

NEW MEXICO SELF INSURER'S FUND LIABILITY PLAN

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NEW MEXICO SELF INSURER'S FUND LIABILITY PLAN

THIS POLICY PROVIDES CLAIMS MADE COVERAGE UNDER COVERAGE H.

PLEASE READ THE ENTIRE FORM CAREFULLY. Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the New Mexico Self Insurer's Fund.

The word "insured" means any person or organization qualifying as such under SECTION III. WHO IS AN INSURED, or the specialized definitions in Coverage parts D or E.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VI. - DEFINITIONS.

RETROACTIVE DATE, CLAIMS MADE COVERAGE

1. Coverage H of this policy has a Retroactive Date as specified in the Declarations.
2. Coverage H of this policy being Claims-Made will cover only claims that are made in accordance with this policy and in which the injury or property damage occur after the Retroactive Date and only during the "policy period."
3. As concerns the Claims-Made portion of this policy the longest Extended Reporting Period available is two (2) years following the rating anniversary date or expiration of this policy.
4. The reporting endorsement will extend the period of time for you to file a claim on an occurrence that took place during a past "policy period." You have sixty (60) days after policy expiration to purchase this reporting endorsement.
5. Coverage H of this insurance applies to damages only if 1 claim for damages is first made against you or your "employees" during the "policy period" or on or after the Retroactive Date shown on the Declarations:
 - a. A claim by a person or organization seeking damages will be deemed to have been made when notice of such claim is received and recorded by you or any of your employees or by us, whichever comes first.
6. SECTION VII. On CONDITIONS, Item 6, "Other Insurance", sets out provisions on other insurance applicable to claims on or after the Retroactive Date herein and prior to the inception date of the policy.

I. COVERAGES

COVERAGE A: GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE

1. WE WILL COVER

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II. - SUPPLEMENTARY PAYMENTS.

The "bodily injury" or "property damage" must be caused by an "occurrence." The "occurrence" must take place in the "coverage territory." The "bodily injury" or "property damage" must occur during the policy period. But:

- a. The amount we will pay for damages is limited as described in SECTION IV. LIMITS OF INSURANCE;
- b. We may, at our discretion, investigate an "occurrence" and settle any "claim" or "suit" that may result in accordance with rules established by the Fund Board of Trustees; and
- c. Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A. We have no duty to defend a "claim," or "suit" or demand that is not covered by this insurance.

2. WE WILL NOT COVER – EXCLUSIONS APPLICABLE TO COVERAGE A ONLY

This insurance does not apply to:

"Bodily injury" or "property damage" expected or intended from your standpoint or the standpoint of any insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

COVERAGE B: AUTO BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. WE WILL COVER

We will pay those sums that you become legally obligated to pay as damages because of "bodily injury" or "property damage" resulting from an auto accident. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II. – SUPPLEMENTARY PAYMENTS. The "bodily injury" or "property damage" must be caused by an "occurrence." The "occurrence" must take place in the "coverage territory." The "bodily injury" or "property damage" must occur during the policy period. We will have the right and duty to defend any "suit" seeking those damages. But:

- a. The amount we will pay for damages is limited as described in SECTION IV. – LIMITS OF INSURANCE;
- b. We may investigate and settle any "occurrence," claim, or "suit" in accordance with rules established by the Fund Board of Trustees.
- c. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or other sums pursuant to SECTION IV. – LIMITS OF INSURANCE under cover B or payment of medical expenses under any Medical Payments Coverages.

While a "covered auto" is away from the state where it is licensed, we will provide the Limits of Insurance stated herein applicable to Coverage B or the minimum amounts and types of other coverages as required of out-of-state vehicles by the jurisdiction where the "covered auto" is being used, whichever is greater.

2. WE WILL NOT COVER – EXCLUSIONS APPLICABLE TO COVERAGE B ONLY

This insurance does not apply to:

"Bodily injury" or "property damage" expected or intended from your standpoint or the standpoint of any insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

3. EXTENSION OF COVERAGE

For the purposes of Coverage B only, "COVERAGE TERRITORY" is extended to include infrequent trips to Mexico that:

1. Do not exceed twenty-five (25) miles from the boundary of the United States of America; and
2. Do not exceed ten (10) days at any one time.

This extension applies only to insureds who live in the United States of America, and an automobile which is principally garaged and used in the United States of America. If either of these two requirements is not met, this extension will not apply.

AUTOMOBILE ACCIDENTS IN MEXICO ARE SUBJECT TO THE LAWS OF MEXICO – NOT THE LAWS OF THE UNITED STATES OF AMERICA. UNLIKE THE UNITED STATES, THE REPUBLIC OF MEXICO CONSIDERS AN AUTOMOBILE ACCIDENT A CRIMINAL OFFENSE AS WELL AS A CIVIL MATTER.

IN SOME CASES, THE COVERAGE UNDER THIS AGREEMENT MAY NOT BE RECOGNIZED BY MEXICAN AUTHORITIES AND WE MAY NOT BE ALLOWED TO IMPLEMENT THIS COVERAGE AT ALL IN MEXICO. THE COVERED PARTY SHOULD CONSIDER PURCHASING AUTOMOBILE COVERAGE FROM A LICENSED MEXICAN INSURANCE COMPANY BEFORE DRIVING INTO MEXICO.

COVERAGE C: PHYSICAL DAMAGE COVERAGE

1. WE WILL COVER

We will pay for loss to a "covered auto" or its equipment which occurs during the "policy period", under:

- a. "Comprehensive Coverage". From any cause except the "covered auto's" collision with another object or its overturn;
- b. "Collision Coverage". Caused by the "covered auto's" collision with another object or its overturn.

2. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE ONLY

This insurance does not apply to

- a. Wear and tear, freezing, mechanical or electrical breakdown, unless caused by a collision;
- b. Blowouts, punctures or other road damage to tires unless caused by a collision;
- c. Loss caused by declared or undeclared war or warlike action by military force, insurrection, rebellion, revolution, or action taken by governmental authority in hindering or defending against any of these, and any consequences of any of the above;
- d. Loss caused by a nuclear hazard, the explosion of any weapon employing atomic fission or fusion, or any of their consequences;
- e. Loss caused by radioactive contamination, nuclear reaction or radiation, however caused.

