



## DECLARATIONS

Attaching to and forming part of  
PROFESSIONAL LIABILITY INSURANCE POLICY NUMBER: «policy\_no»

This Insurance is effected with certain  
Underwriters at Lloyd's of London (not incorporated)

### **THIS IS A CLAIMS-MADE PROFESSIONAL LIABILITY INSURANCE POLICY. PLEASE READ CAREFULLY.**

1. **NAMED INSURED:** «in\_name»  
**ADDRESS:** «in\_address»  
«in\_city», «in\_state» «in\_zipcode»
2. **PERIOD OF INSURANCE:** «eff\_date» TO: «exp\_date»  
12:01 AM STANDARD TIME AT THE ADDRESS SHOWN IN NUMBER 1 ABOVE.
3. **LIMIT OF LIABILITY:** «limits»  
(Includes Claims Expenses)
4. **DEDUCTIBLE:** «deduct»  
(Includes Claims Expenses)
5. **GROSS PREMIUM: (U.S.)** \$«gross\_prem».00  
State Tax: \$«state\_tax» Surplus Lines Stamping Fee: \$«stamp\_fee»
6. **RETROACTIVE DATE:**
7. **NOTICE OF CLAIM:** Dwyer & Associates Insurance Services, Inc.  
318 27<sup>th</sup> Street  
Oakland, CA 94612-3104, USA
8. **PROFESSIONAL SERVICES:** (a) Real Estate Agent  
(b) Mortgage Brokerage
9. **NOTICE OF ELECTION:** Not Applicable
10. **SERVICE OF SUIT:** Wilson, Elser, Moskowitz, Edelman & Dicker LLP  
650 California Street, 14<sup>th</sup> Floor  
San Francisco, CA 94108

**FORMS AND ENDORSEMENTS ATTACHED HERETO:** SLC-3 (USA) Jacket, D-2 FORM (1/1999), Lloyd's Syndicates, DRMPL1100 Policy Wording, NMA 1998 Service of Suit Clause Nominating: Wilson, Elser, Moskowitz, Edelman & Dicker, NMA 1331 Cancellation Clause amended to 30 days notice however 10 days for non payment of premium as applicable, NMA 1256 Nuclear War Exclusion, NMA 2807 Absolute Year 2000/Date Change Exclusion, NMA 1477 Radioactive Contamination Exclusion, NMA 464 War and Civil War Exclusion, Application

## **NOTICE**

- 1. THE INSURANCE POLICY THAT YOU ARE APPLYING TO PURCHASE IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED “NON-ADMITTED” OR “SURPLUS LINE” INSURERS.**
- 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.**
- 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.**
- 4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.**
- 5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357.**

# REAL ESTATE AGENTS / MORTGAGE BROKERS PROFESSIONAL LIABILITY INSURANCE

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## Security Schedule

Percentage %	Syndicate Number	<u>Pseudonyms</u>	
27.50%	570	GNR	
23.50%	958	GSC	
1.50%	991	AEG	
12.37%	2488	AGM	
3.24%	727	SAM	
5.20%	510	KLN	
3.25%	990	BAR	
4.39%	435	DPM	
2.98%	1212	SJB	
3.22%	205	HGJ	
1.67%	2020	WEL	
0.40%	376	AGY	
0.48%	1096	RAS	
0.75%	314	CFP	
0.66%	861	MDR	
0.81%	1209	MEB	
<u>2.97%</u>	362	WEH	
94.89%			
<u>5.11%</u>	B.C. Dyer Underwriting Agencies Ltd		NE9200974C
100.00%	5.11% Split as follows:-		
	Signed	Syndicate	Syndicate
	Line	Number	Pseudonym
	Hereon %		
	1.28%	839	DJM
	0.61%	190	FRW
	0.61%	362	WEH
	0.40%	1141	JEM
	0.30%	435	DPM
	0.30%	314	CFP
	0.24%	990	BAR
	0.10%	183	DFB
	0.20%	79	PJG
	0.51%	205	HGJ
	0.20%	807	SDM
	0.20%	1245	JAT
	<u>0.16%</u>	991	AEG
	5.11%		

**REAL ESTATE AGENTS / MORTGAGE BROKERS**  
**PROFESSIONAL LIABILITY INSURANCE**

**NOTICE:** This is a Claims made form. Except to such extent as may otherwise be provided herein, the coverage afforded under this Policy is limited to liability for only those Claims that are first made against the Insured and reported to the Underwriters while this Policy is in force. 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. Please review the coverage afforded under this Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

