

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY  
6263 NORTH SCOTTSDALE ROAD, SUITE 300  
SCOTTSDALE, ARIZONA 85250

COMMERCIAL INSURANCE POLICY

MUSIC and its General Agent RPS Cowles and Connell - MA  
are pleased to have issued Policy MX0120002000002 to  
2140 Investments LLC

In witness whereof, Mesa Underwriters Speciality Insurance Company has caused this policy to be signed by its President and countersigned on the Declaration page by a duly Authorized Representative of the Company.

  
Corporate Secretary

  
President & CEO

MUSIC

# COMMON POLICY DECLARATIONS EXCESS

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY A Stock Company  
40 Wantage Avenue, Branchville, NJ 07890

Policy Number: MX0120002000002

No Flat Cancellation

Previous Policy Number: \_\_\_\_\_

☒ New ☐ Renewal ☐ Rewrite

Policy Period: From 06/04/2023 To 06/04/2024 at **12:01 A.M.** Standard Time at your mailing address shown below.

Named Insured:  
2140 Investments LLC

Mailing Address:  
10037 S 19th Ave

Phoenix

AZ 85041

Agent and Mailing Address:  
RPS Cowles and Connell - MA  
4 Technology Drive  
Westborough

Agent Number: 20002

MA 01581

Pursuant to Arizona Revised Statutes section 20-401.01, subsection b, paragraph 1, this policy is issued by an insurer that does not possess a certificate of authority from the director of the Arizona Department of Insurance. If the insurer that issued this policy becomes insolvent, insureds or claimants will not be eligible for insurance guaranty fund protection pursuant to Arizona Revised Statutes Title 20.

Tax State: AZ

State Control Number (NJ & PA):

Surplus Lines Broker Name: Surplus Lines Broker Number:

## Form of Business

☐ Individual ☐ Joint Venture ☐ Partnership ☒ Limited Liability Company ☐ Corporation

☐ Organization (other): \_\_\_\_\_

## Business Description:

LRO

Premium : \$ 5,000.00  
Broker Fee - RPS : \$ 150.00  
AZ Surplus Lines Tax : \$ 154.50  
AZ Stamping Office Fee : \$ 10.30  
Total Charges : \$ 5,314.80

## Select Coverage Part (for which insurance is being afforded)

<input checked="" type="checkbox"/> Commercial Excess Liability	\$	5,000.00
<input type="checkbox"/> Commercial Layered Excess Liability	\$	
<input type="checkbox"/> Other (Describe)	\$	
<input type="checkbox"/> TRIA	\$	
Policy Taxes and Fees		

Total Advance Premium \$ 5,000.00

Total Other Charges \$

Total \$ 5,000.00

Premiums Shown are payable at inception or as indicated on the individual Coverage Declarations.

Form(s) and Endorsement(s), including edition dates, made a part of this policy at the time of issue: See Schedule of Forms

RS AAT 06/06/2023  
Date

By:   
Authorized Agent

MUS 01 03 80000 0121

RPSMER/SC/2023.07.12

Insured Copy

## To Report a Loss

- Dial toll-free #1 (844)777-8323 or visit our
- Website: <https://my.rpsins.com/claimsfnol>
- Contact Insurer directly (see policy section)

## SCHEDULE OF FORMS AND ENDORSEMENTS

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

Named Insured 2140 Investments LLC

Policy Number MX01200020000002

Effective Date: 06/04/2023

### Forms Applicable - COMMON POLICY FORMS

MUS 01 01 10001 0321 POLICY JACKET  
MUS 01 03 80000 0121 COMMON POLCY DECLARATIONS EXCESS  
MUS 01 01 10003 1013 SCHEDULE OF FORMS & ENDORSEMENTS  
MUS 01 01 10007 1013 MINIMUM EARNED PREMIUM ENDORSEMENT  
MUS 01 01 10043 1013 PRIVACY NOTICE  
IL 00 17 11 98 COMMON POLICY CONDITIONS  
MUS 01 01 10015 1013 AZ AZ SERVICE OF SUIT  
ILN 014 09 03 AZ FRAUD STATEMENT

