



## **AFB SKINNY TECH™ Technology and Professional Liability and Commercial General Liability Insurance**

This Insurance Policy (referred to as “Insurance” or “Policy”) includes two separate coverage parts - Coverage Part One, AFB SKINNY TECH Technology and Professional Liability Insurance, (referred to as the “Skinny Tech Coverage Part”), and Coverage Part Two, Commercial General Liability Insurance, (referred to as the “CGL Coverage Part”).

Each coverage part contains separate insuring agreements, exclusions, definitions, conditions, and limits of liability applicable only to that coverage part. The Policy includes a General Conditions section containing conditions applicable to both coverage parts, and a combined annual aggregate limit applicable to all claims made and reported under both coverage parts in the Policy.

Throughout this Policy “Underwriters” refers to those Underwriters at Lloyd’s, London who severally subscribed to this Insurance.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is not covered.



## COVERAGE PART ONE

### SKINNY TECH TECHNOLOGY AND PROFESSIONAL LIABILITY INSURANCE

#### **This Coverage is Provided on a Claims Made and Reported Basis.**

*Except to such extent as may otherwise be provided herein, the coverage afforded under Coverage Part One (the "Skinny Tech Coverage Part") is limited to legal liability for only those covered **Claims** that are first made against the **Assured** and reported to the Underwriters while this Insurance is in force that arise from acts, errors or omissions committed on or after the Retroactive date and before the end of the **Period of Insurance**.*

*The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.*

*The deductible applies to **Damages** and **Claims Expenses** resulting from each and every **Claim**.*

*The word **Assured** under this Skinny Tech Coverage Part means any person or organization qualifying as such under Skinny Tech Coverage Part, Section III – The Assured and the Assured Organization.*

*Other words and phrases that appear in bold have special meaning. Refer to Skinny Tech Coverage Part, Section V – Definitions for definitions applicable to this Skinny Tech Coverage Part.*

*Please review the coverage afforded under this Insurance carefully and discuss the coverage hereunder with your insurance agent or broker.*

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The Underwriters agree with the Named Assured, 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 deemed incorporated into and made a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, exclusions, conditions and other terms of this Insurance:

#### **I. INSURING AGREEMENTS**

##### **A. Coverage I: Professional Liability Coverage**

To pay on behalf of the **Assured**:

**Damages and Claims Expenses**, in excess of the deductible, which the **Assured** shall become legally obligated to pay because of any **Claim** first made against any **Assured** and reported to the Underwriters during the **Period of Insurance** or **Extended Reporting Period** (if applicable) arising out of any negligent act, error or omission committed on or after the Retroactive Date and before the end of the **Period of Insurance** by the **Assured** in rendering or failing to render **Professional Services** or by any person for whose **Professional Services** the **Assured** is legally responsible.



## B. Coverage II: Technology Liability

To pay on behalf of the **Assured**:

**Damages and Claims Expenses**, in excess of the deductible, which the **Assured** shall become legally obligated to pay because of any **Claim** first made against any **Assured** and reported to Underwriters during the **Period of Insurance** or **Extended Reporting Period** (if applicable) arising out of any negligent act, error or omission and resulting in one or more of the following acts committed on or after the Retroactive Date and before the end of the **Period of Insurance** in the course of the **Assured's** performance of **Technology Based Services**:

- (a) failure to prevent a party other than any **Assured** from unauthorized access to, use of, or tampering with data or systems;
- (b) failure to prevent a party other than any **Assured** from introducing **Malicious Code** into data or systems;
- (c) inability of a third party, who is authorized to do so, to gain access to your services, unless such inability is caused by a mechanical, telecommunications or electrical interruption or failure.

## II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions in this Policy, any **Claim** against the **Assured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. It is agreed that Underwriters' right and duty to defend shall be limited to payment of **Claims Expenses**. 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.
- C. 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.
- D. If the **Assured** 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 applicable 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 **Assured**.



- E. 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 applicable limit of the Underwriters' liability has been exhausted by payment of **Damages** or **Claims Expenses** or after deposit of the 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 thereof by tendering control of said defense to the **Assured**.

### III. THE ASSURED AND THE ASSURED ORGANIZATION

As used throughout this Skinny Tech Coverage Part, whether expressed in singular or plural, "**Assured**" shall mean:

- A. The Named Assured or Named Assureds shown as such in Item 1. of the Declarations (together the "**Assured Organization**");
- B. A director, officer or employee of the **Assured Organization**, but only while acting in that capacity solely on behalf of the **Assured Organization**;
- C. A principal if the Named Assured is a sole proprietorship, or a partner if the Named Assured is a partnership, but only while acting in that capacity solely on behalf of the Named Assured;
- D. Any person who previously qualified as an **Assured** under B or C above prior to the termination of the required relationship with the **Assured Organization**, but only while acting in that capacity solely on behalf of the **Assured Organization**;
- E. The estate, heirs, executors, administrators, assigns and legal representatives of any **Assured** in the event of such **Assured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Assured** would otherwise be provided coverage under this Insurance; and
- F. An independent contractor while acting solely on behalf of the **Assured Organization**, but only for a **Claim** also made against the **Assured Organization**.

An organization the Named Assured newly acquires or forms during the **Period of Insurance** other than a partnership, joint venture, or limited liability company, over which the Named Assured maintains ownership or majority interest, will qualify as a Named Assured if there is no other similar insurance available to that organization; provided, if the annual revenues of the acquired or formed organization are greater than 10% of the annual revenues of the Named Assured acquiring or forming the organization as set forth in its most recent financial statement, the entity will not qualify as a Named Assured until the provisions of Skinny Tech Coverage Part Condition F, Mergers and Acquisitions, are fulfilled.