Losses excluded in paragraphs c through e are excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss;

- f. Loss to tape decks or other sound reproducing equipment unless permanently installed in a "covered auto";
- g. Loss to tapes, records or other sound reproducing devices designed for use with sound reproducing equipment; or
- h. Loss to any sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "covered auto" manufacturer for the installation of a radio.

3. HOW WE WILL PAY FOR LOSSES - THE MOST WE WILL PAY

- a. At our option we may:
 - (1) Pay for, repair or replace damaged or stolen property; or
 - (2) Return the stolen property, at our expense. We will pay for any damage that results to the "covered auto" from the theft.
- b. The most we will pay for the loss is the smaller of the following amounts:
 - (1) The actual cash value of the damaged or stolen property at the time of loss; or

(2) The cost of repairing or replacing the damaged or stolen property with other of like kind or quality.

c. For each "covered auto," our obligation to pay for, repair, return, or replace damaged or stolen property will be reduced by the applicable deductible shown in the declarations.

4. GLASS BREAKAGE - HITTING A BIRD OR ANIMAL, FALLING OBJECTS OR MISSILES

We will pay for glass breakage, loss caused by hitting a bird or animal or by falling objects or projectiles under Comprehensive Coverage if you carry Comprehensive Coverage for the damaged "covered auto." However, you have the option of having glass breakage caused by a "covered auto's" collision or overturn considered a loss under Collision Coverage.

5. NO BENEFIT TO BAILEE - PHYSICAL DAMAGE INSURANCE ONLY

We will not recognize any assignment or grant any coverage for the benefit of any personal or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.

COVERAGE D: AUTO MEDICAL PAYMENTS COVERAGE

1. WORDS AND PHRASES WITH SPECIAL MEANING

In addition to the WORDS AND PHRASES WITH SPECIAL MEANING in the policy, the following word has special meaning for AUTO MEDICAL PAYMENTS INSURANCE.

a. "Occupying" means in, upon, getting in, on, out or off.

2. WE WILL COVER

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by an accident. We will pay only those expenses incurred within three (3) years from the date of the accident.

3. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE D ONLY

- a. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises;
- b. "Bodily injury" sustained by you while "occupying" or struck by any vehicle (other than a "covered auto") owned by you or furnished or available for your regular use;
- c. "Bodily injury" sustained by anyone while "occupying" or struck by any vehicle (other than a "covered auto") owned by, or furnished, or available for the regular use of that person;
- d. "Bodily injury" to your employee arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic employees if not entitled to workers' compensation benefits;
- e. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos," unless that business is yours;
- f. "Bodily injury" caused by declared or undeclared war or insurrection or any of their consequences;
- g. "Bodily injury" to anyone using a vehicle without reasonable belief that the person is entitled to do so.

4. WHO IS INSURED

For the purposes of Coverage D only, an "insured" means:

- a. Anyone "occupying" a "covered auto" or temporary substitute for a "covered auto." The "covered auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

5. OUR LIMIT OF LIABILITY

Regardless of the number of "covered autos," "insureds," "claims," made or vehicles involved in the "accident," the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the limit of AUTO MEDICAL PAYMENTS shown in the declarations.

6. CHANGES IN CONDITIONS

The CONDITIONS of the agreement are changed for AUTO MEDICAL PAYMENTS INSURANCE as follows:

- a. OUR RIGHT TO RECOVER FROM OTHERS does not apply
- b. The reference in OTHER INSURANCE to "other collectible insurance" applies only to other collectible auto medical payments insurance.

COVERAGE E: UNINSURED MOTORIST COVERAGE

1. WORDS AND PHRASES WITH SPECIAL MEANING

In addition to the WORDS AND PHRASES WITH SPECIAL MEANING in the policy, the following words and phrases have special meaning for UNINSURED MOTORISTS' INSURANCE:

- a. "Occupying" means in, upon, getting in, out or off
- b. "Property damage" means injury or destruction of:
 - (1) A "covered auto;" or
 - (2) Property owned by your or your "employee" and contained in a "covered auto;" or
 - (3) Property contained in a "covered auto" and owned by anyone else occupying the "covered auto."
- c. "Uninsured motor vehicle" means a land motor vehicle or trailer:
 - (1) For which no liability bond or policy at the time of an "occurrence" provides at least the amounts required by the applicable law where a "covered auto" is principally garaged; or
 - (2) For which the sum of all bodily injury liability bonds or policies at the time of an "occurrence" provides at least the amounts required by the applicable law where a "covered auto" is principally garaged but their limits are less than the limit of this insurance; or
 - (3) For which an insuring or bonding company denies coverage or is or becomes insolvent; or
 - (4) Which is a hit-and-run vehicle and neither the driver nor owner can be identified. The vehicle must hit an insured, a "covered auto" or a vehicle an insured is occupying.

However, "uninsured motor vehicle" does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law;
- b. Owned by a governmental unit or agency;
- c. Designed for use mainly off public roads while not on public roads;
- d. Operated on rails or crawler treads;
- e. While located for use as a residence or premises;
- f. Owned or furnished or available for the regular use of you.

2. WE WILL COVER

- a. In accordance with Section 66-5-301, NMSA 1978, but limited as provided herein, we will pay all sums the "insured" is legally entitled to recover as damages from the owner or driver of an "uninsured motor vehicle." The damages must result from "property damage" or "bodily injury" by the "insured," caused by an "occurrence." The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle."

- b. If the insurance provides a limit in excess of the amounts required by the applicable law where a "covered auto" is principally garaged, we will pay only after all liability bonds or policies have been exhausted by judgments or payments.
- c. A judgment for damages arising out of a suit brought without our written consent is not binding on us.

3. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE E ONLY

This insurance does not apply to:

- a. Any claim settled without our consent.
- b. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits, employer liability or similar law.
- c. The direct or indirect benefit of any insurer of property.
- d. The first \$250 of the amount of "property damage" to the property of each insured as the result of any one "occurrence."
- e. Anyone using a vehicle without reasonable belief that the person is entitled to do so.
- f. Property damage for which the insured has been or is entitled to be compensated by other property or physical damage insurance.
- g. Any "auto" when it is being used to carry persons or property for a fee.