### Forms Applicable - COMMERCIAL EXCESS LIABILITY

MUS 01 03 80001 0121 COMMERCIAL EXCESS LIABILITY DECLARATION  
MUS 01 03 80003 0121 EXCLUSION - ASBESTOS  
MUS 01 03 80004 0121 EXCLUSION - AUTOMOBILE LIABILITY  
MUS 01 03 80011 0121 EXCLUSION -ERISA  
MUS 01 03 80012 0121 EXCLUSION - LEAD HAZARD  
MUS 01 03 80013 0121 EXCLUSION - NEW ENTITIES  
MUS 01 03 80014 0121 EXCLUSION - PUNITIVE DAMAGES  
MUS 01 03 80018 0121 EXCLUSION - TOBACCO NICOTINE PRODUCTS  
MUS 01 03 80020 0121 EXCLUSION - WAR  
MUS 01 03 80023 0321 EXCLUSION - ABUSE OR MOLESTATION  
MUS 01 03 80025 0421 EXCLUSION - ASSAULT OR BATTERY  
MUS 01 03 80029 0821 Exclusion – Hired and Non-Owned Automobiles  
MUS 01 03 80030 0821 EXCLUSION - LETHAL WEAPONS  
MUS 01 03 80031 0721 AMENDMENT OF CONDITIONS ENDORSEMENT  
MUS 01 03 80040 0522 Exclusion - Human Trafficking  
CX 00 01 04 13 COMMERCIAL EXCESS LIABILITY COVERAGE FORM  
CX 21 01 09 08 NUCLEAR ENERGY LIABILITY EXCL ENDT  
CX 21 02 04 13 TOTAL POLLUTION EXCLUSION  
CX 21 13 04 13 EXCL - FUNGI OR BACTERIA  
CX 21 16 04 13 EXCL - SILICA OR SILICA-RELATED DUST  
CX 21 17 04 13 EXCLUSION - COMMUNICABLE DISEASE  
CX 21 19 04 13 EXCLUSION - EMPLOYMENT-RELATED PRACTICES  
CX 21 33 01 15 EXCL - CERTIFIED ACTS OF TERROISM  
CX 21 43 05 14 EXCL - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION  
CX 21 71 06 15 EXCL - UNMANNED AIRCRAFT

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

Policy Number: **MX0120002000002**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MINIMUM EARNED PREMIUM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

THIS ENDORSEMENT APPLIES TO ALL COVERAGE PARTS

If this insurance is cancelled at your request, there will be a minimum earned premium retained by Mesa Underwriters Specialty Insurance Company of \$                      or 25 % of the premium for this insurance, whichever is greater.

Cancellation of this insurance for nonpayment of premium is considered a request by the first Named Insured for cancellation of this insurance.

The provisions of this amendment apply separately to each consecutive annual period and to any remaining period of less than 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 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the minimum earned premium.

All other terms and conditions of this policy remain unchanged.

**MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY**

**PRIVACY POLICY  
For  
MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY**

Mesa Underwriters Specialty Insurance Company understands the importance placed by our customers on the privacy and safeguarding of their personal information. The Company intends and is obligated to protect all nonpublic personal information provided to the Company by our customers. Whether a consumer is already a policyholder or is applying for insurance or is a claimant, the Company will maintain the confidentiality and security of all individual's personal information as required by law.