#### IV. EXCLUSIONS

The coverage under this Skinny Tech Coverage Part does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- A. Arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **Assured** with actual, criminal, dishonest, fraudulent or malicious purpose or intent; however, the insurance afforded by this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the forgoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Assured**, or admission by the **Assured**, establishing such conduct at which time the First Named Assured shall reimburse Underwriters for all **Claims Expenses** incurred defending the **Claim** and Underwriters shall have no further liability for **Claims Expenses**;
- B. By or on behalf of one or more **Assureds** under this Insurance against any other **Assured** or **Assureds** under this Insurance;
- C. For or arising out of **Bodily Injury** or **Property Damage**;
- D. Arising out of or resulting from the insolvency or bankruptcy of any **Assured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity;
- E. Made by any business enterprise in which any **Assured** has greater than a 15% ownership interest, or arising out of or resulting from any **Assured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Assured Organization**;
- F. Arising out of or resulting from any act, error or omission committed prior to the inception date of this Insurance:
  1. if any **Assured** on or before the inception date knew or could have reasonably foreseen that such act, error or omission might be expected to be the basis of a **Claim**; or
  2. in respect of which any **Assured** has given notice of a circumstance which might lead to a **Claim** to the insurer of any other policy in force prior to the inception date of this Policy;
- G. For or arising out of the liability of others assumed by the **Assured** under any contract or agreement, either oral or written, except and to the extent the **Assured** would have been liable in the absence of such contract or agreement;
- H. For or arising out of actual or alleged infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress, or misappropriation of trade secret;

- I. For or arising out of the any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
- J. Arising out of or resulting from any employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees;
- K. For or arising out of or resulting from actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- L. Arising out of or resulting from acts of the **Assured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
- M. For or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws;
- N. For or arising out of any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by any Named Assured, or any directors, officers, stockholders, or employees of any Named Assured in their capacity as such;
- O. For or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising;
- P. Arising out of **Professional Services** or **Technology Based Services** performed for any entity which:
  - 1. is operated, managed or controlled by the **Assured** or in which the **Assured** has an ownership interest in excess of 15%; or in which the **Assured** is an officer or director; or
  - 2. wholly or partly owns, operates, controls or manages the **Assured**;
- Q. For or arising out of or the result of any breach of express warranty, guarantee, or service level agreement, or for or arising out of any delay in delivery, failure to deliver, or non-acceptance of products or services;
- R. For or arising out of the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of your cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;



- S. Any punitive or exemplary damages, or any damages which are a multiple of compensatory damages, or fines, sanctions or penalties;
- T. Arising out of or resulting from or constituting **Media Liability**;
- U. Excluded by General Condition XIII, “War and Terrorism Exclusion”;
- V. Arising out of or resulting from any ordinance, law or regulation, rule or ruling restricting or affecting repair, alteration, use, operations, constructions or installation of any hardware, firmware or software; or by suspension, lapse, termination or cancellation of any license, lease or permit;
- W. Arising out of or resulting from any policies, procedures, methods, equipment, hardware, firmware, or software for creating, maintaining or managing any secure means for transmitting, receiving or exchanging electronic information using or involving digital certificates, digital signatures, certification authorities, public or private keys or scrambling technologies, or any other similar type of technology, however denominated;
- X. Arising out of any related or continuing acts errors or omissions where the first such act, error or omission was committed prior to the Retroactive Date;
- Y. Directly or indirectly arising out of or resulting from the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos, fibers or dust;
- Z. Directly or indirectly 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 use of any property;
- AA. Arising out of, resulting from, or related to the actual, potential, or alleged presence of mold, mildew or fungi of any kind whatsoever.
- BB. Directly or indirectly arising out of or resulting from the presence or actual, alleged, or threatened discharge, seepage, dispersal, migration, release, escape, generation, transportation, storage, or disposal of pollutants at any time, including any request, demand or order that the **Assured** or others test for, monitor, clean up, remove, assess, or respond to the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.





## V. DEFINITIONS

Wherever used in this Skinny Tech Coverage Part, the following definitions shall apply.

- A. “**Bodily Injury**” means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.

For purposes of this Skinny Tech Coverage Part, mental anguish or emotional distress that does not result from physical injury, sickness, disease or death of any person is not **Bodily Injury**.

- B. “**Claim**” means a demand received by any **Assured** for money or services, including the service of suit or institution of arbitration proceedings.

Multiple **Claims** arising from or related to the same act, error or omission or any continuing acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

- C. “**Claims Expenses**” means:

1. reasonable and necessary fees charged by an attorney designated by the Underwriters; and
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by the **Assured** with the written consent of the Underwriters;
3. **Claims Expenses** does not include any salary, overhead or other charges by the **Assured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Insurance.

- D. “**Damages**” means a monetary judgment, award or settlement.

The term **Damages** does not mean and shall not include:

1. future profits, restitution, disgorgement of profits by an **Assured**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of, or damages measured by, fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. any amounts or damages which are a multiple of compensatory damages, or fines, sanctions or penalties;
4. punitive or exemplary damages; or
5. any amounts for which the **Assured** is not liable, or for which there is no legal recourse against the **Assured**.