4. WHO IS INSURED

For the purposes of Coverage E only, the following are "insured" as Class II insureds:

- a. Anyone occupying a "covered auto" or a temporary substitute for a "covered auto." The "covered auto" must be out of service because of its breakdown, repair, servicing, loss or destruction
- b. Anyone for damages he is entitled to recover because of "bodily injury" sustained by another "insured."

There are no Class I insureds under Coverage E of this plan.

5. OUR LIMIT OF LIABILITY

- a. Regardless of the number of "covered autos", vehicles or premiums shown in the Declarations or schedules, "insureds", claims made, or vehicles involved in the "occurrence", the most we pay for damages resulting from any one "occurrence" is the limit of Uninsured Motorists Insurance shown on the Declarations of this policy. In consideration of the group self insurance funding of this policy, the limit of liability shown in the Declarations for this endorsement is our maximum limit of liability for all damages resulting from any one occurrence.
- b. Any amount payable under this insurance shall be reduced by:
 - (1) All sums paid or payable under any workers' compensation, disability benefits, employer's liability or similar law, or under any other collectible insurance; and
 - (2) All sums paid by or for anyone who is legally responsible, including all sums paid under Coverage B, this policy's auto liability insurance;
 - (3) All sums paid under Coverages C or D of this policy.
- c. Any amount paid under this insurance will reduce any amount an "insured" may be paid under this policy's liability insurance.
- d. We will not pay for a loss which is paid or payable under physical damage insurance.

6. CHANGES IN CONDITIONS

The CONDITIONS of the agreement are changed for UNINSURED MOTORISTS' INSURANCE as follows:

- a. If there is other applicable similar insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to an auto you do not own shall be excess over any other collectible insurance.
- b. YOUR DUTIES AFTER ACCIDENT OR LOSS is changed by adding the following:
 - (1) Promptly notify the police if a hit-and-run driver is involved; and
 - (2) Promptly send us copies of the legal papers if a suit is brought.
- c. OUR RIGHT TO RECOVER FROM OTHERS is changed by adding the following:

If we make any payment and you recover from another party, you shall hold the proceeds in trust for us and pay us back the amount we have paid.

7. ARBITRATION

- a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of a "uninsured motor vehicle" or do not agree as to the amount of damages, either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of a third arbitrator equally.
- b. Unless both parties agree otherwise, arbitration will take place in the county where the situs of the fund is located. Local rules of law as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

COVERAGE F: PREMISES MEDICAL PAYMENTS

1. WE WILL COVER

- a. We will pay medical expenses as described below for "bodily injury" caused by an occurrence:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations; provided that:
 - (a) The occurrence takes place in the "coverage territory" and during the "policy period";
 - (b) The expenses are incurred and reported to us within one year of the date of the occurrence; and
 - (c) The injured person submits to examination, at our expense, by physician of our choice as often as we reasonably require.
- b. We will make these payments without admission of fault. These payments will not exceed the limits stated in this Coverage part. We will pay reasonable expenses for:
 - (1) First aid at the time of an occurrence;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE F ONLY

We will not pay expenses for "bodily injury":

- a. To an insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.

- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard."
- g. Caused by motor vehicle accidents on the roadways owned by or under the jurisdiction of the insured.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

3. CONDITIONS APPLICABLE TO COVERAGE F ONLY

We may, at our sole discretion, require as a condition precedent to making any payments under Coverage F, that the injured person, or his or her guardian, sign a release releasing you and your "employees" from any further liability for damages caused by the injury. If the injured person, or his or her guardian, refuses to sign a release, we have no obligation to make any payment under Coverage F.

4. LIMITS OF LIABILITY APPLICABLE TO COVERAGE F ONLY

The Limits of Liability for medical payments shall be \$1,000.00 per person per occurrence and \$5,000.00 in the aggregate annually.

COVERAGE G: LAW ENFORCEMENT LIABILITY

1. WE WILL COVER

We will pay all sums that the insured becomes legally obligated to pay as damages as a result of a "claim" or "suit" arising under NMSA Section 41-4-12 (1989 Repl. pamp.), and resulting from an occurrence which occurs during the policy period. For this coverage to apply, the damages must be caused by a "law enforcement officer" or officers acting within the scope of their duties. We will have the right and duty to defend my "suit" seeking those damages. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II. SUPPLEMENTARY PAYMENTS.

- a. The amount we will pay for damages is limited as described in SECTION IV. LIMITS OF INSURANCE;
- b. We may investigate and settle any "occurrence," "claim" or "suit" in accordance with rules established by the Fund Board of Trustees;
- c. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage G.

COVERAGE H: ERRORS AND OMISSIONS LIABILITY

1. WE WILL COVER

We will pay on your behalf all sums which you or your "employees" shall become legally obligated to pay as damages on account of any "claim" or "suit" first made against you during the coverage period by reasons of any act, error, omission, or the violation of any rights, privileges or immunities secured by the Constitution or the laws of the United States of America. This coverage does not apply to any act, error, omission or violation of rights, privileges or immunities which occurred prior to the retroactive date, if any, shown in the Declarations or which occurs after the coverage period. We will have the right and duty to defend any "suit" seeking those damages. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION II. SUPPLEMENTARY PAYMENTS.

- a. The amount we will pay for damages is limited as described in SECTION IV. LIMITS OF INSURANCE;
- b. We may investigate and settle any "occurrence," "claim" or "suit" in accordance with rules established by the Fund Board of Trustees;
- c. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements under Coverage H.

2. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE H ONLY

This coverage does not apply:

- a. To sums which are payable under coverages A, B, G or I; or
- b. To your activities acting in a fiduciary capacity as respects any employee benefit plan; or
- c. To amounts due under the terms of any contractual obligation, but this exclusion does not apply to any employment contract between you and your employees except for any claimed past or future wages and employment benefits or claimed increases in such wages and employment benefits for work that has been or is hereafter performed by the employee making such claim; or
- d. To any "claim" or "suit" for damages arising out of annexation, condemnation, inverse condemnation, adverse possession, or dedication by adverse use; or
- e. To criminal proceedings against you or your employees; or
- f. To any negligent act, error or omission by any interlocal cooperation agreement, mutual aid agreement, or joint powers entity or its officers or employees unless the interlocal cooperation agreement, mutual aid agreement, or joint powers entity is an Insured in the Declarations; or
- g. To damages based on or attributable to you or your "employees" gaining any personal profit or advantages to which you or your "employees" was not legally entitled;
- h. To the return by you or your "employees" of any remuneration paid to you or your "employees" in violation of law;
- i. To damages brought about or contributed to by the dishonesty or fraudulent acts of your or your "employees"; however, notwithstanding the foregoing, you or your "employees" shall be protected under the terms of this Agreement as to any "claims" or "suit" brought against them by reason of any alleged dishonesty or fraudulent acts on the part of them, unless a judgment or other final adjudication thereof adverse to them shall establish that acts of active and deliberate dishonesty or fraud committed by them with actual dishonesty or fraudulent purpose and intent were material to the cause of action so adjudicated;
- j. To the loss of, criminal abstraction of, damage to or destruction of any tangible property or the loss of use of such property by reason of the foregoing;
- k. To any damages which result from a "wrongful act" committed intentionally with knowledge of wrong-doing; however the Fund will provide a defense to you or your "employees" for "claims" or "suits" containing those allegations.

COVERAGE I: EMERGENCY MEDICAL MALPRACTICE

1. WE WILL COVER

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" caused by the negligence of an emergency medical technician in rendering emergency medical treatment while acting within the "scope of duties". This coverage extends to both salaried "employees" and volunteers. We will have the right and duty to defend any "suit" seeking those damages. No other obligation or liability to pay sums or perform acts of services is covered unless explicitly provided for under SECTION II. - SUPPLEMENTARY PAYMENTS.

The "bodily injury" or "property damage" must be caused by an "occurrence." The "occurrence" must take place in the "coverage territory." The "bodily injury" or "property damage" must occur during the policy period. But:

- a. The amount we will pay for damages is limited as described in SECTION IV. LIMITS OF INSURANCE;
- b. We may, at our discretion, investigate an "occurrence" and settle any "claim" or "suit" that may result in accordance with rules established by the Fund Board of Trustees; and

- c. Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage I. We have no duty to defend a "claim," "suit" or demand that is not covered by this insurance.

2. WE WILL NOT COVER - EXCLUSIONS APPLICABLE TO COVERAGE I ONLY

This insurance does not apply to:

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

II. SUPPLEMENTARY PAYMENTS

We will pay, with respect to any "claim" or "suit" we defend under Coverages A, B, G, H or I:

1. All expenses we incur;
2. All costs taxed against the insured in the "suit";
3. Pre-judgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any pre-judgment interest based on that period of time after the offer; and
4. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

III. WHO IS AN INSURED

With respect to Coverages A, B, F, G, H and I, or the Coverage parts specifically indicated, the following are insured:

1. The organization designated in the Declarations is the Named Insured. "You" and "your" in this policy refers to the Named Insured. For the purpose of this policy, your elected and appointed officers and governing body members are "employees" as defined herein.
2. Each of the following is an insured:
 - a. Your "employees," but only for acts within the scope of their duties as your employees. However, none of these employees is an insured for:
 - (1) "Bodily injury" to any of your employees or to a co-employee while in the course of his or her employment;
 - (2) "Property damage" to property owned or occupied by or rented or loaned to that employee or any of your other employees unless covered under Coverage C herein;
 - b. Any person (other than your employee), or any organization while acting as your real estate manager.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured 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 insured, 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 insured with respect to:

- a. "Bodily injury" to a co-employee of the person driving the equipment; or
 - b. "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 insured under this provision.
4. Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the ninetieth (90th) day after you acquire or form the organization or the end of the "policy period", whichever is earlier; and
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
5. With respect to Coverage B, any of your employees with respect to a non-owned automobile only while such auto is being used in your business or within the scope of duties as your employee.
6. With respect to Coverage B, any other person while using a "covered auto" with your permission, provided that person's actual operation or other actual use of the "covered auto" is within the scope of such permission, except:
- a. Someone using a "covered auto" while he or she is working in a business of selling, servicing, repairing or parking "auto" unless that business is yours;
 - b. Anyone other than your employee, a lessee or borrower or any of their employees, while moving property to or from a "covered auto"; or
 - c. The owner or anyone else from whom you hire or borrow an "auto" is covered only if that "auto" is a "trailer" connected to a "covered auto" you own.
7. With respect to Coverage B, anyone liable for the conduct of an employee as described above is covered but only to the extent of that liability.
8. The following are not an insured with respect to Coverage B:
- a. The owner or lessee (of whom you are a sub-lessee) of an "auto" or the owner of a nonowned auto, or any agent or employee of any such owner or lessee;
 - b. Any person while employed in or otherwise engaged in duties in connection with an automobile business, other than an automobile business operated by you; and
 - c. Any person while engaged in the business of his employer with respect to bodily injury to any fellow employee of such persons injured in the course of his employment.

IV. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
 - b. Claims made or "suits" brought
 - c. Persona or organizations making claims or bringing "suits"; or
 - d. Autos to which the policy applies.
2. The Annual Aggregate Coverage A (General Liability) is the most we will pay for the sum of medical expenses under any Medical Payments Coverage and damages because of injury and damage included in the Coverage A during the "policy period." The Annual Aggregate Coverage B (Auto) is the most we will pay for the sum of

medical expenses under any Medical Payments Coverage, Uninsured Motorists Coverages, and damages because of injury and damage included in Coverage B during the "policy period."