In order to meet our customers' insurance needs and to comply with business, regulatory and legal obligations we are required to collect and at times, use personal information. The Company does not disclose personal information about customers, potential or former, for marketing purposes to nonaffiliated third parties. The Company may gather information from a variety of sources including but not limited to the Company's affiliates, consumer reporting agencies such as credit bureaus, property inspection services and other non-affiliated third party organizations. We do not disclose any personal information about our customers, except as follows:

- 1) with consumer/customer consent,
- 2) as required by law,
- 3) as permitted by law
- 4) as necessary or appropriate to underwrite, administer, service, effect, process or enforce an insurance policy that we have issued ( or are considering issuing), or
- 5) as necessary to otherwise service a customer's policy or effect a customer

When necessary, the Company may disclose nonpublic personal information to a nonaffiliated organization that is performing services relative to the policy or our operation, we require that such third parties use and disclose the information only as necessary relating to the service or function that they are performing on our behalf. It is important that the Companies' employees be aware of and abides by this Privacy Policy and the applicable laws governing the use, handling and disclosure of nonpublic personal information. Our employees may not access nonpublic personal information maintained by the Company on a general basis. Company employees will have access to personal nonpublic information of applicants, policyholders or claimants if this information relates to their job performance for the Company. The Company will maintain adequate safeguards to protect the confidentiality and security of the nonpublic personal information that we obtain. Employees may not disclose or use nonpublic personal information except as authorized by the Company or as permitted or required by law. If an employee fails to comply with these requirements this may lead to appropriate disciplinary action by the Company up to, and including, dismissal.

This Privacy Policy applies to individuals who are applicants, policyholders, or claimants under insurance products or services obtained from the Company primarily for personal, family or household purposes; it does not apply to products or services obtained for business, commercial or agricultural purposes.

The Company will provide notice of its privacy policy to its customers not less than annually, while the policyholder maintains a relationship with us.

# COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

## A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

## B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

## C. 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 years afterward.

## D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake 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.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

## E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

## F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SERVICE OF SUIT**

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS

We appoint the highest State official in charge of insurance affairs (Commissioner of Insurance, Director of Insurance, Insurance Commissioner, Executive Secretary, Superintendent of Insurance, or such other official title as designated by the State) of the State of **ARIZONA** and his/her successor or successors in office as his/her and their duly authorized deputies, as our true and lawful attorney in and for the aforementioned State, upon whom all lawful process may be served in any action, "suit", or proceeding instituted in the said State by or on behalf of any insured or beneficiary against us, arising out of this insurance policy, provided a copy of any process, "suit" complaint or summons is sent by certified or registered mail to Michael H. Lanza, Mesa Underwriters Specialty Insurance Company, 40 Wantage Avenue, Branchville, NJ 07890.

A handwritten signature in black ink, appearing to read "MHL", is positioned above the title "Authorized Representative".

Authorized Representative

## ARIZONA FRAUD STATEMENT

For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.



## COMMERCIAL EXCESS LIABILITY Coverage Part Declarations

Policy Number: MX0120002000002

Named Insured: 2140 Investments LLC

DBA: \_\_\_\_\_

Effective Date: 06/04/2023

### EXCESS LIMITS OF INSURANCE

Each Occurrence \$ 5,000,000 - Excess of controlling underlying insurance

Aggregate \$ 5,000,000 - Excess of controlling underlying insurance

### PREMIUM

☒ Flat

☐ Adjustable Rate \_\_\_\_\_ Exposure Basis \_\_\_\_\_ Exposure \_\_\_\_\_

**TOTAL ANNUAL PREMIUM (Minimum and Deposit):** \$ 5,000

**Forms/Endorsements Applicable** See Schedule of Forms and Endorsements

### SCHEDULE OF CONTROLLING UNDERLYING INSURANCE

#### Commercial General Liability

Company: **MESA UNDERWRITERS SPECIALTY INSURANCE COMPANY**

Policy Number: **MP002000210012300**

Policy Period: **06/04/2023 - 06/04/2024**

#### Limits of Insurance:

Each Occurrence	\$	1,000,000	
Personal and Advertising Injury	\$	1,000,000	(Any one person or organization)
Products-Completed Operations Aggregate	\$	INCLUDED	
General Aggregate	\$	2,000,000	
Occurrence: <input checked="" type="checkbox"/>	Claims Made: <input type="checkbox"/>		