- E. **"Extended Reporting Period"**, if applicable, means the 6-month period of time after the end of the **Period of Insurance** for reporting **Claims** as provided in General Condition I. of this Policy.
- F. **"Malicious Code"** means any virus, Trojan Horse, worm or other software program, code or script that inserts itself into computer memory or onto a computer disk and spreads itself from one computer to another, is not written, licensed, owned, or controlled by the **Assured**, and is introduced into a computer or data system without the authorization or knowledge of the **Assured**.
- G. **"Media Liability"** means liability for disparagement or harm to the reputation or character of any person or organization; defamation; libel; slander; product disparagement; trade libel; infliction of emotional distress; outrage or outrageous conduct; invasion or interference with the right to privacy or of publicity; misappropriation of any name or likeness; infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping; plagiarism; piracy; misappropriation of ideas; or negligence regarding the information or content in any communication transmitted by any media, including harm caused through any reliance or failure to rely upon such content;
- H. **"Period of Insurance"** 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**.
- I. **"Professional Services"** means professional services or professional activities performed for others in the course of **Assured Organization's Technology Based Services**.
- J. **"Property Damage"** means:
1. Physical injury to tangible property, including all resulting loss of use of that property; or
  2. Loss of use of tangible property that is not physically injured.
- For the purposes of this Insurance, electronic data is not tangible property.
- As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- K. **"Technology Based Services"** means design, review, analysis, development, installation, maintenance, or consultation in connection with computer software, computer and data networks, computer facilities management, computer maintenance, computer and electronic repair, computer programming, electronic data processing, information management, and computer system integration and internet websites (excluding any website content related services) for others in the ordinary course of the **Assured's Organization's** business.



## VI. SKINNY TECH CONDITIONS

The following conditions apply to this Skinny Tech Coverage Part:

### A. Limit of Liability

1. The “Annual Aggregate” stated in Item 3.(b) of the Declarations is Underwriters’ combined total Limit of 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 Skinny Tech Coverage Part, and neither the inclusion of more than one **Assured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
2. The Limit of Liability stated in Item 3.(a) of the Declarations for “Each **Claim**” is the limit of Underwriters’ Liability for all **Damages and Claims Expenses** arising out of each **Claim**.
3. The “Combined Annual Aggregate Limit” stated in Item 3. of the Declarations is the combined total limit of Underwriters’ Liability for all payments under Items 3.(b) and 3.(d) of the Declarations.
4. 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 **Period of Insurance**.

### B. Deductible

1. The “Each **Claim** deductible” stated in Item 4.(a) of the Declarations applies separately to each and every **Claim**.
2. The Deductible shall be satisfied by payments by the First Named Assured of **Damages and Claims Expenses** resulting from **Claims** first made and reported to the Underwriters during the **Period of Insurance** 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 limits stated in Items 3.(a) and 3.(b) of the Declarations.
3. The First Named Assured shall make direct payments within the deductible to appropriate other parties designated by the Underwriters.



C. **Notice of Claim or Circumstance that Might Lead to a Claim**

1. If any **Claim** is made against the **Assured**, the **Assured** shall immediately forward to Underwriters through persons named in Item 7. of the Declarations every demand, notice, summons or other process received by the **Assured** or the **Assured's** representative.
2. If during the **Period of Insurance** the **Assured** first becomes aware of any circumstance 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 as soon as practicable during the **Period of Insurance** of:
  - (a) the specific details of the act, error or omission in the provision of **Professional Services**, or **Technology Based Services** that could reasonably be the basis for a **Claim**;
  - (b) the injury or damage which may result or has resulted from the circumstance; and
  - (c) the facts by which the **Assured** first became aware of the act, error or omission.

Any subsequent **Claim** arising out of such circumstance made against the **Assured** who is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to Underwriters.

3. 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 act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with Section 2 above.
4. In the event of non-renewal of this Insurance by the Underwriters, the **Assured** shall have thirty (30) days from the expiration date of the **Period of Insurance** to notify Underwriters of **Claims** made against the **Assured** during the **Period of Insurance** which arise out of acts, errors, or omissions committed prior to the termination date of the **Period of Insurance** and otherwise covered by this Insurance.
5. If any **Assured** 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.

D. **Territory**

This Insurance applies to **Claims** made anywhere in the world.



E. **Mergers and Acquisitions**

1. During the **Period of Insurance**, if any Named Assured acquires or forms another entity whose revenues are more than ten percent (10%) of the Named Assured's total revenues as listed in its most recent financial statement; then no **Assured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission, whether committed either before or after such merger, purchase or acquisition:

- (a) by the acquired or formed entity or any person employed by the acquired or formed entity; or
- (b) involving or relating to the assets or liabilities of the acquired or formed entity,

unless the Named Assured gives the Underwriters written notice prior to the purchase, formation or acquisition, obtains the written consent of Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by Underwriters.

2. If during the **Period of Insurance**, the Named Assured consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless Underwriters have issued an endorsement extending coverage under this Policy, and the Named Assured has agreed to any additional premium and terms of coverage required by Underwriters.

3. All notices and premiums payments made under this section shall be directed to Underwriters through the entity named in Item 8. of the Declarations

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## COVERAGE PART TWO

### COMMERCIAL GENERAL LIABILITY INSURANCE

#### **This Coverage is Provided on a Claims Made and Reported Basis.**

*Throughout this Coverage Part Two (the “CGL Coverage Part”) the words “you” and “your” refer to the Named Assured or Named Assureds shown in Item 1. of Declarations as such.*

*The Limit of Liability available to pay damages arising from an **Occurrence** shall be reduced and may be completely exhausted by Defense and Supplementary Payments.*

*The word **Assured** under this CGL Coverage Part means any person or organization qualifying as such under CGL Coverage Part, Section IV– Who Is An Assured.*

*Other words and phrases that appear in bold have special meaning. Refer to CGL Coverage Part, Section V – Definitions for definitions applicable to the CGL Coverage Part.*

*Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.*

#### **I. INSURING AGREEMENT: BODILY INJURY AND PROPERTY DAMAGE LIABILITY COVERAGE**

A. Underwriters will pay those sums that the **Assured** becomes legally obligated to pay as damages because of **Bodily Injury** or **Property Damage** to which this insurance applies. Underwriters will have the right and duty to defend the **Assured** against any **Suit** seeking those damages. However, Underwriters will have no duty to defend the **Assured** against any **Suit** seeking damages for **Bodily Injury** or **Property Damage** to which this insurance does not apply. Underwriters may, at their discretion, investigate any **Occurrence** and settle any claim or **Suit** that may result. But:

1. The amount Underwriters will pay for damages is limited as described in CGL Coverage Part, Condition VI.A, Limit Of Liability; and
2. Underwriters’ right and duty to defend ends when the applicable Limit of Liability has been exhausted in the payment of judgments or settlements under this insuring agreement or in the payment of sums explicitly provided for under Section III of this CGL Coverage Part, “Defense and Supplementary Payments”.

