protect persons or property;
- (kk) arising out of **Bodily Injury, Personal Injury, Property Damage or Advertising Liability** for which the **Insured** or their indemnitee may be held liable as a result of:

- (1) causing or contributing to the intoxication of any person;
  - (2) the furnishing of alcoholic beverages to a person under legal drinking age or under the influence of alcohol; or
  - (3) any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages; or
- (ll) arising out of any **Named Insured's Products** that include in whole or in part any ingredient or substance listed in Schedule A (as attached to the Declarations), or any derivative thereof, or which have the same or similar formulation, structure, or function; or.
- (mm) arising out of any act or failure to act that:
- (1) falls outside the usual business operations (specified in Item 6. of the Declarations) of the **Named Insured**; or
  - (2) occurs away from those locations specified in Schedule B (as attached to the Declarations) leased or owned by and at which the **Named Insured** carries on its usual business operations, unless such act or failure to act falls within its usual business operations.

## V. DEFINITIONS

Wherever used in this **Policy**, the bolded terms have the meaning set out below, unless expressly stated otherwise:

- (a) **"Accident"** means an event, including continuous or repeated exposure to substantially the same general harmful conditions, which results in **Bodily Injury, Personal Injury, Property Damage, or Advertising Liability** to one or more persons or entities.
- (b) **"Administration"** means:
  - (1) giving counsel to **Employees** with respect to the **Named Insured's Employee Benefits Program**;
  - (2) interpreting the **Employee Benefits Program**;
  - (3) the handling of records in connection with the **Employee Benefits Program**; or
  - (4) effecting enrolment, termination or cancellation of **Employees** under the **Employee Benefits Program**, provided all such acts are authorized by the **Named Insured**.

**"Administration"** does not mean:

- (1) the exercise of or failure to exercise any authority or control respecting:
    - (i) the management of any **Employee Benefits Program**; or
    - (ii) the investment or disposition of any **Employee Benefits Program**;
  - (2) the rendering of any advice with respect to the investment of any assets of any **Employee Benefits Program**;
  - (3) handling payroll deductions; or
  - (4) handling overtime requirements or payments, or payroll issues concerning exempt or non-exempt **Employees**.
- (c) **“Adverse Event”** includes any:
- (1)
    - (i) congenital anomaly or birth defect;
    - (ii) death;
    - (iii) disability or incapacity;
    - (iv) hospitalization; or
    - (v) life-threatening disease, injury or sickness;of any person;
  - (2) intervention to prevent any outcome described in clause (c) (1) above;
  - (3) malfunction of a **Nutraceutical** that may give rise to any outcome described in clauses (c) (1) or (2) above;
  - (4) condition that may give rise to any outcome described in clauses (c) (1), (2) or (3) above, requiring notification to a governmental or regulatory authority; or
  - (5) condition that may give rise to a **Claim** in respect of **Products Recall Expense**.
- (d) **“Advertising Liability”** means injury arising out of one or more of the following, committed in the course of the **Insured’s** advertising activities:
- (1) libel, slander or defamation;

- (2) piracy or idea misappropriation under an implied contract; or
  - (3) invasion of right of privacy, subject always to exclusion IV.6.(aa).
- (e) “**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**.
- (f) “**Biologic**” means any substance or product consisting of or originally derived from a living organism or its by-products (including globulin, serum, blood or blood components, vaccine, protein, antibody, antigen or analogous product) administered orally, topically, or via injection and used in the diagnosis, prevention, mitigation, or treatment of illness or disease, but does not include any glandular extract from raw animal gland and non-gland tissues or extracts of such tissues when used as a **Dietary Supplement**.
- (g) “**Bodily Injury**” means physical injury (including death at any time resulting therefrom), mental injury, mental illness, mental anguish, humiliation, emotional upset, shock, sickness, disease or disability.
- (h) “**Circumstance**” means:
- (1) a negligent act, error or omission;
  - (2) an **Accident**; or
  - (3) an **Adverse Event** concerning the **Named Insured’s Product** or the **Named Insured’s Operations**;

that is reasonably likely to give rise to a **Claim**.

- (i) “**Claim**” means a written demand or request for monetary damages or non-monetary relief or to toll or waive a statute of limitations against any of the **Insureds**, including any liability incurred for **Medical Expenses** or **Products Recall Expense**.
- (j) “**Claims Expenses**” means:
- (1) reasonable and customary fees charged by any attorney who is designated and agreed in advance by the Underwriters in consultation with the **Insured**, but subject always to the Underwriters’ final decision; and
  - (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if incurred by the Underwriters, or by the **Insured** with the written consent of the Underwriters.

**Claims Expenses** does not include any salary, overhead or other charges by the **Insured** for any time spent in co-operating in the defense and investigation of any **Claim** or **Circumstance** notified under this **Insurance**.