3. Subject to Paragraph 2 above the Per Occurrence Limits for Bodily Injury or Property Damage is the most we will pay for the sum of damages arising out of any one "occurrence" under Coverage A as to General Liability or Coverage B as to Auto Liability or Coverage G as to Law Enforcement Liability or Coverage H as to Errors and Omissions Liability. In the event a claim is brought under Coverages A, B or H, arising out of one occurrence, only one Per Occurrence Limit for Bodily Injury and/or Property Damage shall apply; such Per Occurrence Limit shall be the maximum limit of our liability for the claim(s), regardless of the number of coverages under which the claim(s) may be brought. We retain the authority to determine which coverage is applicable to a loss, "claim" or "suit."
4. Subject to 3 above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.
5. Subject to 2 above, the Medical Expense Limit shown on applicable endorsements or declarations is the most we will pay for all medical expenses because of "bodily injury" sustained by any one person.
6. For the purpose of determining the limit of our liability, all loss arising out of continuous or repeated exposures to substantially the same general conditions shall be considered as arising out of one occurrence. Our liability to an insured is further limited as to this and all other named insureds participating in the Liability Plan by the terms and amounts of excess or reinsurance contracts entered into by the New Mexico Self Insurer's Fund board of trustees.
7. The limits of this insurance apply separately to each consecutive policy period and to any remaining period of less than twelve (12) months starting with the beginning of the "policy period" shown in the Declarations, unless the "policy period" is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

V. EXCLUSIONS APPLICABLE TO ALL COVERAGE PARTS

This insurance does not apply to:

Certain Liabilities You Assume by Contract

1. "Bodily injury" or "property damage" for which you are 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:
 - a. Assumed in a contract or agreement that is an "insured contract"; or
 - b. That you would have in the absence of the contract or agreement.

Coverage provided hereunder is limited to the liability of a governmental entity under the Tort Claims Act and to the Limits of Insurance shown in the Declarations, and to coverages provided under this policy to the Named Insured. Coverage provided hereunder is limited to "bodily injury" or "property damage" which occurs subsequent to the execution of the "insured contract."

2. Any liability for any amount actually due under the terms of any contract or agreement for any damages arising as a consequence of the failure, refusal or inability of an insured to enter, renew or perform any contract or agreement, or for any claim of breach of contract, whether or not the contract is an "insured contract." As used in this paragraph, "contract" includes any oral or written agreement or contract.

Liquor Liability

3. "Bodily injury" or "property damage" for which you or any of your employees may be held liable by reason of:
 - a. Causing or contributing to the intoxication of any person;

- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies if you are manufacturing, distributing, selling, serving or furnishing alcoholic beverages, whether or not a license is required for such activity. This exclusion applies if you serve or furnish alcoholic beverages without a charge if a license is required for such activity. The exclusion also applies as to coverage for any contractor or sublicensee which may be held harmless in any "insured contract."

Workers' Compensation Liabilities

- 4. Any of your obligations or liabilities arising out of an occurrence subject to a workers' compensation, disability benefits, unemployment compensation, minimum wage, overtime, social security, pension, fair labor standards law, or under any similar local state or federal law.
- 5. "Bodily injury" to:
 - a. An employee of yours arising out of and in the course of employment by you; or
 - b. The spouse, child, parent, brother or sister of that employee as a consequence of (a) above.

This exclusion applies:

- a. Whether you may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by you under an "insured contract."

6. Pollution Liability

- a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, release, escape, seepage or migration of pollutants:
 - (1) At or from premises you own, rent or occupy, or under your control;
 - (2) At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste;
 - (3) Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible; or
 - (4) At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations;
 - (a) if the pollutants are brought on or to the site or location in connection with such operations; or
 - (b) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

However, paragraph (1) and subparagraph 4(a) above do not apply to "bodily injury" or "property damage" caused by heat, smoke or fumes from a hostile fire. As used here, a "hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

- b. Any loss, claim "suit," cost, or expense arising out of or on behalf of any governmental direction or request that you test for, monitor, evaluate, clean up, remove, contain, treat, detoxify or neutralize pollutants; or any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages arising out of any request, demand or order to in any way respond to or assess the effects of pollutants, or communicate, warn or notify of any chemical or pollutant.

c. For the purpose of this exclusion, "pollutants" means any solid, liquid, gaseous, aural or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, noise and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

d. This exclusion does not apply to:

- (1) Fuel, lubricants, fluids or exhaust gasses that have leaked from a covered "auto" if they are needed for or result from normal electrical, hydraulic or mechanical functioning of the "auto" and leak from the part of the "auto" designed by its manufacturer to hold or dispose of them;
- (2) Fluids or fuel that have leaked from a "covered auto" after an accident.

Airport, Aircraft, Certain Watercraft, Auto Liability Conditions

7. "Bodily injury" or "property damage" arising out of the ownership, maintenance, management, service, construction, design, operation, use or entrustment to others, or in your care, custody or control, of any:

- a. Airport, airfields, runways, hangars, buildings or other properties in connection with aviation activities;
- b. Aircraft, equipment or any component part or equipment thereof or any airplane navigational or aviation related equipment;
- c. Any other type of device navigated in the air, including hang gliders, other types of gliders and hot air balloons;
- d. Watercraft;
- e. "Auto", if Coverage B is not purchased as shown on the Declarations, owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading"; or
- f. Transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured, but only if Coverage B is not purchased for the "auto" as shown on the Declarations; or

This exclusion does not apply to:

- a. A watercraft while ashore on premises you own or rent;
- b. A watercraft that is:
 - (1) Less than twenty-six (26) feet long; and
 - (2) Not being used to carry persons or property for a charge.
- c. 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 your employee;
- d. Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- e. "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in subparagraph (b) or (c) of paragraph f(l) of the definition of "mobile equipment."

Mobile Equipment in Stunts, Contests

8. "Bodily injury" or "property damage" arising out of the use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.
9. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution, invasion, or confiscation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Certain Types of Property Damage

10. "Property damage" to:

- a. Property you own, rent or occupy;
- b. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. 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;
- e. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph b of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs c, d and e of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph e of this exclusion does not apply to "property damage" included in the "products completed operations hazard".

11. With respect to Coverage B, "bodily injury" or "property damage" resulting from:

- a. The handling of property:
 - (1) Before it is moved from the place where it is accepted by an insured for movement into or onto the "covered auto"; or
 - (2) After it is moved from the "covered auto" to the place where it is finally delivered by an insured; or
- b. The movement of property by a mechanical device (other than a hand truck) not attached to the "covered auto".

12. "Property damage" to "your product" arising out of it or any part of it.

13. "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.

14. "Property damage" or "implied property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work" or
- b. 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.

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

- a. "Your product;"
- b. "Your work;" or
- c. "Impaired property;"

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

Exclusions 3 through 16 do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in SECTION IV. - LIMITS OF INSURANCE.

16. Any health care provider or medical facility liability, but this exclusion does not apply to the coverage granted under Coverage I.