#### Commercial Automobile Liability

Company: **N/A**

Policy Number: \_\_\_\_\_

Policy Period: **-**

#### Limits of Insurance:

Each Accident	\$
Other:	\$

This Coverage Part consists of this Declarations Form, the Common Policy Conditions, the Commercial General Liability Conditions, the Coverage Form(s), and the Coverage Endorsement(s) indicated as applicable.

COMMERCIAL EXCESS LIABILITY Coverage Part Declarations

SCHEDULE OF CONTROLLING UNDERLYING INSURANCE (continued)

Employers Liability

Company: N/A

Policy Number:

Policy Period: -

Limits of Insurance:

Bodily Injury By Accident Each Accident	\$
Bodily Injury By Disease Policy Limit:	\$
Bodily Injury By Disease Each Employee	\$

Other: Enter Type of Coverage or N/A:

Company: N/A

Policy Number:

Policy Period: -

Limits of Insurance:

\$  
\$  
\$  
\$

Other: Enter Type of Coverage or N/A:

Company: N/A

Policy Number:

Policy Period: -

Limits of Insurance:

\$  
\$  
\$  
\$

This Coverage Part consists of this Declarations Form, the Common Policy Conditions, the Commercial General Liability Conditions, the Coverage Form(s), and the Coverage Endorsement(s) indicated as applicable.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION - ASBESTOS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

### Asbestos

1. This insurance does not apply to any “injury or damage” arising directly or indirectly out of, resulting from, caused by or in any way related to the actual, alleged, or threatened presence of, or exposure to, asbestos, including inhalation, ingestion, irritation, absorption or other similar physical exposure to asbestos, regardless of whether any other cause, “event”, material or product contributed concurrently or in any sequence to the “injury or damage”. Such presence of, or exposure to, asbestos includes, but is not limited to:
  - a. structures or manufacturing processes containing asbestos;
  - b. the disposal of asbestos or goods, products or materials containing asbestos;
  - c. the storing or presence of asbestos or goods, products or materials containing asbestos; or
  - d. the removal of asbestos from any goods, products, materials, structures or manufacturing processes, whether or not such asbestos is airborne.
2. We shall have no obligation under this coverage part:
  - a. to investigate, settle or defend any claim or “suit” against any insured alleging actual or threatened “injury or damage” of any nature or kind to persons or property which arises out of or would not have occurred but for the presence of, or exposure to, asbestos; or
  - b. to pay any damages, judgments, settlements, losses, costs or expenses of any kind or nature that may be awarded or incurred by reason of any such claim or “suit” or any such actual or threatened “injury or damage” from asbestos; or
  - c. for any losses, costs or expenses arising out of any obligation, order, direction or request of or upon any insured or others, including, but not limited to, any governmental obligation, order, direction or request, to test for, monitor, clean up, remove, contain, treat, neutralize, in any way respond to, or assess the effects of asbestos.
3. Asbestos includes asbestos, asbestos fibers, asbestos materials, and asbestos products, or any goods or products containing asbestos or asbestos fibers, materials, or products.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - AUTOMOBILE LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

**Automobile Liability**

1. This insurance does not apply to "injury or damage" arising directly or indirectly out of, resulting from, caused by or in any way related to the ownership, maintenance, operation, use, "loading or unloading" or entrustment to others of any "auto".
2. Such "injury or damage" is excluded regardless of any other cause or "event" that contributes concurrently or in any other sequence to the "injury or damage."
3. For the purpose of this endorsement the following definitions apply:

"Auto" means:

- a. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

"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";
- 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".