- (k) **“Cosmetic”** means an article that is intended to be applied to the human body for altering appearance, beautifying, cleansing or promoting attractiveness, or as defined by the Federal Food, Drug, and Cosmetic Act.
- (l) **“Damages”** means a civil monetary judgment, award or settlement but does not include:
  - (1) the voluntary or involuntary restitution or reimbursement of compensation, fees, costs or expenses charged by any **Insured** whether by offset or otherwise;
  - (2) fines, penalties, sanctions, taxes or penalties, exemplary, multiplied or punitive sums; or
  - (3) judgments or awards deemed uninsurable by law.
- (m) **“Dietary Supplement”** means a product intended for ingestion and to add further nutritional value to supplement the diet, and may be a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance supplementing the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, or extract, or any combination thereof.
- (n) **“Drug”** means a medicinal product or synthetic article (other than a **Biologic** or conventional food) that requires a doctor’s authorization for purchase by the general public and is intended to achieve a chemical action upon or within the human body:
  - (1) for use in the cure, diagnosis, mitigation, prevention or treatment of disease, injury or sickness in human beings;
  - (2) to affect any function or structure of the human body; or
  - (3) which is recognized as such in the official Homoeopathic Pharmacopoeia or United States Pharmacopoeia-National Formulary.
- (o) **“Employee”** includes any person whose labor or service is currently or has formerly been engaged by and directed by the **Named Insured**, including members or managers, employees, volunteers, part time employees as well as any individual employed in a supervisory or managerial position, but does not include seasonal, leased or temporary employees or employees leased to another employer.



- (p) **“Employee Benefits Program”** means the **Named Insured’s** program providing any of the following benefits to its **Employees**:
- (1) group life insurance; group accident or health insurance, dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an **Employee** may subscribe to such benefits and such benefits are made generally available to those **Employees** who satisfy the plan’s eligibility requirements;
  - (2) profit sharing plans, employee savings plans; employee stock ownership plans; pension plans and stock subscription plans; provided that no one other than an **Employee** may subscribe to such benefits and such benefits are made generally available to all **Employees** who are eligible under the plan for such benefits;
  - (3) unemployment insurance; social security benefits; Workers’ Compensation and Disability Benefits; or
  - (4) vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family and civil leave; tuition assistance plans; transportation and health club subsidies.
- (q) **“Extended Reporting Period”**, if applicable, means the period specified in the Declarations after the end of the **Policy Period** for reporting **Claims** caused by an **Accident**, or caused by an **Accident** arising out of **Products/Completed Operations Liability Hazard**, or other negligent act, error or omission, which takes place prior to the end of the **Policy Period** but subsequent to the Retroactive Date.
- (r) **“Gross Receipts”** means the gross amount of money charged by the **Named Insured** or by others trading under the name of or on behalf of the **Named Insured**, or from any other source, for all goods and products sold or distributed during the **Policy Period** and charged during the **Policy Period**, or operations specified in Item 6. of the Declarations performed during the **Policy Period**, and includes taxes (other than taxes which the **Named Insured** and such others collect as a separate item and remit directly to a governmental division).
- (s) **“Hostile Fire”** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- (t) **“Insured Contract”** means that part of any written contract or agreement pertaining to the **Insured’s** operations or facilities under which the **Insured** assumes any tort liability of another to pay **Damages** because of **Bodily Injury** or **Property Damage** to a third person or organization, provided such contract or agreement is made prior to that **Bodily Injury** or **Property Damage**. Tort liability means a liability which would be imposed by law in the absence of any contract or agreement.

- (u) **“Loading or Unloading”** means the handling of property:
- (1) after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **Automobile**;
  - (2) while it is in or on an aircraft, watercraft or **Automobile**; or
  - (3) while it is being moved from an aircraft, watercraft or **Automobile** to the place where it is to be finally delivered;

but **Loading or Unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or **Automobile**.

- (v) **“Medical Expenses”** means reasonable expenses for:
- (1) first aid administered at the time of the **Accident**;
  - (2) necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) necessary ambulance, hospital, professional nursing and funeral services.
- (w) **“Mobile Equipment”** means a land vehicle (including any attached machinery or apparatus) whether or not self-propelled that is:
- (1) not subject to motor vehicle registration;
  - (2) maintained for use exclusively on premises owned by or rented to the **Named Insured**, including the ways immediately adjoining;
  - (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:
    - (i) power cranes, shovels, loaders, diggers and drills;
    - (ii) concrete mixers (other than the mix-in-transit type), graders, scrapers, rollers and on the road construction or repair equipment;
    - (iii) air-compressors, pumps and generators including spraying, welding and building cleaning equipment; or
    - (iv) geophysical exploration and well servicing equipment.