Gas, Electric Utilities, Jails or Holding Facilities, Housing Authorities, if not Endorsed to Policy

17. Any gas or electric utility of the Named Insured unless specifically endorsed in this policy.

18. Any premises in which prisoners are confined or in custody including, but not limited to, any jail, detention facility, penal institution, or holding facility, unless specifically endorsed in this policy.

19. Any housing authority or its operations, properties or any activities unless it is specifically endorsed in this policy.

Specific Risks Excluded

20. Any liability arising from the existence, handling, installation, processing, manufacture, sale, distribution, purchase, storage, use, removal, failure to remove, exposure, warning or failure to warn, of:

a. Asbestos, asbestos products, or products containing asbestos; or

b. Tobacco or tobacco products.

21. Any liability arising out of a claim for inverse or reverse condemnation or in connection with the operation of the principles of eminent domain, adverse possession or condemnation, by whatever name called, whether such liability accrues directly against the insured or by virtue of any agreement entered into by or on behalf of the insured.

22. Any liability arising out of fireworks manufacture, use, sale or displays.

23. Any liability arising out of design, ownership, management, operation, use or maintenance of the following unless specifically endorsed in this policy:

a. Ski facility;

b. Any mechanical amusement ride;

c. Trampoline or rebound device, including bungee jumping equipment;

d. Zoo;

e. Rodeo;

f. Racetrack.

24. Any liability arising out of a claim, loss or "suit" alleging violation of any state or federal antitrust law.

Other Exclusions

25. Any act for which immunity is granted pursuant to federal or state law including, but not limited to, the "Tort Claims Act".

26. Any claim settled without our consent.

27. Any liability resulting from a claim occurring before the "policy period" which was first made against you or any of your employees or your insurance carrier prior to the "Inception Date" shown on the Declarations.

28. Any government, civil or criminal tax, fine or penalty.

29. "Claims" or "suits" against you or your "employer" which do not seek civil damages or monetary relief other than costs of court or attorney's fees for prosecuting the suit, such as, but not limited to: criminal prosecutions and proceedings; election contests; actions to enforce or invalidate ordinances, city charter provisions or code provisions; actions specifically to enforce or invalidate contracts with you or go between you and others; actions by government agencies against the you or your "employees" to require compliance with applicable law or regulation; and actions by any person seeking exemption from applicable ordinances or regulations.

Nuclear Energy

30. a. Under Coverage A or B, to bodily injury or property damage;

- (1) With respect to which an insured on the policy is also 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 insured under any such policy but for its termination upon exhaustion of property (including money) or the loss of use thereof;
- (2) Resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof or (b) 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, with any person or organization.

b. Under Medical Payment Coverages, or under Supplemental Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;

c. Under Coverage A or B, to "bodily injury" or "property damage" resulting from the hazardous properties of nuclear material, if:

- (1) The nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of an insured; or b) has been discharged or dispersed therefrom;
- (2) The nuclear material is contained in spent fuel or waste as any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by any insured of services, material, 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 "property damage" to such nuclear facility and any property thereat.

d. As used in this Exclusion:

- (1) "Hazardous properties" includes radioactive, toxic, or explosive properties;
- (2) "Nuclear material" means source material, special nuclear material or byproduct material;
- (3) "Source material", "special nuclear material", and "by-products material" have the meaning given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (5) "Waste" means any waste material (1) containing by-product material; and (2) resulting from the operations of any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (f), (1) or (2) thereof;
- (6) "Nuclear facility" means: (1) any nuclear reactor; (2) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing, or packaging waste; (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25

grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; (4) a structure, basis, excavation, premises or place prepared or used for the storage or disposal of waste; and (5) includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operation.

(7) "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; and

(8) "Property damage" includes all forms of radioactive contamination of property.

IV. DEFINITIONS

1. "**Auto**" means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."

2. "**Bodily injury**" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "**Claim**" means:

a. Any written demand, suit or proceeding against any insured by a specifically identified person, entity or asserted class for "bodily injury" or "property damage;" or

b. Any written notice of "bodily injury" or "property damage" by any specifically identified person, entity or asserted class.

4. "**Coverage territory**" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. 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 a. above; or

c. All parts of the world, if:

(1) The injury or damage arises out of;

(a) Goods or products made or sold by you in the territory described in a. above; or

(b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and

(2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "**Covered auto**" means any "auto" owned by or rented to you. An "auto" rented to you does not include an "auto" used by your "employee" in the "scope of duty" even if you pay for mileage expenses for the use of that "auto."

6. "**Employee**" means any of your officers, employees or servants as defined in the "Tort Claims Act" (NMSA 41-4-3(F)).

7. "**Error or omission**" means any actual or alleged error or misstatement or omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by an "employee" in any capacity arising out of the "scope of duties."

8. "**Fund**" or "**New Mexico Self Insurer's Fund**" means the organization established by Joint Powers Agreement of its members, as authorized by 3-62-1 of et seq., NMSA 1978.

9. **"Health care provider"** or **"Medical facility"** liability shall be as defined and interpreted in Section 41-4-9 and 41-4-10, respectively, NMSA 1978.

10. **"Impaired property"** means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

11. **"Insured contract"** means a written:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
- d. Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- e. An indemnification of a governmental entity as may be required by ordinance or otherwise in connection with work performed for a governmental entity,
- f. An elevator maintenance agreement; or
- g. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage." "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- b. Under which you, if an architect, engineer or surveyor, assume liability for injury or damage arising out of your rendering or failing to render professional services, including those listed in a. above and supervisory, inspection or engineering services;
- c. That indemnifies any person or organization for damage by fire to premises rented or loaned to you;
- d. That pertains to the loan, lease or rental of an "auto" to you;
- e. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority.

12. **"Law enforcement officer"** means any full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor.

13. **"Loading or unloading"** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto;" or
- b. While it is in or on an aircraft, watercraft or "auto;" or
- c. 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."

14. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

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

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning.
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

15. **"Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

16. **"Policy period"** means the period covered from the policy Inception Date through the Rating Anniversary Date as shown on the Declarations. After the first Rating Anniversary Date, the "policy period" means each twelve-month period thereafter, beginning at 12:01 A.M. July 1 and expiring 12:01 A.M. July 1 of the following year.