The Underwriters agree with the Named Insured, set forth at Item 1 of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the application which is made a part of this Policy and subject to the Limit of Liability, exclusions, conditions and other terms thereof:

**I INSURING AGREEMENTS**

(a) Coverage

To pay on behalf of the Insured Damages and Claims Expenses which the Insured shall become legally obligated to pay because of any Claim or Claims first made against any Insured and reported to the Underwriters during the Policy Period or Extended Reporting Period, arising out of any error or omission of the Insured in rendering or failing to render Professional Services as stated in Items 8(a) and 8(b) of the Declarations, for others on behalf of the Named Insured designated in Item 1 of the Declarations and caused by the Insured except as excluded or limited by the terms, conditions and exclusions of this Policy.

(b) Defense and Settlement (included in the Limit of Liability)

- (i) The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, any Claim against the Insured seeking payment under the terms of this Policy, even if any of the allegations of the Claim are groundless, false or fraudulent.
- (ii) It is agreed that 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.
- (iii) The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage.
- (iv) If the Insured shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the Claim, Underwriters' liability for any Damages and Claims Expenses shall not exceed the amount for which the Claim could have been settled, less the remaining Deductible, plus the Claims Expenses incurred up to the time of such refusal, or the Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the Insured.

- (v) It is further provided that the Underwriters shall not be obligated to pay any Damages or Claims Expenses, or to undertake or continue defense of any suit or proceeding after the Limit of Liability has been exhausted by payment of Damages or Claims Expenses or after deposit of the remaining 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 thereof by tendering control of said defense to the Insured.

## **II PERSONS INSURED**

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

- (a) if the Named Insured designated in Item 1 of the Declarations is an individual, the person so designated but only with respect to the Professional Services stated in Item 8 of the Declarations;
- (b) if the Named Insured designated in Item 1 of the Declarations is a firm or association, the firm or association so designated and any partners, directors, officers or any other employee or independent contractor hired under a written contract of employment by the Named Insured but solely with respect to the Professional Services, stated in Item 8 of the Declarations, on behalf of the Named Insured designated in Item 1 of the Declarations;
- (c) any person who previously qualified as an Insured under (b) above prior to the termination of the required relationship with the Named Insured, but solely with respect to the Professional Services, stated in Item 8 of the Declarations, on behalf of the Named Insured designated in Item 1 of the Declarations; and
- (d) the estate, heirs, executors, administrators, assigns and legal representatives of any Insured in the event of such Insured's death, incapacity, insolvency or bankruptcy, but only to the extent that such Insured would otherwise be provided coverage under this Policy.

## **III TERRITORY**

This Policy applies to errors or omissions which take place anywhere in the world provided the Claim is first made against the Insured within the United States of America, its territories or possessions or Canada during the Policy Period or Extended Reporting Period purchased in accordance with Clause IX.

## **IV EXCLUSIONS**

The coverage under this Policy does not apply to Damages or Claims Expenses incurred with respect:

- (a) to any Claim arising out of any criminal, dishonest, fraudulent or malicious error or omission of any Insured, committed with actual criminal dishonest, fraudulent or malicious purpose or intent. Notwithstanding the foregoing, this Policy shall apply to Claims Expenses incurred in defense of any Claim arising out of a criminal, dishonest, fraudulent or malicious error or omission up until the time an Insured is found guilty thereof;
- (b) to any Claim by one Insured under this Policy against another Insured under this Policy;

- (c) to any Claim for personal injury, including but not limited to bodily injury, mental anguish or sickness, disease or death of any person or to injury to or destruction of any tangible property, including the loss of use thereof. However, with respect only to damage or destruction of tangible property, this exclusion does not apply to claims arising out of the Insured's operation or maintenance of a lock box. The Limit of Liability for Claims arising from the operation or maintenance of a lock box ("lock box limit") shall not exceed \$25,000 per claim. This lock box limit shall be part of, and not in addition to, the Limit of Liability stated in the Declarations. The per Claim deductible is applicable to this lock box limit, and any payment for Claims arising hereunder shall be excess of any other applicable insurance;
- (d) to any Claim arising out of any Insured's activities as a trustee, partner, officer, director or employee trust, charitable organization, corporation, company or business other than that of the Named Insured;
- (e) to any Claim 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;
- (f) to any Claim arising directly or indirectly out of:
  - i) the purchase, lease, or other acquisition of an interest in property, in whole or in part, by the Named Insured designated in Item 1 of the Declarations or any principal, agent, or representative of such Named Insured, or any entity in which such Named Insured or any principal, agent, or representative of such Named Insured has an ownership interest;
  - ii) the sale or transfer of an interest in property owned, in whole or in part, by the Named Insured designated in Item 1 of the Declarations or any principal, agent, or representative of such Named Insured, or any entity under common ownership with such Named Insured or any principal, agent, or representative of such Named Insured, subject to the limitation set forth below;
  - iii) the leasing or management of property owned, in whole or in part, by the Named Insured designated in Item 1 of the Declarations, or any principal, agent, or representative of such Named Insured, or any entity under common ownership with such Named Insured or any principal, agent, or representative of such Named Insured, subject to the limitation set forth below;