- (x) **“Named Insured”** means the entity or person identified in Item 1. of the Declarations.
- (y) **“Named Insured’s Products”** means those goods or products (other than real property) developed, designed, created, manufactured, tested, licensed, marketed, disposed of, sold, handled or distributed by the **Named Insured** or by others trading under its name, including any container thereof (other than a vehicle) but shall not include a vending machine or any property, other than such container rented to or located for use of others but not sold.
- (z) **“Nutraceutical”** means a **Cosmetic** product, **Dietary Supplement**, **Personal Care Product**, and **Drug** that do not require a doctor’s authorization for purchase by the general public.
- (aa) **“Personal Care Product”** means a non-medicinal consumable product that is intended to be used in the topical care and grooming of the body or hair and is rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied, to a body, human or animal, for cleansing, beautifying, promoting attractiveness, or altering the appearance without affecting the body’s structure or functions, and includes products specifically for use in such activities as cleansing, toning, moisturizing, hydrating, exfoliating, conditioning, anointing, massaging, coloring/decorating, soothing, deodorizing, perfuming, and styling.
- (bb) **“Personal Injury”** means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:
  - (1) false arrest, false imprisonment, wrongful eviction, detention or malicious prosecution;
  - (2) libel, slander, defamation of character or invasion of right of privacy, unless arising out of any advertising activities; or
  - (3) 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.
- (cc) **“Policy”** or **“Insurance”** mean this contract of insurance including the application, any Declarations, and any endorsements or variations, all incorporated into and forming part hereof.
- (dd) **“Policy Period”** means the period of time between the Inception Date and the Expiration Date specified in Item 3. of the Declarations unless terminated earlier, and specifically excludes any **Extended Reporting Period**.
- (ee) **“Pollutants”** means any solid, liquid, gaseous or thermal irritant or contaminant, including asbestos and/or lead (or products containing

asbestos and/or lead whether or not the asbestos and/or lead is or was at any time airborne as a fibre or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever), smoke, vapor, soot fumes, acids, alkalis, toxic chemicals and waste (waste includes materials to be recycled, reconditioned or reclaimed).

- (ff) **“Prescription Drug”** means a medicine or **Biologic**, subject to approval by the Food and Drug Administration (FDA), whether or not approval has been obtained; or any product containing an ingredient that is subject to the FDA, whether or not approval has been obtained; or any drug or medicine that requires a doctor’s authorization for purchase by the general public.
- (gg) **“Prescription Drug Active Ingredient”** means any component of a **Prescription Drug** that provides pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment or prevention of disease, or affects the structure or any function of the human body, including any derivatives, precursors, analogs or extracts of such **Prescription Drug** whether alone, in combination with any such substance, ingredient, compounds or other drugs, all medical devices, and all vaccines, birth control pills or birth control devices.
- (hh) **“Products/Completed Operations Liability Hazard”** means **Bodily Injury, Personal Injury** and/or **Property Damage** which arise out of the **Named Insured’s Products**, or operations, or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Bodily Injury, Personal Injury** or **Property Damage** occurs away from the premises owned by or rented to the **Insured**, and takes place:
- (1) after physical possession of such products has been relinquished;  
or
  - (2) after such operations have been completed or abandoned.

“Operations” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (i) when all operations to be performed by or on behalf of the **Insured** under the contract have been completed;
- (ii) when all operations to be performed by or on behalf of the **Insured** at the site of the operations have been completed;
- (iii) when the portion of the work out of which the **Bodily Injury, Personal Injury** or **Property Damage** arises has been put to its intended use by any person or organization other than another

contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

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

**“Products/Completed Operations Liability Hazard”** does not include **Bodily Injury, Personal Injury** and/or **Property Damage** arising out of:

- (a) the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by the **Insured**, and that condition was created by the **Loading or Unloading** of that vehicle by any **Insured**; or
  - (b) the existence of tools, uninstalled equipment or abandoned or unused materials.
- (ii) **“Products Recall Expense”** means only the reasonable and necessary cost incurred by the **Named Insured** for:
- (1) telephone and telegraphic communications, radio, television or internet announcements and newspaper advertising;
  - (2) stationery, envelopes, productions or announcements and postage therefor;
  - (3) the cost of shipping the **Named Insured's Products** from any purchaser, distributor or user to the place or places designated by the **Insured**;
  - (4) the cost of hire of additional persons, other than the regular employees of the **Named Insured**;
  - (5) remuneration paid to regular employees, other than salaried employees, of the **Named Insured**, for necessary overtime;
  - (6) transportation and accommodation expenses incurred by employees of the **Named Insured**;
  - (7) the extra expense for rental or hire of additional warehouse or storage space; and
  - (8) the actual cost of disposal of the **Named Insured's Products** but only to the extent that it is determined by the **Insured** that specific methods of destruction other than those usually employed for trash discarding or disposal are required to avoid **Bodily Injury** as a result of such disposal;

but only when:

- (i) the **Named Insured's Products** are substantially the direct cause of the recall of the product; and
  - (ii) such costs are incurred exclusively for the purpose of withdrawing the **Named Insured's Products** and after making proper deduction for all recoveries and salvages collectible.
- (jj) **"Property Damage"** means:
- (1) physical injury to or destruction of tangible property, including consequential loss of use thereof; or
  - (2) loss of use of tangible property which has not been physically injured or destroyed.
- (kk) **"Recall Occurrence"** means:
- (1) the accidental omission of a substance in the manufacture of the **Named Insured's Products**;
  - (2) the accidental introduction or substitution of a deleterious substance in the manufacture of the **Named Insured's Products**; or
  - (3) error in the manufacture, blending, mixing, or compounding of the **Named Insured's Products**;

all resulting or having the potential to result in **Bodily Injury** or **Property Damage**. It is specifically agreed that recall by order of a Federal or other regulatory body is covered under this **Policy** and is not subject to the clauses (1), (2) or (3) of the **Recall Occurrence** definition.