17. a. **"Products-completed operation hazard"** includes all "bodily injury" and "property damage" occurring away from premises you own or rent arising out of "your product" or your work except:
- (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned.
- b. **"Your work"** will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in your contract has been completed;
 - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
 - (3) When the 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.

- c. This hazard does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification in this insurance or in our manual of rules includes products or completed operations.

18. **"Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. Loss of use of damaged property shall be deemed to occur at the time of the physical injury that caused such loss of use; or
- b. Loss of use of tangible property that is not physically injured. Loss of use of tangible property that is not physically injured shall be deemed to occur at the time of the occurrence that caused the loss.

19. **"Scope of duties"** means performing any duties which an employee is requested, required or authorized to perform by you, regardless of the time and place of performance.

20. **"Suit"** means a civil proceeding in which damages because of "bodily injury", or "property damage" to which this insurance applies are alleged. "Suit" includes an arbitration proceeding and any other alternative dispute resolution proceeding alleging such damages to which you must submit or submit with our consent.

21. **"Tort Claims Act"** means the Tort Claims Act of New Mexico, Sections 41-4-1 et seq., NMSA 1978, and as amended from time to time.

22. **"Wrongful Act"** means any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty including misfeasance, malfeasance or nonfeasance employment practices including, but not limited to, hiring or failure to hire, improper dismissal or discipline, improper promotion or failure to promote, discrimination in employment practices or allegations related to your employment practices by you or your "employees" while acting in their official capacity.

23. **"Your product"** means:

- a. Any goods or products other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) You;
 - (2) Others trading under your name; or

- (3) A person or organization whose business or assets your have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

“Your product” includes:

- a. Its design, formulation, construction or manufacture;
- b. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your products;”
- c. The providing or failure to provide warnings or instructions.

“Your product” does nto include vending machines or other property rented to or located for the use of others but not sold.

24. “**Your work**” 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.

“Your work” includes:

- a. Its design, formulation, construction or manufacture;
- b. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work;”
- c. The providing or failure to provide warnings or instructions.

VII. CONDITIONS

1. ACCEPTANCE

By accepting this policy, you agree to act on your behalf and on behalf of all employees with respect to the giving and receiving of the notice of claim or cancellation, the payment of premiums, and the receiving of any return premiums that may become due under this policy; and the employees agree that you will act on their behalf. By accepting this policy you also agree to be bound by the terms and conditions of the Bylaws and Agreements of the New Mexico Self Insurers’ Fund, as amended from time to time, and the resolutions and rules of the board of trustees.

2. GOVERNMENT IMMUNITY

The issuance of this policy and coverages shall not be deemed a waiver of any statutory or other immunities as to any insured and we do not waive any right to deny liability by reason of such immunity. Immunities granted to any insured by law or decision, and specifically, but not limited to, those included in the “Tort Claims Act,” shall be deemed as not covered in this policy.

3. BANKRUPTCY

Your bankruptcy or insolvency or that of an employee will not relieve us of our obligations under any coverage in this policy.

4. DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

- a. You must see to it that we are notified as soon as practicable of an occurrence” which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "Occurrence" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence".

Notice of an "occurrence" is not notice of a claim.

b. If a claim is received by any employee or insured you must:

- (1) Immediately record the specifics of the claim and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim as soon as possible.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit;"
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit;"
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply;
- (5) Submit at our expense and as often as we require to physical examinations by physicians we select, and authorize us to obtain medical reports and other pertinent information.

d. No insured will, except at his or its own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent;

e. You shall promptly take at your own expense, except as otherwise provided in this policy, all reasonable steps to prevent additional injury or damage from or arising out of the same or similar conditions at the same location where the initial injury or damage occurred. Any failure to take such preventative measures shall not constitute a breach of the condition unless we have requested you in writing to undertake such preventative measures. Any such expense shall not be recoverable under this policy;

f. Additionally, to recover for loss to a "covered auto" or equipment, you must do the following:

- (1) Permit us to inspect and appraise the damaged property before its repair or disposition;
- (2) Do what is reasonably necessary after loss at our expense to protect the "covered auto" from further loss;
- (3) Submit a proof of loss when required by us; and
- (4) Promptly notify the police if the "covered auto" or any of its equipment is stolen.

5. LEGAL ACTION AGAINST US

No person or organization has a right under this policy to:

- a. Join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. Sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy

or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, you, and the claimant or the claimant's legal representative.

6. OTHER INSURANCE

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A, B or C of this policy, our obligations are limited as follows:

- a. Primary Insurance. This insurance is primary except when (b) below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then we will share with all that other insurance by the method described in (c) below;
- b. Excess Insurance. This insurance is excess over any of the other insurance, whether primary, excess, contingent or on another basis:
 - (1) That is effective prior to the beginning of the "policy period" shown in the Declarations of this insurance and applies to "bodily injury" or "property damage" if:
 - (a) No Retroactive Date is shown in the Declarations of this insurance; or
 - (b) The other insurance has a "policy period" which continues after the Retroactive Date shown in the Declarations of this insurance.
 - (2) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work;"
 - (3) That is Fire insurance for premises rented to you; or
 - (4) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion 7 Section V, Exclusions.

When this insurance is excess, we will have no duty under Coverages A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of the Coverage Part.

- c. Method of sharing. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance of all insurers.

7. PREMIUM

We will compute all premiums for this policy in accordance with our rules and rates.

8. REPRESENTATIONS

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

9. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom "claim" is made or "suit" is brought.

10. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. You or any of your employees must do nothing after loss to impair them. At our request, you or your employee will bring "suit" or transfer those rights to us and help us enforce them.

11. WHEN WE DO NOT RENEW

If we decide not to renew this policy, we will mail or deliver to you at the address shown in our records written notice of the nonrenewal.

If notice is mailed, proof of mailing will be sufficient proof of notice.

12. YOUR RIGHT TO CLAIM AND "OCCURRENCE" INFORMATION

We will provide you the following information relating to this and any preceding general liability claims made policy we have issued to you during the previous three (3) years:

- a. A list or other record of each "occurrence," not previously reported to any other insurer, of which we were notified in accordance with Item 4 of this Section on Conditions. We will include the date and brief description of the "occurrence" if that information was in the notice we received.
- b. A summary by "policy period", of payments made and amounts reserved, stated separately, under any applicable Aggregate Limit.