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

- a. Bulldozers, 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 Paragraph 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 Paragraph 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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

"Trailer" includes semitrailer.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - ERISA**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

**ERISA**

This insurance does not apply to any obligation of the insured under the Employee Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - LEAD HAZARD**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

**Lead**

1. This insurance does not apply to “injury or damage” arising directly or indirectly out of, resulting from, caused by or in any way related to the actual, alleged, or threatened presence of, or exposure to, lead, including inhalation, ingestion, irritation, absorption or other similar physical exposure and or the presence of lead in any form, regardless of whether any other cause, “event”, material or product contributed concurrently or in any sequence to the “injury or damage”. Such presence of, or exposure to lead , includes, but is not limited to:
  - a. structures or manufacturing processes containing lead;
  - b. the disposal of lead or goods, products or materials containing lead;
  - c. the storing or presence of lead or goods, products or materials containing lead; or
  - d. the removal of lead from any goods, products, materials, structures or manufacturing processes, whether or not such lead is airborne.
2. We shall have no obligation under this coverage part:
  - a. to investigate, settle or defend any claim or “suit” against any insured alleging actual or threatened “injury or damage” of any nature or kind to persons or property which arises out of or would not have occurred but for the presence of, or exposure to, lead; or
  - b. to pay any damages, judgments, settlements, losses, costs or expenses of any kind or nature that may be awarded or incurred by reason of any such claim or “suit” or any such actual or threatened “injury or damage” from lead; or
  - c. for any losses, costs or expenses arising out of any obligation, order, direction or request of or upon any insured or others, including, but not limited to, any governmental obligation, order, direction or request, to test for, monitor, clean up, remove, contain, treat, neutralize, in any way respond to, or assess the effects of lead.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – NEW ENTITIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I - COVERAGES – 2. Exclusions:**

**New Entities**

This insurance does not apply to any organization over which you maintain ownership or a majority interest, or any partnership, joint venture or limited liability company, that you newly acquire or form.

All other terms and conditions of this policy remain unchanged.



MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - PUNITIVE DAMAGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I - COVERAGES - 2. Exclusions:**

**Punitive or Exemplary Damages**

This insurance does not apply to fines, penalties and/or judgments, treble damages or the multiplication of compensatory damages and awards or portions thereof which are based upon Punitive or Exemplary Damages including related judgments and awards or portions thereof for attorneys' fees, costs or expenses of litigation of whatever kind or amount.

All other terms and conditions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **EXCLUSION — TOBACCO, NICOTINE OR NICOTINE REPLACEMENT PRODUCTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

**A. The following is added to SECTION I – COVERAGES - 2. Exclusions:**

**Tobacco, Nicotine Or Nicotine Replacement Products**

This insurance does not apply to "injury or damage" arising directly or indirectly out of, resulting from, caused by or in any way related to the actual, alleged, threatened or suspected inhalation, ingestion, use, absorption, delivery or consumption of, exposure to, existence or presence of or contact with any "tobacco, nicotine or nicotine replacement products" used, handled, supplied, processed, altered, prepared, sold or manufactured by any insured or any other person or entity regardless of whether any other cause, "event", material or product contributed concurrently or in any sequence to such "injury or damage".

**B. The following is added to SECTION IV — DEFINITIONS:**

"Tobacco, nicotine or nicotine replacement products" means tobacco in any form; raw or cured tobacco; cigars and cigar wrappers; pipe tobacco; cigarettes; cigarette filters and papers; snuff; chewing tobacco; liquids or e-liquids used in electronic cigarettes; smokeless tobacco products; tobacco smoke including second hand smoke; tobacco substitutes; vaporized tobacco or nicotine; and nicotine and synthetic nicotine in any form.

"Tobacco, nicotine or nicotine replacement products" includes any device used for the absorption, consumption, ingestion, inhalation or delivery of natural or synthetic nicotine or replacement nicotine, or any container, material, part, battery, atomizer cartridge, equipment or accessory, including, but not limited to: electronic or smokeless cigarettes, lozenges, discs, orbs, gases, mists, chew sticks and film strips, or applied patches or treatment in any form; hookahs, water pipes, vaporizers; or gaseous, liquid or solid residues or byproducts of tobacco or nicotine use, consumption, manufacturing or processing.