## VI. LIMIT OF LIABILITY

- A. The Limits of Liability stated in the Declarations for each **Claim** and the aggregate Limits of Liability for all **Damages** and **Claims Expenses** caused by or arising out of the same, related or continuing **Accidents** or negligent acts, errors or omissions, without regard to the number of **Insureds, Claims** or claimants, are as follows:

Item 4. 1. General Liability Limit under Insuring Agreement I.A.1

Item 4. 2. Personal Injury or Advertising Liability under Insuring Agreement I.A.2

Item 4. 3. General Liability Aggregate

- Item 4. 4. Products/Completed Operations Liability Limit under Insuring Agreement I.A.3
- Item 4.5. Products/Completed Operations Liability Aggregate
- Item 4. 6. Employee Benefits Liability Limit under Insuring Agreement I.A.4
- Item 4.7. Employee Benefits Liability Aggregate
- Item 4. 8. Medical Expenses Limit under Insuring Agreement I.A.5
- Item 4. 9. Products Recall Expense under Insuring Agreement I.A.6
- Item 4.10. Products Recall Expense Aggregate
- Item 4. 11. Damage to Premises
- Item 4. 12. Policy Term Aggregate

- B. All **Claims** arising out of the same, related or continuing **Accidents** or negligent acts, errors or omissions, shall be deemed to be a single **Claim**.
- C. Each such Limit is part of and not in addition to the “Policy Term Aggregate” Limit of Liability stated in Item 4.9. of the Declarations.

## VII. DEDUCTIBLE

The Deductible amount stated in Item 5. of the Declarations shall be satisfied by payments by the **Insured** of **Damages** and/or **Claims Expenses** in respect of each **Claim** first made during the **Policy Period** as a condition precedent to the payment by the Underwriters of any amounts due or other obligation hereunder. The Underwriters shall be liable only for the amounts in excess of such Deductible, subject to the Underwriters' Limit of Liability in Item 4. of the Declarations. The Deductible is in addition to the Underwriters' Limit of Liability and not part thereof. The **Insured** shall make direct payments within the Deductible to appropriate parties designated by the Underwriters. The Deductible is to be and remain uninsured, unless otherwise agreed by the Underwriters. Under no circumstances shall the Underwriters be called upon to pay the Deductible, but the Underwriters may do so at their sole discretion. Such payment shall in no way affect the Underwriters' ability to collect the Deductible from the **Insured**. The existence of “other insurance” shall not affect or abrogate the obligation of the **Insured** to pay the Deductible as required.

All **Claims** arising out of the same, related or continuing **Accidents** or negligent acts, errors or omissions, shall be deemed to be a single **Claim**.

## VIII. EXTENDED REPORTING PERIOD

- A. In the event of cancellation or non-renewal of this **Insurance** by the Underwriters or by the **Named Insured**, the **Named Insured** shall have the right to any **Extended Reporting Period** identified in Item 9. of the Declarations for **Claims** first made against any **Insured** during the **Extended Reporting Period** in respect of any **Accident** or negligent act, error or omission occurring after the Retroactive Date and before the Expiration Date. The **Named Insured** must invoke the specific **Extended Reporting Period** required in writing and pay the additional premium specified in Item 9. of the Declarations within 30 days of the non-renewal or cancellation in full. If so invoked the **Extended Reporting Period** shall commence at the effective date of cancellation or non-renewal.
- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**.
- C. The quotation by the Underwriters of a different premium or Deductible or Limit of Liability or changes in **Policy** language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- D. The right to the **Extended Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts within the applicable Deductible, as at the date of cancellation or non-renewal or any material breach of this **Policy**.
- E. At the commencement of the **Extended Reporting Period**, the entire premium shall be deemed earned, and if the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.
- F. This clause VIII. **Extended Reporting Period** shall not apply to the coverage under Insuring Agreement 1.A.6. **Products Recall Expense**.

## IX. OTHER INSURANCE

This **Insurance** shall apply in excess of the applicable Deductible and any other valid and collectible insurance or self-insurance available to any **Insured**, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only and identified as excess insurance over the Limit of Liability specifically of this **Policy**.

If there is any other such insurance in force at the time of any event giving rise to a **Claim** under this **Policy** the **Insured** shall promptly provide the Underwriters in writing with full details of such other insurance, including the identity of the



insurer and the policy number, its terms and limits, and such further information as the Underwriters may reasonably require.

**X. NOTICE OF CLAIM OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**

- A. If any **Claim** is made against the **Insured**, the **Insured** shall, as soon as practicable and without delay, notify the Underwriters in writing and forward every demand, notice, summons or other process received by the **Insured** or its representative. The **Insured's** duty to provide such notice is a condition precedent to coverage and the Underwriters shall not be subject to any liability under this **Policy** if the **Insured** fails to comply in full with this clause X. A.
- B. If during the **Policy Period** the **Insured** first becomes aware of an **Accident** or **Circumstance** it must give written notice to the Underwriters through those persons named in Item 11. of the Declarations of:
- (1) the specific act, error or omission, **Accident** or **Adverse Event**;
  - (2) the injury or damage which may result or has resulted therefrom; and
  - (3) the circumstances by which the **Insured** first became aware of the act, error or omission, or **Accident** or **Adverse Event**.