Subparts (i) and (ii) above shall apply only where the Name designated in Item 1 of the Declarations or any principal, agent, or representative of such Named Insured, or any entity under common ownership with such Named Insured or any principal, agent, or representative of such Named Insured, individually or collectively, has owned such property for less than a period of 365 days,

This exclusion shall apply regardless of whether the Named Insured designated in Item 1 of the Declarations, or any principal, agent, or representative of such Named Insured, or any entity under common ownership with such Named Insured or any principal, agent, or representative of such Named Insured, was or was not performing Professional Services as stated in Item 8 of the Declarations.

Notwithstanding the forgoing, this exclusion shall not apply to claims involving the principal single-family dwelling owned by an Insured and listed by another Insured who has no ownership interest in such property;

- (g) to any Claim arising out of any errors or omissions that took place prior to the effective date of this Policy, if any Insured on the effective date knew or could have reasonably foreseen that such errors or omissions might be expected to be the basis of a Claim, to any Claim or circumstance which might lead to a Claim in respect of which any Insured has given notice to the insurer of any other policy in force prior to the effective date of this Policy;
- (h) to any Claim arising out of or relating to any liability assumed by any Insured under any contract or agreement, whether written or oral, including but not limited to any express warranties or guarantees, or estimates of cost, unless such liability would have attached to the Insured in the absence of such agreement;
- (i) to any Claim arising out of the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto;
- (j) to any punitive or exemplary damages, any damages which are a multiple of compensatory damages, fines, sanctions or penalties, or the return of or reimbursement for fees, costs or expenses charged by any Insured, or any Claim seeking non-pecuniary, equitable or injunctive relief;
- (k) to any Claim arising out of libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy, or any use or misuse of confidential or proprietary information;
- (l) to any Claim arising out of plagiarism, infringement of copyright or trademark or patent;
- (m) to any Claim arising out of discrimination including but not limited to discriminatory employment practices and to any Claims arising out of Steering. However, notwithstanding the foregoing, this Policy will pay Claims Expenses incurred in the defense of any Claim arising out of discrimination or Steering subject to a maximum of \$100,000 with respect to Claims Expenses incurred in defense of such Claim and a maximum of \$100,000 for all such Claims during the Policy Period. Underwriters obligation to pay such Claims Expenses is in excess of the Insured's Deductible;
- (n) to any Claim arising from the failure to buy, maintain or pay any form of insurance, suretyship, bond, interest on any bond, debt, financial guarantee or debenture;
- (o) to any Claim directly or indirectly arising out of:
  - (i) the actual alleged or threatened discharge, dispersal, release or escape or failure to detect the presence of "pollutants", including but not limited to solid, liquid, gaseous or thermal irritants or contaminants, including asbestos, smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste (waste includes materials to be recycled, reconditioned or reclaimed);
  - (ii) Any governmental or regulatory directive or request that the Insured or anyone acting under its direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize said "pollutants";

Notwithstanding (o)(i) and (o)(ii) above, and with respect to professional services set forth in Item \*(a) of the Declarations, and subject always to exclusion (c), this exclusion shall not apply where the Insured has provided a written disclaimer to all parties in the transaction involving the property, prior to the execution of a binding purchase and sale agreement or lease, stating that the Insured makes no warranty or representation as to the extent, presence or lack

thereof of any environmentally hazardous substance, material, irritant, pollutant or contaminant in, upon or affecting the property. In no event, however, shall Underwriter's obligation to pay Claim Expenses and/or damages resulting from such Claim apply to any actual or alleged liability to abate or investigate any threat of seepage onto or pollution or contamination of property, or to evaluate, monitor, control, remove, nullify and/or clean-up seeping, polluting or contaminating substances to the extent such liability arises solely from any obligations imposed by any statute, rule, ordinance, regulation or imposed by contract;