Amounts reserved are based on our judgment. They pre subject to change and should not be regarded as ultimate settlement values.

We will provide this information on a regular basis to you.

We compile claim and "occurrence" information for our own business purposes and exercise care in doing so. In providing this information to you, we make no representations or warranties to insureds, insurers, or others to whom this information is furnished by or on behalf of any insured. Cancellation or non-renewal will be effective even if we inadvertently provide inaccurate information.

13. CANCELLATION

- a. You may cancel this policy by mailing or delivering at least sixty (60) days' advance written notice to us, stating when cancellation is to take effect;
- b. We may cancel this policy by mailing or delivering to you written notice of cancellation at least:
 - (1) Ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2) Sixty (60) days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to you at the address shown on the Declarations or at your last mailing address known to us;

- d. Notice or cancellation will state the effective date of cancellation. The "policy period" will end on that date;
- e. If this policy is cancelled, we will send you any premium refund due. If we cancel, the refund will be pro rata. If you cancel, the refund may be less than pro rata, computed in accordance with rules of the Fund's board of trustees which presently require a minimum premium of fifty percent (50%) during any "policy period". The cancellation will be effective even if we have not made or offered a refund; or
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

14. CHANGES IN THE POLICY

This policy contains all the agreements between you and us concerning the insurance afforded. You are not authorized to make changes in the terms of this policy without our written consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

15. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the "policy period" and up to three (3) years afterward.

16. INSPECTIONS AND SURVEYS

We have the right but are not obligated to:

- a. Make inspections and surveys at anytime;
- b. Give you reports on the conditions we find; and
- c. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

17. PREMIUMS

You, as shown in the Declarations:

- a. Are responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

18. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent.

19. DEDUCTIBLE

We may pay any part or all of any deductible amount listed in the Declarations and Endorsements to effect settlement of any claims or suit, upon notification of the action taken, you shall promptly reimburse us for the part of the deductible amount we paid. If any auto liability is written on a deductible basis, the deductible applies to owned and nonowned coverage. The deductible amount applies to the loss portion of the claim as well as to allocated loss adjustment expenses incurred by us.

20. AGREEMENTS BETWEEN THE PARTIES

You agree that this policy, the application, and the Bylaws and Agreements of the New Mexico Self Insurer's Fund, and any terms, conditions or rules issued as provided in those documents by the board of trustees, embody all agreements existing between you and us or any of our agents relating to this policy and coverages. This policy is issued in reliance upon the trust of representations in the application and statements in this policy.

21. NOTICE OF PRIOR CLAIMS AND OCCURRENCES

In consideration of the Retroactive Coverage being afforded under the policy to the date set forth on the Declarations, it is a condition precedent to the rights of any insured under this policy with respect to any occurrence that no insured under this policy was aware of such occurrence at the inception date of the "policy period." An insured shall be deemed to have been aware of an occurrence if any employee or any elected or appointed officer was aware of any event, exposure to conditions, "bodily injury" or "property damage" liability referred to in Coverage A, irrespective of whether or not an insured was aware that such occurrence was likely to involve this policy.

22. ARBITRATION

If we and you fail to agree on a matter concerning this policy, including but not limited to coverage issues, the dispute shall be resolved through arbitration, not litigation. Either party may issue a written demand for arbitration. If demand for arbitration is made, each party will select an arbitrator. The two arbitrators will select a disinterested third arbitrator. If they cannot agree within thirty days, either party may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third party equally.

Unless both parties agree otherwise, arbitration will take place in the county where the situs of the fund is located. Local rules as to arbitration procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding.

VIII. EXTENDED REPORTING PERIODS (COVERAGE H ONLY)

1. We will provide one or more Extended Reporting Periods, as described below if:
 - a. Coverage H is cancelled or not renewed by us; or
 - b. We renew or replace this Coverage H with other insurance that:
 - (1) Has a Retroactive Date later than the date shown in the Declarations for Coverage H; or
 - (2) Does not apply to "bodily injury" or "property damage" on a claims-made basis.
2. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the "policy period" and lasts for:
 - a. Two (2) years for claims arising out of an "occurrence" reported to us, not later than ninety (90) days after the end of the "policy period." in accordance with paragraph 6a of SECTION VII. - CONDITIONS; or
 - b. Ninety (90) days for all other claims.

The Basic Extended Reporting Period does not apply to claims that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.

3. A Supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra charge. This supplemental period starts:
 - a. Two (2) years after the end of the "policy period" for claims arising out of an "occurrence" reported to us, not later than ninety (90) days after the end of the "policy period," in accordance with paragraph 6a of SECTION VII. - CONDITIONS; or
 - b. Ninety (90) days after the end of the "policy period" for all other claims.

You must give us a written request for the endorsement within sixty (60) days after the end of the "policy period." The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this Coverage A for future payment of damages; and
- d. Other related factors.

The additional premium will not exceed one hundred percent (100%) of the annual premium for this Coverage A. The endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for claims first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

4. Extended Reporting Periods do not extend the "policy period" or change the scope of coverage provided. They apply only to claims for "bodily injury" or "property damage" that occur before the end of the "policy period" (but not before the Retroactive Date, if any, shown in the Declarations).

Claims for such injury or damage which are first received and recorded during the Basic Extended Reporting Period (or during the Supplemental Extended Reporting Period, if it is in effect) will be deemed to have been made on the last day of the "policy period."

Once in effect, Extended Reporting Periods may not be cancelled.

5. Extended Reporting Periods do not reinstate or increase the Limits of Insurance applicable to any claim to which this Coverage A applies, except to the extent described in paragraph 6 of this Section.

6. If the Supplemental Extended Reporting Period is in effect, we will provide the separate aggregate limits of insurance described below, but only for claims first received and recorded during the Supplemental Extended Reporting Period.

The separate aggregate limits of insurance will be equal to the dollar amount shown in the Declarations in effect at the end of the "policy period" for such of the following limits of insurance for which a dollar amount has been entered:

Aggregate Limit

Paragraphs 2 and 3 of SECTION IV. - LIMITS OF INSURANCE will be amended accordingly. The Each Occurrence Limit and the Fire Damage Limit shown in the Declarations will then continue to apply, as set forth in that Section.