Any subsequent **Claim** made against the **Insured** which is the subject of the written notice shall be deemed to have been made at the time written notice was first received by the Underwriters.

- C. (1) All **Claims** for **Bodily Injury** or **Property Damage** under Insuring Agreement I.A.3. **Products/Completed Operations Liability** which arise out of one lot of goods, batch, package or run of the **Named Insured's Products** and are attributable to a single, direct cause shall be deemed to be one **Claim** and deemed to have been made at the time of such notice or the first of the related **Claims** if:
- (i) the negligent act, error or omission or **Accident** which causes or is alleged to cause injury or damage affects two or more persons and is attributable to a single, direct cause;
  - (ii) the first relevant negligent act, error or omission or **Accident** occurs after the Retroactive Date and before the Expiration Date of the **Policy Period**;
  - (iii) the first of all such related **Claims**:
    - (a) has been made within the **Policy Period**; or
    - (b) directly relates to a **Circumstance** notified within the **Policy Period**; and

- (iv) the **Named Insured** has requested in writing prior to, or within 120 days after, the Expiration Date of the **Policy Period** that the Underwriters agree to such designation as one **Claim**, such consent not to be unreasonably withheld.
- (2) If the Underwriters agree to designate such **Claims** as one **Claim**, then any later related **Claims** which are made and notified within five (5) years of the Expiration Date of the **Policy Period** are hereby covered under this **Policy** as that one **Claim**, and will be deemed to have been notified at the date of the first designated **Claim** or notification and are subject to one Deductible and one each **Claim Limit**.
- (3) Any **Claims, Damages** or **Claims Expenses** arising from any negligent act, error or omission or **Accident** notified to the Underwriters or other insurer prior to the Inception Date shall not be included as one **Claim** or payable under this **Policy** as **Damages** or **Claims Expenses** arising out of the same, continuing or related negligent act, error or omission or **Accident** of which any **Claim** is made or notice is first given during this **Policy Period**.
- (4) In the absence of any notification and agreement strictly in accordance with the above:
  - (i) the Underwriters shall only be liable for each **Claim** (otherwise properly notified and payable under this **Policy**) on the basis that each remains a separate **Claim**;
  - (ii) no **Claim** made after expiry of the above 120 day period shall be capable of being deemed related to an earlier negligent act, error or omission or **Accident** or **Claim**.
- D. If any **Insured**, with the intent to defraud, shall make any **Claim** under this **Policy** that is false or fraudulent in any way (including using any fraudulent device), the Underwriters shall be entitled to elect to void this **Policy** and all coverage hereunder (including any **Claims** or **Claims Expenses** already paid), or to refuse to indemnify the **Insured** in respect of any **Claim** to which the dishonesty relates.
- E. Reporting an **Adverse Event** to the Underwriters, any other insurer or a governmental or regulatory authority does of itself not constitute a conclusion that the **Nutraceutical** caused or contributed to that event or that injury or damage was expected or intended, an admission or assumption of liability, or a notice of **Circumstance** under X. B. or knowledge of a **Circumstance** or an injury or damage that would be expected to result in payment under this **Insurance**, unless clearly so specified.

- F. Solely with respect to the coverage provided by Insuring Agreement 1.A.6. **Products Recall Expense:**
- (1) the **Insured** shall give immediate written notice to the Underwriters upon discovery or notification that any of the **Named Insured's Products** must be withdrawn or recalled. The **Insured's** duty to provide such notice is a condition precedent to coverage and the Underwriters shall not be subject to any liability under this **Policy** if the **Insured** fails to comply in full with this clause X. F. (1);
  - (2) the **Insured** shall cease and desist from further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from such defects as would be cause of loss under this **Policy**;
  - (3) within sixty (60) days after loss, unless such time is extended in writing by the Underwriters, the **Named Insured** shall render to the Underwriters a proof of loss, signed and sworn to by the **Named Insured**, stating the knowledge of the **Named Insured** as to the time and cause of loss, actual **Products Recall Expense** incurred. Such expenditures shall be substantiated by submission with the proof of loss of all bills, invoices and other vouchers or certified copies.
- G. All **Products Recall Expense** incurred in the simultaneous recall of any types, classes or models of the same product shall be considered as arising out of one recall.

## XI. ASSISTANCE AND CO-OPERATION OF THE INSURED

The **Insured** shall co-operate with the Underwriters in all investigations, including regarding the application and coverage under this **Policy** and, upon the Underwriters' request, assist in negotiating and making settlements, in all aspects of the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization, other than an **Employee** of any **Insured** who may be liable to the **Insured** because of **Accidents** or negligent acts, errors or omissions with respect to which insurance is afforded under this **Policy** (which do not involve any fraudulent or criminal acts or omissions). The **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the assistance and attendance of witnesses. It is a condition precedent to coverage that the **Insured** shall not, except at its own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any **Claim**, or otherwise take any action prejudicial to the Underwriters, without the written consent of the Underwriters.