No other obligation or liability to pay sums or perform acts or services is covered by this CGL Coverage Part.

B. This insurance applies to **Bodily Injury** and **Property Damage** only if:

1. The Bodily Injury or Property Damage is caused by an Occurrence that takes place in the Coverage Territory;



2. The **Bodily Injury** or **Property Damage** did not occur before the Retroactive Date shown in the Declarations or after the end of the **Period of Insurance**; and
  3. A **Claim** for damages because of the **Bodily Injury** or **Property Damage** is first made against any **Assured**, in accordance with Paragraph C below, and reported to Underwriters during the **Period of Insurance** or any **Extended Reporting Period** (if applicable).
- C. A **Claim** by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:
1. When notice of such **Claim** is received by any **Assured** or by Underwriters, whichever comes first; or
  2. When Underwriters contribute to a settlement in accordance with Paragraph I.A. above.

All **Claims** for damages because of **Bodily Injury** to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the **Bodily Injury**, will be deemed to have been made at the time the first of those **Claims** is made against any **Assured**.

All **Claims** for damages because of **Property Damage** causing loss to the same person or organization will be deemed to have been made at the time the first of those **Claims** is made against any **Assured**.

## II. EXCLUSIONS

The Insurance under this CGL Coverage Part does not apply to:

A. **Expected Or Intended Injury**

**Bodily Injury** or **Property Damage** expected or intended from the standpoint of the **Assured**. This exclusion does not apply to **Bodily Injury** resulting from the use of reasonable force to protect persons or property.

B. **Contractual Liability**

**Bodily Injury** or **Property Damage** for which the **Assured** is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

1. That the **Assured** would have in the absence of the contract or agreement; or
2. Assumed in a contract or agreement that is an **Assured Contract**, provided the **Bodily Injury** or **Property Damage** occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **Assured Contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Assured** are deemed to be damages because of **Bodily Injury** or **Property Damage**, provided:



- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **Assured Contract**; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

C. **Liquor Liability**

**Bodily Injury** or **Property Damage** for which any **Assured** may be held liable by reason of:

1. Causing or contributing to the intoxication of any person;
2. Furnishing alcoholic beverages to a person under the 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.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

D. **Workers' Compensation And Similar Laws**

Any obligation of the **Assured** under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

E. **Employers Liability**

**Bodily Injury** to:

1. An **Employee** of the **Assured** arising out of and in the course of
  - (a) Employment by the **Assured**; or
  - (b) Performing duties related to the conduct of the **Assured's** business; or
2. The spouse, child, parent, brother, or sister of that **Employee** as a consequence of Paragraph 1 above.

This exclusion applies:

1. Whether the **Assured** may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the **Assured** under an **Assured Contract**.



F. **Pollution**

This Insurance does not apply to:

1. **Bodily Injury or Property Damage** which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time.
2. Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **Pollutants**.

G. **Aircraft, Auto Or Watercraft**

**Bodily Injury or Property Damage** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **Auto** or watercraft owned by operated by or rented or loaned to any **Assured**. Use includes operation and **Loading or Unloading**. This exclusion applies even if the **Claims** against any **Assured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Assured**, if the **Occurrence** which caused the **Bodily Injury or Property Damage** involved the ownership, maintenance, use or entrustment to others of any aircraft, **Auto** or watercraft that is owned or operated by or rented or loaned to any **Assured**. This exclusion does not apply to:

1. A watercraft while ashore on premises you own or rent;
2. A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
3. Parking an **Auto** on, or on the ways next to, premises you own or rent, provided the **Auto** is not owned by or rented or loaned to you or any **Assured**;
4. Liability assumed under any **Assured Contract** for the ownership, maintenance or use of aircraft or watercraft; or
5. **Bodily Injury or Property Damage** arising out of the operation of any of the equipment listed in Paragraph 6.(b) or (c) of the definition of **Mobile Equipment**.



H. **Mobile Equipment**

**Bodily Injury or Property Damage** arising out of:

1. The transportation of **Mobile Equipment** by an **Auto** owned or operated by or rented or loaned to any **Assured**; or
2. The use of **Mobile Equipment** in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

I. **War and Terrorism**

War and terrorism as set forth in General Condition XIII, “War and Terrorism Exclusion”.

J. **Damage to Property**

**Property Damage** to:

1. Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another’s property.
2. Premises you sell, give away or abandon, if the **Property Damage** arises out of any part of those premises;
3. Property loaned to you;
4. Personal property in the care, custody or control of the **Assured**;
5. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the **Property Damage** arises out of those operations; or
6. That particular part of any property that must be restored, repaired or replaced because **Your Work** was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are **Your Work** and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **Property Damage** included in the **Products-Completed Operations Hazard.**”



K. **Damage To Your Product**

**Property Damage to Your Product** arising out of it or any part of it.

L. **Damage to Your Work**

**Property Damage to Your Work** arising out of it or any part of it and included in the **Products-Completed Operations Hazard**.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

M. **Damage To Impaired Property Or Property Not Physically Injured**

**Property Damage to Impaired Property** or property that has not been physically injured, arising out of:

1. A defect, deficiency, inadequacy or dangerous condition in **Your Product** or **Your Work**; or
2. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Your Product** or **Your Work** after it has been put to its intended use.