- (p) to any Claim arising out of any actual or alleged commingling of or inability or failure to pay, collect or safeguard funds;
- (q) to any Claim solely alleged to have been sustained through fluctuation in the market value of any security or property including real property;
- (r) to any Claim based upon or arising out of the syndication of property, the formation of general limited partnerships or Real Estate Investment Trusts or to any Claim based upon or arising out of activities as a mortgage banker, independent third party escrow agent, construction advisor, property developer, trustee, partner, officer, director or employee of any employee trust or charitable organization;
- (s) to any Claim based upon the arranging or failure to arrange finance. This exclusion does not apply to the Professional Service set forth in item 8(b) of the declarations;
- (t) to any Claim arising out of any defect in title not disclosed of public record of which (defect in title) any Insured had actual or constructive knowledge at the date of issuance of such title;
- (u) to any Claim arising out of the insolvency, conservatorship, bankruptcy, receivership, liquidation or failure of any Insured or any bank, banking firm, investment company, investment banker, or any broker or dealer in securities or commodities, or their inability to meet all or part of any legal financial obligation.
- (v) to any **claim**, of any kind, directly or indirectly arising out of or relating to the actual, potential, alleged or threatened presence of mold, mildew or fungi of any kind whatsoever.

If a retroactive date is applicable to this coverage it will appear at Item 6 of the Declarations and the following exclusion shall apply:

- (w) to any Claim or circumstance that might lead to a Claim arising out of any error or omission which took place, or is alleged to have taken place, prior to the retroactive date as set forth in Item 6 of the Declarations.

## V DEFINITIONS:

- (a) "Claims Expenses" means:

- (i) fees charged by an attorneys designated by the Underwriters; and
  - (ii) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the Insured with the written consent of the Underwriters.
  - (iii) 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 which might lead to a Claim notified under this Policy.
- (b) "Policy Period" means the Period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this insurance and specifically excludes any Extended Reporting Period hereunder.
  - (c) "Extended Reporting Period", if applicable, means the 12-month period of time after the end of the Policy Period for reporting Claims, arising out of, errors or omissions which take place prior to the end of the Policy Period and otherwise covered by this Policy.
  - (d) "Claim" means a demand received by any Insured for money or services including the service of suit or institution of arbitration proceedings against the Insured.
  - (e) "Damages" means a monetary judgement, award or settlement.
  - (f) "Steering" means the practice of channelling persons seeking property to a particular area either to maintain the homogeneity of any area or change the character of any area.

## **VI CONDITIONS:**

### **(a) LIMIT OF LIABILITY**

- (i) The Limit of Liability stated in the Declarations as "each Claim" is the limit of the Underwriters' liability for all Damages and Claims Expenses arising out of the same, related or continuing professional services without regard to the number of Insureds, Claims or claimants.
- (ii) The Limit of Liability stated in the Declaration as "annual aggregate" is the total limit of the Underwriters' liability for all Damages and Claims Expenses arising out of all Claims or circumstances which might lead to a Claim which are covered under the terms and conditions of this Policy. Items 8(a) and 8(b) of the Declarations collectively are subject to one single "annual aggregate" limit.
- (iii) The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Underwriters for the Policy Period.

### **(b) DEDUCTIBLE**

The Deductible amount stated in Item 4 of the Declarations, shall be satisfied by payments by the Insured of Damages and Claims Expenses resulting from all Claims first made and reported to the Underwriters during the Policy Period and the Extended Reporting Period as a condition precedent to the payment by the Underwriters of any amounts hereunder and the

Underwriters shall be liable only for the amounts in excess of such Deductible subject to Underwriters' total liability not exceeding the limit stated in Item 3(a) of the Declarations. The Insured shall make direct payments within the Deductible to appropriate other parties designated by the Underwriters.

If a Claim is fully and finally resolved to the satisfaction of all parties, including the Underwriters, through mediation, the Insureds Deductible for such Claim shall be reduced by fifty (50%) percent up to a maximum of \$10,000, provided that such mediation is initiated and concluded and/or abandoned before and not subsequent to commencement of any litigation or arbitration. In the event such mediation does not fully and finally resolve the Claim, there shall be no reduction of the Deductible, and all such Claims Expenses incurred in the mediation shall be subject to the original Deductible.