## **XII. INSPECTION AND AUDIT**

Any of the Underwriters' authorized representatives shall have the right and opportunity, whenever the Underwriters so desire, to inspect at any reasonable time the **Named Insured's Products**, goods, operations and premises, but the Underwriters assume no responsibility or duty by reason of such inspection or the omission thereof. The **Insured** agrees to provide appropriate personnel to assist the Underwriters' representatives during such inspection (together with photocopying and internet facilities) without cost to the Underwriters.

## **XIII. ACTION AGAINST THE UNDERWRITERS**

It is a condition precedent to the Underwriters' liability under this **Policy** that no action shall lie against the Underwriters unless the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the claimant and the Underwriters. No person or organization shall have any right under this **Insurance** to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, and nor shall the Underwriters be impleaded by the **Insured** or its legal representative.

## **XIV. BANKRUPTCY**

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder, save that the Underwriters shall not be liable for any sum arising solely as a result of the bankruptcy or insolvency of the **Insured**, and under no circumstances, including such bankruptcy or insolvency, shall the Underwriters be responsible to pay or advance the **Insured's** Deductible, unless the Underwriters choose to do so at their own discretion.

## **XV. SUBROGATION**

The Underwriters shall be subrogated to all the **Insured's** rights of recovery against any person or organization in relation to the Underwriters' potential liability under this **Policy**, 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 before or after the payment of **Damages** by the Underwriters to prejudice such rights and shall take all reasonable steps to maintain them including positive action where necessary. The obligations of the **Insured** under this clause XV. shall survive this **Policy**.

Any subrogated recovery shall first be paid to the Underwriters to the extent of any **Claims Expenses** paid by them, with the balance then being paid to the Underwriters and the **Insured** in the proportions that they have paid **Damages** in excess of the Deductible, then to the **Insured** for any uninsured loss in excess of the Limit of Liability and then in respect of the Deductible. Notwithstanding the

foregoing, the Underwriters agree to waive their rights of subrogation against the **Insured** except where it is established (by admission or a final non-appealable adjudication) that the relevant **Insured** has committed a deliberately fraudulent or deliberately criminal act or omission.

Notwithstanding the above the **Insured** shall promptly effect any Underwriters' request for an assignment from the **Insured** of any cause of action that the **Insured** may have against any third party in respect of which it has been, or appears likely to be, indemnified by the Underwriters.

## **XVI. CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this **Insurance** adverse to the Underwriters or estop them from asserting any right under the terms of this **Insurance**, and the terms of this **Insurance** cannot be waived or changed except by written endorsement issued to form part of this **Insurance**, signed by the Underwriters.

## **XVII. MERGERS AND ACQUISITIONS**

A. If, during the **Policy Period**, the **Named Insured** is acquired by or acquires an entity (including its subsidiaries) or purchases assets or acquires liabilities and

- (1) the revenues of the acquiring or acquired entity or such assets or liabilities immediately prior to the date of completion of such acquisition do not exceed 10% of the **Named Insured's** annual revenues or assets respectively as specified in its most recent application for insurance to the Underwriters;
- (2) the business operations of the acquiring or acquired entity are of a similar nature to those of the **Named Insured** as specified in such recent application; and
- (3) the operations of the acquiring or acquired entity are primarily located in the same country as the **Named Insured** or any subsidiary;

then this **Policy** will automatically cover the acquiring or acquired entity from the date of completion of such acquisition but only for **Accidents** or other events giving rise to liability that take place subsequent to the completion of such acquisition.

B. If during the **Policy Period** the **Named Insured** is acquired by or acquires an entity that does not fall within the criteria detailed in clause XVII. A. above, this **Policy** shall not apply after the date of completion of such acquisition and the **Named Insured** shall be required to give written notice to the Underwriters prior to the completion of such acquisition by or of the

**Named Insured**, and to negotiate with the Underwriters in respect of the additional premium payable and the imposition of any amended terms and conditions in respect of any insurance similar to that provided hereunder that it may require.

## **XVIII. ASSIGNMENT**

The interest hereunder of any **Insured** is not assignable except as requested by the Underwriters under clause XV. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured**, as would be permitted by this **Policy**.

## **XIX. CANCELLATION**

- A. This **Policy** may be cancelled by the **Named Insured** or by the Underwriters by sending registered or certified mail notice to the other party stating when, not less than sixty (60) days thereafter, cancellation shall be effective.
- B. Any failure of the **Named Insured** to pay the premium when due or any sum payable as its share of any **Damages** owed by it as a co-insured or the Deductible shall be a repudiatory breach of this **Policy** and the Underwriters shall be entitled to accept such repudiation and cancel this **Policy** on ten (10) days' notice by registered or certified mail to the **Named Insured**. The Underwriters shall be entitled to set off any sum held by them in the discharge of the **Insured's** obligations to the Underwriters or otherwise.
- C. The registration or certification of mailed notice as aforesaid shall be sufficient proof of notice, and the insurance under this **Policy** shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent to mailing.
- D. If this **Policy** is cancelled the effective date of such cancellation shall become the Expiration Date.
- E. If this **Policy** is cancelled by the **Named Insured** the Underwriters shall retain the short rate proportion of the premium for the period this **Policy** has been in force, calculated in accordance with the Short Rate Cancellation Table then in force, and all of the premium in respect of any **Extended Reporting Period**.
- F. If this **Policy** is cancelled by the Underwriters, the Underwriters shall retain the pro rata proportion of the premium for the period this **Policy** has been in force.