For purposes of this exclusion, any mineral, chemical, (including but not limited to those used to enhance flavor or fragrance such as ketones, diketones, and related substances), fluid or aerosol or other product sprayed on, applied to, found within or used in conjunction with any "tobacco, nicotine or nicotine replacement product" is deemed a part of such product.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - WAR**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

**War**

1. This insurance does not apply to "injury or damage" arising directly or indirectly out of, resulting from, caused by or any way related to:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
2. Such "injury or damage" is excluded regardless of any other cause or "event" that contributes concurrently or in any other sequence to the "injury or damage".

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - ABUSE OR MOLESTATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS COVERAGE FORM

- A. The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

**Abuse or Molestation**

This insurance does not apply to "injury or damage" directly or indirectly caused by, related to or arising from "abuse or molestation".

- B. The following is added to **SECTION IV – DEFINITIONS:**

"Abuse or molestation" means:

Any physical contact or any other conduct of an abusive, harassing or bullying nature; sexual action; or, any other alleged act, failure to act or breach of duty in the hiring, training, supervision, retention or reporting or failing to report any person who commits or allegedly committed any of the foregoing offenses.

Sexual action includes any contact or interaction with a person which is objectively considered sexually oriented or motivated, including grooming, physical touching, nudity, exposure to material of a sexual nature in any medium, exposure to sexual language or behavior, requests for sexual activity, and any other behavior with sexual connotation or purpose, whether performed for sexual gratification, discrimination, intimidation, coercion or any other reason.

All other terms and conditions of this policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION - ASSAULT OR BATTERY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS COVERAGE FORM**

A. The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

#### **Assault or Battery**

This insurance does not apply to, "injury or damage", caused by, arising out of, resulting from, in whole or in part an "assault" or "battery". This exclusion includes but is not limited to an "assault" or "battery" when that "assault" or "battery" is actually or allegedly caused by, arising out of or resulting from, in whole or in part:

- (1) The direct or indirect instigation, instruction or direction, by you, any insureds, your "employees", patrons or any other persons;
- (2) The failure to provide a safe environment including but not limited to the failure to provide adequate security, or to warn of the dangers of the environment;
- (3) The negligent employment, investigation, supervision, hiring, training or retention of any person;
- (4) Negligent, reckless, or wanton conduct by you, your employees, patrons or any other persons;
- (5) The use of force, whether excessive or not, to protect persons or property whether or not the "bodily injury", "property damage", or "personal and advertising injury" was intended from the standpoint of the insured or committed by or at the direction of any insured;
- (6) The failure to render or secure medical treatment or care necessitated by any "assault" or "battery".

B. The following is added to **SECTION IV – DEFINITIONS:**

"Assault" means any intentional act, or attempted act or threat to inflict injury to another including any conduct that would reasonably place another in apprehension of injury, including but not limited to physical injury, sexual abuse or harassment, intimidation, verbal abuse, and any threatened harmful or offensive contact between two or more persons.

"Battery" means the intentional or reckless use of force including a physical altercation or dispute between persons, or offensive touching or sexual molestation against another, resulting in injury whether or not the actual injury inflicted is intended or expected. The use of force includes, but is not limited to the use of a weapon.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**Exclusion – Hired and Non-Owned Automobiles**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following exclusion is added to **SECTION I - COVERAGES**, Paragraph **2. Exclusions**:

**Hired and Non-Owned Auto**

Insurance provided under this Coverage Part does not apply to any “injury or damage” arising out or resulting from the maintenance or use of any hired autos or non-owned autos by you or any person other than you in the course of your business.