N. **Recall of Products, Work or Impaired Property**

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

1. **Your Product**;
2. **Your Work**; or
3. **Impaired Property**;

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

O. **Employment-Related Practices**

**Bodily Injury** arising out of any:

1. Refusal to employ;
2. Termination of employment;



3. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
4. Consequential **Bodily Injury** as a result of 1 through 3 above.

This exclusion applies

1. Whether the **Assured** may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

P. **Asbestos**

**Bodily Injury** or **Property Damage** arising out of, resulting from, caused or contributed by asbestos or exposure to asbestos; or the costs of abatement, mitigation, removal or disposal of asbestos.

This exclusion also includes:

1. Any supervision, instructions, recommendations, warning or advice given or which should have been given in connection with the above; and
2. Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage.

Q. **Electromagnetic Radiation**

**Bodily Injury** or **Property Damage** directly or indirectly 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 use of any property.

R. **Mold**

**Bodily Injury** or **Property Damage** arising out of, resulting from, or related to the actual, potential, or alleged presence of mold, mildew or fungi of any kind whatsoever.



S. **Technology and Professional Liability**

**Bodily Injury** or **Property Damage** arising out of the performance of or failure to perform Professional Services or Technology Based Services (as defined in the Skinny Tech Coverage Part) by:

1. The **Assured**, or
2. Any person or organization:
  - (a) For whose acts errors or omissions the **Assured** is legally responsible; or
  - (b) From whom the **Assured** assumed liability by reason of a contract or agreement.

For purposes of this exclusion, Professional Services and Technology Based Services shall be defined as provided in Coverage Part One of this Insurance.

III. **DEFENSE AND SUPPLEMENTARY PAYMENTS**

Underwriters will pay, with respect to any **Claim** Underwriters investigate or settle or any **Suit** against an **Assured** Underwriters defend under this CGL Coverage Part:

- A. All expenses Underwriters incur.
- B. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. Underwriters have no obligation under this Policy to furnish these bonds.
- C. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. Underwriters have no obligation under this Policy to furnish these bonds.
- D. All reasonable expenses incurred by the **Assured** at Underwriters' request to assist Underwriters in the investigation or defense of the **Claim** or **Suit**, including actual loss of earnings up to \$250 a day because of time off from work.
- E. All costs taxed against the **Assured** in the **Suit**.
- F. Prejudgment interest awarded against the **Assured** on that part of the judgment Underwriters pay. If Underwriters make an offer to pay the applicable limit of insurance, Underwriters will not pay any prejudgment Interest based on that period of time after the offer.
- G. All interest on the full amount of any judgment that accrues after entry of the judgment and before Underwriters have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.



**These payments (exclusive of expenses for Underwriters employees) are payable only in excess of the deductible and will reduce and may completely exhaust the Limit of Liability.**

#### **IV. WHO IS AN ASSURED**

A. If you are:

1. An individual, you and your spouse are **Assureds**, but only with respect to the conduct of a business of which you are the sole owner.
2. A partnership or joint venture, you are an **Assured**. Your members, your partners, and their spouses are also **Assureds**, but only with respect to the conduct of your business.
3. A limited liability company, you are an **Assured**. Your members are also **Assureds**, but only with respect to the conduct of your business. Your managers are **Assureds**, but only with respect to their duties as your managers.
4. An organization other than a partnership, joint venture or limited liability company, you are an **Assured**. Your **Executive Officers** and directors are **Assureds**, but only with respect to their duties as your officers or directors. Your stockholders are also **Assureds**, but only with respect to their liability as stockholders.

B. Each of the following is also an **Assured**:

1. Your **Employees**, other than either your **Executive Officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these **Employees** is an **Assured** for:

(a) Bodily Injury:

- (i) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-**Employee** while that co-**Employee** is either in the course of his or her employment or while performing duties related to the conduct of your business;
- (ii) To the spouse, child, parent, brother or sister of that co-**Employee** as a consequence of Paragraph (a) (i) above;
- (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 Paragraphs (a) (i) or (ii) above; or



- (iv) Arising out of his or her providing or failing to provide professional health care services.
    - (b) **Property Damage** to property:
      - (i) Owned, occupied or used by,
      - (ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by  
  
you, any of your **Employees**, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - 2. Any person (other than your **Employee**) or any organization while acting as your real estate manager.
  - 3. Any person or organization having proper temporary custody of your property if you die, but only:
    - (a) With respect to liability arising out of the maintenance or use of that property, and
    - (b) Until your legal representative has been appointed.
  - 4. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this CGL Coverage Part.
- C. With respect to **Mobile Equipment** registered in your name under any motor vehicle registration law, any person is an **Assured** while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an **Assured**, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an **Assured** with respect to:
- 1. **Bodily Injury** to a co-**Employee** of the person driving the equipment; or
  - 2. **Property Damage** to property owned by, rented to in the charge of or occupied by you or the employer of any person who is an **Assured** under this provision.





- D. Subject to subsections 1 and 2 of this paragraph D, any organization you newly acquire or form during the Period of Insurance, other than a partnership, joint venture or limited liability company, over which you maintain ownership or majority interest, will qualify as a Named Assured if there is no other similar insurance available to that organization. However:
1. If the annual revenues of the acquired or formed organization are greater than 10% of the annual revenues of the Named Assured acquiring or forming the organization as set forth in its most recent financial statement, then such organization shall not have coverage under this CGL Coverage Part unless the Named Assured gives the Underwriters written notice prior to the acquisition or formation, obtains the written consent of Underwriters to extend coverage to such additional organizations and agrees to pay any additional premium required by Underwriters; and
  2. This CGL Coverage Part does not apply to **Bodily Injury** or **Property Damage** that occurred before you acquired or formed the organization.