- G. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium with such notice.

## XX. MITIGATION OF LOSS

In the event of an **Accident** or negligent act, error or omission involving the **Named Insured's Products**, operations or premises covered by this **Policy**, it is a condition precedent to the Underwriters' further liability that the **Insured** shall promptly, at its expense, take all reasonable steps (including positive action as necessary) to prevent or mitigate other or further **Bodily Injury, Property Damage, Personal Injury or Advertising Liability** or consequential loss, damage or liability from arising out of such **Accident** or the same or similar conditions, and the Underwriters shall not be liable for any such failure of the **Insured** to do so.

## XXI. INTERPRETATION

Throughout this **Policy**:

- A. The singular includes the plural, the masculine includes the feminine, and vice versa;
- B. "Including" and "include(s)" mean without limitation;
- C. Any right, obligation or sum payable shall in every case be subject to the terms, conditions, limitations and exclusions of this **Policy** including the Limit of Liability specified in Item 4. of the Declarations.
- D. Any reference to legislation shall include any similar or related Federal, State or local law, any amendments, and any rules or regulations promulgated thereunder, or by agencies or similar bodies thereof;
- E. Any requirement for notification or payment to the Underwriters under this **Policy** shall be discharged if sent by prepaid express courier or certified mail, or fax or email (if received and there capable of being easily read), to the persons named in Item 11. of the Declarations, or other designated address;
- F. Any reference to a regulatory or investigative or other federal, state or local governmental body shall include any similar or related agency or body;
- G. The descriptions in the headings and subheadings of this **Policy** are solely for convenience, and form no part of the terms and conditions of coverage; and
- H. All or part of any provision of this **Policy** which is or becomes void or illegal, invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction shall be deleted. The parties shall use

all reasonable efforts to agree a replacement for the provision deleted which achieves as far as possible the same effect as would have been achieved by the deleted provision had it remained enforceable.

## **XXII. ENTIRE CONTRACT**

By acceptance of this **Policy** the **Insured** agrees that the statements and application are his agreements and representations, that this **Insurance** is issued in reliance upon the truth of such representations and that this **Policy** embodies all agreements existing between the **Insured** and the Underwriters relating to this **Insurance**.

## **XXIII. PREMIUM AND AUDIT**

The actual earned premium payable by the **Named Insured** for the **Policy Period** shall be computed on its actual **Gross Receipts** at the Premium Rate stated in Item 8. of the Declarations. Within 21 days of the Expiration Date, the **Named Insured** shall provide to the Underwriters a written statement of the **Named Insured's** actual **Gross Receipts** for the **Policy Period**.

If the actual **Gross Receipts** are more than the Gross Receipts Threshold stated in Item 8. of the Declarations, the **Named Insured** shall pay further premium on the difference to the Underwriters at the Premium Rate stated in Item 8. of the Declarations within 21 days of a request to do so from the Underwriters.

If the actual earned premium is less than the Deposit Premium payable (stated in Item 7. of the Declarations), the Underwriters shall refund the difference to the **Named Insured** except that the Underwriters shall be entitled to the Minimum Premium as stated in Item 7. of the Declarations.

The Underwriters shall have the right to require of the **Named Insured**, at any time within the **Policy Period** or one year thereafter, a written and sworn statement specifying the entire amount (or number) of such **Gross Receipts** or other premium base during the whole or any specified part of the said period, and the **Named Insured** shall furnish this statement within ten (10) days after request. This statement shall be subject to verification and audit by a duly authorized representative of the Underwriters, who shall have the right and opportunity to examine the books and records of the **Named Insured** as respects such **Gross Receipts** or other premium base, and such examination may be made at any time during the said period and within three (3) years thereafter.

The rendering of any estimate or statement or the making of any previous settlement shall not bar the examination of the books and records of the **Named Insured**, or the Underwriters' right to additional premium.



#### XXIV. NAMED INSURED AS AGENT

The **Named Insured** shall be considered the agent of all **Insureds**, and shall act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this **Policy**, and the acceptance of any endorsements to this **Policy**, and the **Named Insured** shall be responsible for the payment of all premiums and Deductibles.

#### XXV. NUCLEAR INCIDENT EXCLUSION

The insurance provided by this **Policy** does not apply:

- A. To injury sickness, disease, death or destruction
  - (1) with respect to which an **Insured** under this **Policy** of insurance is also an **Insured** under a nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or would be an **Insured** under any such insurance but for its termination upon exhaustion of its limits of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or (ii) the **Insured** is, or had this **Insurance** not been issued would be, entitled to indemnity from the United States of America, or any agency thereof under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. To injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
  - (1) the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of, an **Insured** or (ii) has been discharged or dispersed there from;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or

- (3) the injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to injury to or destruction of property at such nuclear facility.