(c) INNOCENT INSURED

(i) Whenever coverage under this Policy would be excluded, suspended or lost;

1. because of any exclusion relating to criminal, dishonest, fraudulent or malicious errors or omissions by any Insured, and with respect to which any other Insured did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, or
2. because of non-compliance with any condition relating to the giving of notice to the Underwriters with respect to which any other Insured shall be in default solely because of the failure to give such notice or concealment of such failure by one or more Insureds responsible for the loss or damage otherwise insured hereunder,

the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those Insureds who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of (a) one or more of the errors or omissions described in any such exclusion; or (b) such failure to give notice, provided that if the condition be one with which such Insured can comply, after receiving knowledge thereof, the Insured entitled to the benefit of Clause VIII shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured to comply therewith.

(ii) With respect to this provision, the Underwriters' obligation to pay in such event shall be in excess of the full extent of any assets of any Insured to whom the exclusion applies and shall be subject to the terms, conditions and limitations of this Policy.

(d) EXTENDED REPORTING ENDORSEMENT

(i) In the event of cancellation or non-renewal of this insurance by the Underwriters, the Named Insured designated in Item 1 of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of 100% of the Premium set forth in Item 5 of the Declarations, to have issued an endorsement providing a 12-month Extended Reporting Period for Claims first made against any Insured and reported to the Underwriters during the Extended Reporting Period, subject to the conditions set forth in the definition of Extended Reporting Period herein. In order for the Named Insured to invoke the Extended Reporting Period option, the payment of the additional premium for the Extended Reporting Period must be paid to Underwriters within 30 days of the non-renewal or cancellation.

- (ii) The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Underwriters for the Policy Period.
- (iii) The quotation by 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.
- (iv) 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 in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- (v) All notices and premiums payments with respect to the Extended Reporting option shall be directed to Underwriters through the entity named in Item 9 of the Declarations.
- (vi) At the commencement of the Extended Reporting Period the entire premium shall be deemed earned, and in the event the Named Assured terminates the Extended Reporting Period for any reason prior to its natural expiration, Underwriters will not be liable to return any premium paid for the Extended Reporting Period.

## **VII OTHER INSURANCE**

This insurance shall apply in excess of any other valid and collectible insurance available to any Insured, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## **VIII NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**

- (a) If any Claim is made against the Insured, the Insured shall immediately forward to Underwriters through persons named in Item 7 of the Declarations every demand, notice, summons or other process received by him or his representative.
- (b) If during the Policy Period the Insured first becomes aware of an error or omission that could reasonably be the basis for a Claim it must give written notice to Underwriters, through persons named in Item 7 of the Declarations, during the Policy Period, of:
  - (i) the specific error or omission; and
  - (ii) the injury or damage which may result or has resulted from the error or omission; and
  - (iii) the circumstance by which the Insured first became aware of the error or omission.

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 given to Underwriters.

- (c) A Claim shall be considered to be reported to the Underwriters when notice is first given to Underwriters through persons named in Item 7 of the Declarations of the Claim or of an error or omission which could reasonably be expected to give rise to a Claim.
- (d) All Claims arising out of the same, continuing or related Professional Services shall be considered a single Claim and deemed to have been made at the time the first of the related Claims is reported to Underwriters and shall be subject to one Limit of Liability.

- (e) In the event of non-renewal of this Policy by the Underwriters, the Insured shall have thirty (30) days from the expiration date of the Policy Period to notify Underwriters of Claims made against the Insured during the Policy Period which arise out of any error or omission occurring prior to the termination date of the Policy Period and otherwise covered by this Policy.
- (f) If any Insured shall make any Claim under this Policy knowing such Claim to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

## **IX ASSISTANCE AND CO-OPERATION OF THE INSURED**

The Insured shall co-operate with the Underwriters in all investigations, including investigations regarding the application and coverage under this Policy and, upon the Underwriters' request, assist in making settlements, in 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 errors or omissions with respect to which insurance is afforded under this Policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgement or award or otherwise dispose of any Claim without the consent of the Underwriters.

## **X ACTION AGAINST UNDERWRITERS**

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

Any person or organization or the legal representative thereof who has secured such judgement, award or written agreement shall thereafter be entitled to make a claim under this policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Underwriters as a party to an action or other proceeding against the Insured to determine the Insured's liability, nor shall the Underwriters be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Underwriters of its obligations hereunder.

## **XI SUBROGATION**

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

## **XII 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 Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, signed by Underwriters.

### **XIII MERGERS AND ACQUISITIONS**

The Named Insured shall be required to give written notice to the Underwriters prior to the completion of a merger or acquisition by or of the Named Insured and Underwriters expressly reserve the right to demand a premium adjustment if this insurance is to remain in force subsequent to any merger or acquisition.