No person or organization is an **Assured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Assured in the Declarations.

- E. If during the **Period of Insurance**, you consolidate or merge with or are acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless Underwriters have issued an endorsement extending coverage under this Policy, and the First Named Assured has agreed to any additional premium and terms of coverage required by Underwriters.
- F. All notices and premiums payments made under this section shall be directed to Underwriters through the entity named in Item 8. of the Declarations.

## V. DEFINITIONS

Whenever used in this CGL Coverage Part, the following definitions will apply:

- A. **“Assured Contract”** means;
1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an **Assured Contract**;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality except in connection with work for a municipality;
  5. An elevator maintenance agreement;



6. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under, which you assume the tort liability of another party to pay for **Bodily Injury** or **Property Damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph 6 does not include that part of any contract or agreement:

- (a) That indemnifies a railroad for **Bodily Injury** or **Property Damage** arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (b) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (i) Preparing, approving, or failing to prepare or approve, maps, shop drawing, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (ii) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (c) Under which the **Assured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Assured's** rendering or failure to render professional services, including those listed in (b) above and supervisory, inspection, architectural or engineering activities.

B. “**Auto**” means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But, auto does not include **Mobile Equipment**.

C. “**Bodily Injury**” means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time

**Bodily Injury** does not include mental anguish, shock, humiliation or emotional distress except to the extent that it results from physical injury, sickness or disease sustained by a person.

D. “**Claim**” means a demand for damages.

E. “**Coverage Territory**” means:

- 1. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- 2. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in 1 above; or



3. All parts of the world if the injury or damage arises out of:
  - (a) Goods or products made or sold by you in the territory described in 1 above; or
  - (b) The activities of a person whose home is in the territory described in 1 above, but is away for a short time on your business

provided the **Assured's** responsibility to pay damages is determined in a **Suit** on the merits, in the territory described in 1 above or in a settlement we agree to.

- F. "**Employee**" includes a **Leased Worker**, **Employee** does not include a **Temporary Worker**.
- G. "**Executive Officer**" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- H. "**Extended Reporting Period**" means the 6 month period of time after the end of the **Period of Insurance** for reporting **Claims** as provided in General Condition I.
- I. "**Impaired Property**" means tangible property, other than **Your Product** or **Your Work**, that cannot be used or is less useful because:
  1. It incorporates **Your Product** or **Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
  2. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  1. The repair, replacement, adjustment or removal of **Your Product** or **Your Work**; or
  2. Your fulfilling the terms of the contract or agreement.
- J. "**Leased Worker**" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased Worker** does not include a **Temporary Worker**.
- K. "**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 **Auto**;
  2. While it is in or on an aircraft, watercraft or **Auto**; or
  3. While it is being moved from an aircraft, watercraft or **Auto** to the place where it is 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 **Auto**.

L. “**Mobile Equipment**” means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (a) Power cranes, shovels, loaders, diggers or drills; or
  - (b) Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in 1, 2, 3, or 4, above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (a) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (b) Cherry pickers and similar devices used to raise or lower workers;
6. Vehicles not described in 1, 2, 3, or 4, above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **Mobile Equipment** but will be considered **Autos**:

- (a) Equipment designed primarily for:
  - (i) Snow removal;
  - (ii) Road maintenance, but not construction or resurfacing; or
  - (iii) Street cleaning;
- (b) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and



- (c) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- M. “**Occurrence**” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- N. “**Period of Insurance**” 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**.
- O. “**Pollutants**” mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- P. “**Products Completed Operations Hazard**”:
- 1. Includes all **Bodily Injury** and **Property Damage** occurring away from premises you own or rent and arising out of **Your Product** or **Your Work** except:
    - (a) Products that are still in your possession; or
    - (b) Work that has not yet been completed or abandoned. However, **Your Work** will be deemed completed at the earliest of the following times:
      - (i) When all of the work called for in your contract has been completed.
      - (ii) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (iii) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
  - 2. Does not include **Bodily Injury** 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 you, and that condition was created by the **Loading or Unloading** of that vehicle by any **Assured**;
    - (b) The existence of tools, uninstalled equipment or abandoned or unused materials. Or



- (c) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that the products-completed operations are subject to a General Aggregate Limit.

Q. “**Property Damage**” means:

- 1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- 2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

For the purposes of this Insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

R. “**Suit**” means a civil proceeding in which damages because of **Bodily Injury**, or **Property Damage** to which this Insurance applies are alleged. **Suit** includes:

- 1. An arbitration proceeding in which such damages are claimed and to which the **Assured** must submit or does submit with Underwriters’ consent; or
- 2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the **Assured** submits with Underwriters’ consent.

S. “**Temporary Worker**” means a person who is furnished to you to substitute for a permanent **Employee** on leave or to meet seasonal or short-term workload conditions.

T. “**Your Product**”;

- 1. Means:
  - (a) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (i) You;
    - (ii) Others trading under your name; or
    - (iii) A person or organization whose business or assets you have acquired; and
  - (b) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.



2. Includes:
  - (a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Your Product**; and
  - (b) The providing of or failure to provide warnings or instructions.
3. Does not include vending machines or other property rented to or located for the use of others but not sold

U. **“Your Work”:**

1. Means:
  - (a) Work or operations performed by you or on your behalf; and
  - (b) Materials, parts or equipment furnished in connection with such work or operations.
2. Includes:
  - (a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Your Work**; and
  - (b) The providing of or failure to provide warnings or instructions.