D. As used in this clause "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954, "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (i) containing by-product material and (ii) resulting from the operation by any person or organization of any nuclear facility under paragraph (1) or (2) thereof; "nuclear facility" means:

- (1) any nuclear reactor;
- (2) (any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
- (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

## XXVI. SANCTIONS LIMITATION AND EXCLUSION

No Underwriter shall be deemed to provide cover and no Underwriter shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the Underwriters to any sanction, prohibition or restriction under

United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

## **XXVII. SERVICE OF SUIT**

- A. It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this **Insurance**, the Underwriters hereon, at the request of the **Named Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. This condition does not constitute and should not be understood to constitute an agreement by the Underwriters that an action is properly maintained in a specific forum, nor may it be construed as a waiver of the Underwriters' rights to commence an action in a court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state of the United States, all of which rights the Underwriters expressly reserve. It is further agreed that service of process in such suit may be made upon the designated entity in Item 12. of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court in the event of an appeal.
- B. The Entity designated in Item 12. of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the **Named Insured** to give written undertaking to the **Named Insured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceedings instituted by or on behalf of the **Named Insured** or any beneficiary hereunder arising out of this **Insurance**, and hereby designates the Entity, designated in Item 12. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

## **XXVIII. CHOICE OF LAW**

Any dispute involving this Policy shall be resolved by applying the law of the state designated in Item 13. of the Declarations.

## **XXIX. SEVERAL LIABILITY**

The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible

for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

### **XXX. LICENSURE AND ALTERATIONS OF NAMED INSURED'S PRODUCTS**

- A. The premium charged for this **Policy** is based on the **Named Insured's Products**, operations and premises identified in the underwriting information submitted to the Underwriters on behalf of the **Insured** at the Inception Date. The **Insured** shall notify the Underwriters promptly of any changes in the **Named Insured's Products**, operations or premises that are likely to impact adversely upon the risks hereby insured, and the Underwriters shall have the right to adjust the premium, Deductible(s) and any **Policy** terms to account for such changes, based on their sole assessment of the additional exposure(s) presented.

Changes to report include:

- (1) any changes to manufacturing or servicing premises requiring structural alterations, or the acquisition of additional manufacturing or serving premises;
- (2) any change in manufacturing or serving operations which is likely to result in an annual increase in the **Named Insured's** total **Gross Receipts** of twenty-five percent (25%) or more;
- (3) any changes in operations which are not accurately described by the description as specified in Item 6. of the Declarations.

This **Policy** shall apply to only the **Named Insured's Products**, Business Operations specified in Item 6. of the Declarations and locations specified in Schedule B attached thereto, irrespective of any changes reported.

- B. The operations of the **Named Insured** and any **Insured** requiring a license to operate shall be licensed in accordance with all relevant federal, state and local requirements and the **Named Insured** warrants that as of the Inception Date it has secured all relevant licenses.
- C. If, during the **Policy Period**, any **Insured's** licensure status is altered by withdrawal, revocation, denial, suspension or failure to renew, the **Named Insured** shall give written notice of such change to the Underwriters within thirty (30) days of the change becoming effective. Following receipt of such notice, the Underwriters may elect, at their sole option, to revise any Insuring Agreements, Definitions, Exclusions, Limitations, Endorsements or other conditions of this **Policy** with respect to the **Insured**, with effect from such date of such withdrawal, revocation, denial, suspension or failure to renew. Such action does not waive the Underwriters' option to invoke the provisions of Clause XIX. of this **Policy**. The Underwriters will have no obligation to respond in any way to any **Claim** arising out of an

**Accident** or act, error or omission which took place subsequent to the date of withdrawal, revocation, denial, suspension or failure to renew.

### **XXXI. NON-CUMULATION OF LIMITS**

Notwithstanding anything to the contrary in this **Policy**, if a **Claim** purports to trigger coverage under more than one Insuring Agreement of this **Policy**, the Underwriters' liability under this **Policy** shall not exceed the greater of the Limit of Liability available under any one of those Insuring Agreements.

No **Claim** can trigger coverage or be paid under more than one Insuring Agreement of this **Policy**.

In the event that a **Claim** purports to trigger coverage under more than one policy issued by the Underwriters to the **Named Insured** and its subsidiary companies, any **Claim** or suit will only be covered under the policy with the highest limit of insurance available or, if the limits are the same, under only one of the policies.

### **XXXII. INNOCENT INSURED**

Whenever coverage under this **Insurance** would be excluded, suspended or lost owing to:

- A. the application of IV. Exclusion 1. (a) relating to the use of force by any **Insured**;
- B. the application of IV. Exclusion 5. (e) relating to intentional, criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Insured**; or
- C. non-compliance with any condition relating to the giving of notice to the Underwriters where an **Insured** is in default solely as a result of the failure of another **Insured** so to comply;

such insurance coverage as would otherwise be afforded under this **Policy** shall remain in effect with respect to those **Insureds** who did not personally participate in, or acquiesce in or remain passive after having personal knowledge of, (a) one or more of the acts, errors or omissions described in any such exclusion, or (b) such failure to give notice; provided that after becoming aware of such act, error or omission or any failure to give notice, an **Insured** seeking the benefit of this clause shall inform the Underwriters immediately in writing of such event.