

# ASSUMPTION OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

## GENERAL SECTION

### A. The Policy

This replacement policy includes at its effective date the Information Page and two endorsements and one Schedule A. The endorsements are the Terrorism Risk Insurance Program Reauthorization Act Disclosure endorsement and the Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement. It is a contract of insurance between you (the qualified self insurer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). This policy is subject to approval of the New York Superintendent of Insurance and the Workers' Compensation Board and is consistent with the requirements of the New York Workers' Compensation Law. This policy provides for a complete novation without recourse for prior periods of workers compensation self insurance. The terms of this policy may not be changed, waived or altered.

### B. Workers' Compensation Self Insurance Replacement

As used herein means the assumption by us of all outstanding or incurred but not yet paid, known and unknown obligations of the named insured as a formally qualified self insurer, under one or more specified Workers' Compensation Acts, to pay workers' compensation benefits for claims in accordance with Item 2 and 3 of the Information Page.

### C. Who Is Insured

The qualified self insurer and all participants as named in Schedule A of the Information Page. If you are one of the named participants you are insured, but only for the period of participation in the self insured program as detailed in the Schedule A.

### D. Workers' Compensation Law

Workers' Compensation Law means the Workers or Workmen's Compensation Law and Occupational Disease law of New York State. It includes any amendments to that law which are in effect during the policy periods. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provision of any law that provides non occupational disability benefits.

### E. State

State means any state of the United States of America, and the District of Columbia.

## PART ONE WORKERS' COMPENSATION INSURANCE

### A. How This Insurance Applies

This workers' compensation insurance applies to bodily injury by accident or bodily injury by disease.

Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### B. We Will Pay

We will pay promptly when due the benefits required of you by the workers' compensation law.

### C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

### D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claims, proceeding or suit we defend:

1. Reasonable expenses incurred at our request but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance ;and
5. Expenses we incur.

### E. We Will Not Pay

This policy does not obligate us to reimburse you for any amounts you have paid as benefits or any expenses that you have incurred, including, but not limited to, any defense costs or expenses similar to those described in Part One (Workers' Compensation Insurance) Section D or Part Two

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(Employers Liability Insurance) Section B that you paid before the policy's effective date.

## **F. Other Insurance**

We will not pay more than our share of benefits and costs covered by this insurance and other insurance.

## **G. Recovery From Others**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

## **H. Assignment of Rights**

All rights, duties and obligations under contracts of workers' compensation and employer's liability excess of loss provision and all endorsements made on those policies are transferred to us.

## **I. Statutory Provisions**

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of your duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers' compensation law that apply to:
  - a. benefits payable by this insurance;
  - b. special taxes, payments into security or other special funds, and assessments payable by us under the law.
6. Terms of this insurance that conflict with the workers' compensation law are changed by this statement under this policy.

## **PART TWO EMPLOYERS LIABILITY INSURANCE.**

### **A. How this Insurance Applies**

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

We may not limit our liability to pay damages for which we become legally liable to pay because a bodily injury arises out of and in the course of employment that is subject to and is compensation under the Workers' Compensation Law of New York.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in New York State.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### **B. We Will Pay**

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, included damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as result of injury to your employers.
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

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## C. Exclusions

The insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United State of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-Appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmens' compensation law or other federal occupational disease law, or any amendments to these laws;
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any other amendments to those laws,
10. bodily injury to a master or member of the crew of any vessel;

11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

## D. We will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

## E. We Will also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend;

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

## F. We Will Not Pay

This policy does not obligate us to reimburse you for any amounts you have paid as benefits or any expenses that you have incurred, including, but not limited to, any defense costs or expenses similar to those described in Part One (Workers' Compensation Insurance) Section D or Part Two (Employers Liability Insurance) Section B that you paid before the policy's effective date.

## G. Other

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance.

## H. Assignment of Rights

All rights, duties and obligations under contracts of workers' compensation and employer's liability excess of loss provision and all endorsements made on those policies are transferred to us.

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## **I. Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance.

## **J. Actions Against Us**

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of your obligations under this Part.

## **PART THREE YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers; compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

## **PART FOUR – PREMIUM**

### **A. Single Complete Premium**

You will pay the premium in a single lump sum payment and such policy shall be non-cancelable.

## **B. Records**

All records for the qualified self insured will become the records of carrier.

## **PART FIVE – CONDITIONS**

### **A. Cancellation**

You may not cancel this policy.