VI. **CGL CONDITIONS**

A. **Limit of Liability**

1. The Limit of Liability stated in Item 3.(d) of the Declarations “Annual Aggregate Limit” is the most Underwriters will pay for the sum of all payments including damages and Defense and Supplementary Payments under this CGL Coverage Part regardless of the number of:
  - (a) **Assureds**;
  - (b) **Claims** made or **Suits** brought; or
  - (c) Persons or organizations making **Claims** or bringing **Suits**.
2. Subject to 1 above, the “Each **Occurrence**” Limit stated in Item 3.(c) of the Declarations is the most Underwriters will pay for damages and Defense and Supplementary Payments under this Coverage Part because of all **Bodily Injury** and **Property Damage** arising out of any one **Occurrence**.
3. The “Combined Annual Aggregate Limit” stated in Item 3. of the Declarations is the combined total limit of Underwriters’ Liability for all payments under Items 3.(b) and 3.(d) of the Declarations.





The Limit of Liability of this CGL Coverage Part applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the **Period of Insurance** shown in the Declarations, unless the **Period of Insurance** is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Liability.

**B. Deductible**

1. Underwriters' obligation under this CGL Coverage Part to pay damages, or to make Defense and Supplementary Payments on behalf of any **Assured** applies only to such amounts in excess of the deductible amount stated in Item 4.(b) of the Declarations, "CGL Coverage Part Each **Occurrence** Deductible." The deductible applies to all damages sustained by any one person because of:

- (a) **Bodily Injury**;
- (b) **Property Damage**; or
- (c) **Bodily Injury and Property Damage** combined

as a result of any one **Occurrence**, and includes Defense and Supplementary Payments incurred in any resulting **Claim**.

If damages are claimed for care, loss of services or death resulting at any time from **Bodily Injury**, a separate deductible amount will be applied to each person making a claim for such damages.

With respect to **Property Damage**, person includes an organization.

2. The deductible shall be satisfied by payments by the First Named Assured as a condition precedent to payment by the Underwriters of any amounts under the terms of this CGL Coverage Part. The **Assured's** duties in the event of an **Occurrence, Claim or Suit** apply irrespective of the application of the deductible amount.

3. The First Named Assured shall make direct payments within the deductible to appropriate other parties designated by the Underwriters.

**C. Duties in the Event of an Occurrence, Claim or Suit**

1. You must see to it that Underwriters are notified as soon as practical, through persons named in Item 7. of the Declarations, of an **Occurrence** that may result in a **Claim**. To the extent possible, notice should include:

- (a) How, when and where the **Occurrence** took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the **Occurrence**.



2. If any **Claim** is made or a **Suit** is brought against any **Assured**, you must immediately:
  - (a) Record the specifics of the **Claim** or **Suit** and the date received; and
  - (b) Forward to Underwriters through persons named in Item 7. of the Declarations every demand, notice, summons or other process received by the **Assured** or the **Assured's** representative.

You must see to it that Underwriters, through the persons named in Item 7 of the Declarations receive written notification of the **Claim** or **Suit** as soon as practicable.

3. If any **Assured** shall makes 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.
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## GENERAL CONDITIONS

### APPLICABLE TO BOTH COVERAGE PARTS

#### **I. EXTENDED REPORTING ENDORSEMENT**

A. In the event of cancellation or non-renewal of this Insurance by the Underwriters, the First Named Assured 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 6-month **Extended Reporting Period** for **Claims** first made against any **Assured** and reported to the Underwriters during the **Extended Reporting Period**, and arising out of:

1. in the case of a claim covered by the Skinny Tech Coverage Part, any act, error or omission committed on or after the Retroactive Date and before the end of the **Period of Insurance**; or
2. in the case of a claim covered by the CGL Coverage Part, out of any **Bodily Injury** or **Property Damage** caused by an **Occurrence** that did not occur before the Retroactive Date or after the end of the **Period of Insurance**,

subject to the conditions set forth in the definition of **Extended Reporting Period** herein.

In order for the First Named Assured 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.

- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability for the **Period of Insurance**.
- C. 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.
- D. The right to the **Extended Reporting Period** shall not be available to the First Named Assured where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Assured** to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- E. All notices and premium payments with respect to the **Extended Reporting Period** option shall be directed to Underwriters through the entity named in Item 8. of the Declarations.
- F. 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**.



## II. ASSISTANCE AND COOPERATION OF THE ASSURED

- A. The **Assured** shall cooperate with the Underwriters in all investigations, including investigations regarding the application for and coverage under this Policy. The **Assured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters.
- B. Upon the Underwriters' request, the **Assured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Assured** because of acts, errors or omissions, or **Bodily Injury** or **Property Damage** with respect to which Insurance is afforded under this Policy; and the **Assured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Assured** shall not admit liability, voluntarily make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the consent of Underwriters.
- D. Expenses incurred by the **Assured** in assisting and cooperating with Underwriters, as described above, do not constitute **Claims Expenses** or Defense or Supplementary Payments under the Policy.

## III. OTHER INSURANCE

This Insurance shall apply in excess of any other valid and collectible insurance available to any **Assured**, including any self-insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## IV. ACTION AGAINST UNDERWRITERS

- A. No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto: (1) there shall have been full compliance with all terms of this Insurance; and (2) until the amount of the **Assured's** obligation to pay shall have been finally determined either by judgment or award against the **Assured** after actual trial or arbitration or by written agreement of the **Assured**, the Claimant and the Underwriters.
- B. Any person or organization or the legal representative thereof who has secured such judgment, 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 Insurance to join the Underwriters as a party to an action or other proceeding against the **Assured** to determine the **Assured's** liability, nor shall the Underwriters be impleaded by the **Assured** or his legal representative.
- C. Bankruptcy or insolvency of the **Assured** or of the **Assured's** estate shall not relieve the Underwriters of their obligations hereunder.