### **XIV ASSIGNMENT**

The interest hereunder of any Insured is not assignable. 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.

### **XV CANCELLATION**

- (a) This Policy of insurance may be cancelled by the Named Insured by surrender thereof to Underwriters or by mailing to Underwriters written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Underwriters by mailing to the Named Insured at the address shown in the Declarations written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if the Underwriters cancel this Policy because the Insured has failed to pay a premium when due this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the Named Insured at the address shown in the Declarations stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery (where permitted by law) of such written notice either by the Named Insured or by the Underwriters shall be equivalent to mailing.
- (b) If the Named Insured cancels this Policy, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Underwriters cancel this Policy, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

### **XVI SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

### **XVII ENTIRE CONTRACT**

By acceptance of this Policy the Insured agrees that the statements in the Declarations 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 Policy.

### **XVIII NUCLEAR INCIDENT EXCLUSION CLAUSE - LIABILITY - DIRECT**

This Policy does not apply:

- (a) To injury, sickness, disease, death or destruction
  - (i) with respect to which an Insured under this Policy 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
  - (ii) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the Insured is, or had this Policy 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
  - (i) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (2) has been discharged or dispersed therefrom;
  - (ii) 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
  - (iii) 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 byproduct material; "source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; "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 (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof; "nuclear facility" means:
  - (i) any nuclear reactor;
  - (ii) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;

- (iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination therefore, or more than 250 grams of uranium 235; or
- (iv) 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 a 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,

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the insurance to which it is attached.

#### **XIX WAR AND CIVIL WAR EXCLUSION CLAUSE**

Notwithstanding anything to the contrary contained herein this insurance does not cover Claims directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

#### **XX SERVICE OF SUIT**

- (a) It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Policy, 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 Underwriters that an action is properly maintained in a specific forum, nor may it be construed as a waiver of 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 Underwriters may expressly reserve. It is further agreed that service of process in such suit may be made upon the Underwriters' representative, designated in Item 10 of the Declarations, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court in the event of an appeal.
- (b) The Underwriters' representative, designated in Item 10 of the Declarations, is authorized and directed to accept service of process on behalf of 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 therefor, 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 proceeding instituted by or on behalf of the Named Insured or any beneficiary hereunder arising out of this Policy, and hereby designate

the Underwriters' representative, designated in Item 10 of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

## **SERVICE OF SUIT CLAUSE (U.S.A.)**

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any 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 in the United States.

It is further agreed that service of process in such suit may be made upon Wilson, Elser, Moskowitz, Edelman & Dicker LLP 650 California St., 14<sup>th</sup> Floor, San Francisco, CA 94108, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) 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 therefor, 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 proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

24/4/86  
NMA1998

## CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrendering of this Contract of Insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than 30 days thereafter, the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the customary short rate proportion of any Minimum Premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the pro rata proportion of any Minimum Premium stipulated herein whichever is the greater.

Payment or tender of any Unearned Premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

20/4/61  
NMA1331

## **NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)**

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:-

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This policy\* does not apply:-

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
  - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy 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 policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act 1954. or any law amendatory thereof, or (2) the insured is, or had this policy 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.
- II. 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.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
  - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - (b) 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
  - (c) 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

"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 1954 or in any law amendatory thereof; "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 (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) 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 a 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.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

\* NOTE: -As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60  
NMA1256

## **RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)**

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

13/2/64  
NMA1477

## **WAR AND CIVIL WAR EXCLUSION CLAUSE**

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38  
NMA464

## **ABSOLUTE YEAR 2000 / DATE CHANGE EXCLUSION**

This insurance does not cover any loss, cost, claim or expense directly or indirectly arising out of, or in any way connected with:

1. the actual alleged or anticipated failure or inability of any computer or electronic device or component or system or embedded programming or software, whether or not owned by or in the possession of the Insured:
  - (a) correctly to assign any date to the correct day, week, month, year or century; or
  - (b) correctly to recognize or compute any date which is or is intended to be beyond 31 December 1998; or
  - (c) to continue to operate as it would have done had its current date, the true date or any other date relevant to any function being carried out by it been prior to 1 January 1999;
2. the use of any arbitrary, ambiguous or incompletely defined date in any data, software or embedded programming whether or not owned by or in the possession of the Insured;
3. any measures taken with the intention of averting or mitigating any of the above.

6/5/98  
NMA2807