## V. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Assureds'** rights of recovery therefore against any person or organization and the **Assured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Assured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to any payments made by Underwriters under the terms of this Policy, and third to the deductible. Any additional amounts recovered shall be paid to the First Named Assured.

## VI. ENTIRE AGREEMENT

By acceptance of the Policy, all **Assureds** agree that this Policy embodies all agreements between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Insurance or stop the Underwriters from asserting any right under the terms of this Insurance; nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form a part of this Insurance, signed by Underwriters.

## VII. ASSIGNMENT

The interest hereunder of any **Assured** is not assignable. If the **Assured** shall die or be adjudged incompetent, such Insurance shall cover the **Assured's** legal representative as the **Assured** as would be permitted by this Policy.

## VIII. CANCELLATION

- A. This Policy of Insurance may be cancelled by the First Named Assured by surrender thereof to Underwriters or by mailing to Underwriters through the entity named in Item 8. of the Declarations written notice stating when thereafter the cancellation shall be effective. The Underwriters may cancel this Insurance by mailing to the First Named Assured 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 Insurance because the **Assured** has failed to pay a premium when due, this Insurance may be cancelled by the Underwriters by mailing a written notice of cancellation to the First Named Assured 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 **Period of Insurance**. Delivery (where permitted by law) of such written notice either by the Named Assured or by the Underwriters shall be equivalent to mailing.
- B. If the First Named Assured cancels this Insurance prior to reporting any **Claim** under this Policy, thirty percent (30%) of the premium shall be deemed earned upon inception of the policy, and the remaining earned premium shall be computed in accordance with the customary short rate table and procedure.
- C. If the Underwriters cancel this Insurance prior to any **Claim** being reported under this Policy, earned premium shall be computed pro rata.



- D. The premium shall be deemed fully earned if any **Claim** under this Policy is reported to Underwriters on or before the date of cancellation.
- E. 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.

**IX. 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.

**X. TITLES OF PARAGRAPHS**

The titles of paragraphs sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

**XI. WARRANTY BY THE ASSURED**

By acceptance of this Policy, the **Assured** agrees that the statements contained in the Application, any Application for insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are its agreements and representations, that they shall be deemed material to the risk assumed by Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Assured** or its agent in the Application, any Application for insurance of which this Policy is a renewal, or any supplemental materials submitted therewith will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

The Application and any Application for insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are deemed incorporated into and made a part of this Policy.

**XII. NAMED ASSURED AS AGENT**

The First Named Assured specified in Item 1. of the Declarations shall be considered the agent of all **Assureds**, and shall act on behalf of all **Assureds** with respect to the giving of or receipt of all notices pertaining to this Policy, the acceptance of any endorsements to this Policy, and the First Named Assured shall be responsible for the payment of all premiums and deductibles.

**XIII. WAR AND TERRORISM EXCLUSION**

Notwithstanding any provision to the contrary within this Insurance or any endorsement thereto, it is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;



- A. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- B. any act of terrorism.

For the purpose of this endorsement, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to A or B above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Insurance, the burden of proving the contrary shall be upon the **Assured**.

In the event any portion of this Section XIII is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### **XIV. 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 under this Insurance, the Underwriters hereon, at the request of the **Assured**, 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 the Underwriters' representative, designated in Item 9. 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 or of any Appellate Court in the event of an appeal.

The Underwriters' representative designated in Item 9. 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 **Assured** to give a written undertaking to the **Assured** 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, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor 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 **Assured** or any beneficiary hereunder arising out of this Policy, and hereby designate the Underwriters' representative, designated in Item 9 of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

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Specimen



## DECLARATIONS

### SKINNY TECH TECHNOLOGY AND PROFESSIONAL LIABILITY

#### AND

### COMMERCIAL GENERAL LIABILITY INSURANCE

#### CLAIMS MADE AND REPORTED COVERAGE

PLEASE READ CAREFULLY.

**1. NAMED ASSURED  
ADDRESS:**

**2. PERIOD OF INSURANCE:**

FROM: TO:  
12:01 AM STANDARD TIME AT THE ADDRESS SHOWN IN NUMBER 1. ABOVE.

**3. LIMIT OF LIABILITY:**

Skinny Tech Coverage Part:

- (a) USD Each **Claim** Limit - Includes **Claims Expenses**.  
(b) USD Annual Aggregate Limit - Includes **Claims Expenses**.

CGL Coverage Part:

- (c) USD Each **Occurrence** Limit – Includes Defense and Supplementary Payments  
(d) USD Annual Aggregate Limit – Includes Defense and Supplementary Payments

Combined Annual Aggregate Limit:

**4. DEDUCTIBLE:**

Skinny Tech Coverage Part each **Claim** deductible

- (a) USD includes Claims Expenses

CGL Coverage Part each **Occurrence** deductible:

- (b) USD includes Defense and Supplementary Payments.



**5. GROSS PREMIUM:**

Skinny Tech Coverage Part	USD
CGL Coverage Part	USD

**6. RETROACTIVE DATE:**

**7. NOTICE OF CLAIM TO:** Michael L. Donovan  
Hancock, Rothert & Bunshoft LLP  
4 Embarcadero Center, Suite 300  
San Francisco, CA 94111

**8. NOTICE OF ELECTION:**

**9. SERVICE OF SUIT:**

FORMS AND ENDORSEMENTS ATTACHED HERETO