For the purposes of this endorsement only, the following definitions are added to **SECTION IV – DEFINITIONS**:

- (1) “Hired Auto” means any “auto” you lease, hire, rent or borrow. This does not include any “auto” you lease, hire, rent, or borrow from any of your “employees”, your partners, your members or your “executive officers”, or members of their households.
- (2) “Non-owned Auto” means any “auto” you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes “autos” owned by your “employees”, your partners, your members or your “executive officers”, or members of their households, but only while used in your business or your personal affairs.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - LETHAL WEAPONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following exclusion is added to **SECTION I – COVERAGES**, Paragraph **2. Exclusions**:

**Lethal Weapons**

Insurance provided under this Coverage Part does not apply to any “injury or damage” arising out of or resulting from the possession, ownership, maintenance, use of or threatened use of a lethal weapon, including but not limited to firearms, by any person.

All other terms and conditions of this policy remain unchanged.

MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF CONDITIONS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following conditions are deleted from **SECTION III – CONDITIONS**, Paragraphs **6. Changes** and **7. Maintenance Of/Changes To Controlling Underlying Insurance** and replaced with:

**6. Changes**

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**7. Maintenance Of/Changes To Controlling Underlying Insurance**

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

You must notify us in writing, within 30 days, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

All other terms and conditions of this policy remain unchanged.



MESA UNDERWRITERS SPECIALTY  
INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION - HUMAN TRAFFICKING

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

A. The following is added to **SECTION I – COVERAGES – 2. Exclusions:**

### Human Trafficking

Insurance provided under this Coverage Part does not apply to claims or “suits” arising out of, concerning, or in any way related to any actual, alleged or suspected “human trafficking”.

This exclusion applies even if a claim or “suit” concerns or alleges negligent or passive participation in “human trafficking”, including but not limited to the failure to detect, investigate, recognize, intervene in, report or prevent “human trafficking”; the failure to maintain policies or procedures concerning the detection, investigation, recognition or prevention of “human trafficking”; the hiring, employment, training, supervision, facilitation or monitoring of any person or persons alleged to have participated in or failed to detect, investigate, recognize or prevent “human trafficking”; or, any conduct, act or omission prohibited by, in violation of, or for which penalties are provided under the Trafficking Victims Protection Act of 2000, as amended, or under any federal, state or local law related to “human trafficking.”

This exclusion further applies regardless of whether a claim or “suit” alleges that any insured, including their agents, employees or volunteers, knew or should have known of the actual, alleged or suspected “human trafficking”, or benefitted financially or received anything of value from actual, alleged or suspected “human trafficking” or anyone who actually or allegedly engaged in “human trafficking”.

B. The following is added to **SECTION IV – DEFINITIONS:**

“Human trafficking” means the detention, recruitment, grooming, transportation, provision, facilitation, obtaining, soliciting, harboring, or use of the labor or services, of a person or persons: 1) by coercion, threat, force, fraud, trick, physical restraint, serious harm or abuse of the legal process; 2) by the threat of any of these actions; or 3) by any scheme, plan or pattern intended to make a person believe that they or any other person would suffer any of these actions if they did not perform or provide the labor or service.

“Human trafficking” includes but is not limited to using the labor or service of a person or persons for: domestic servitude or work in factories and agricultural settings; labor exploitation; forced labor; involuntary servitude; slavery; peonage; debt bondage; migratory smuggling; organ harvesting or donation; marriage; sexual exploitation and sex work, including any allegation that a person is deceived, coerced or forced to take part in any sexual activity, or that they lacked legal capacity to consent to any sexual activity; child soldiers; or, forced criminality or violence of any kind. “Human trafficking” includes the use of the labor or services of a person or persons who lacked the legal capacity to consent to the labor or services, including but not limited to minor persons.

All other terms and conditions of this policy remain unchanged.

# COMMERCIAL EXCESS LIABILITY COVERAGE FORM

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 the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section **IV** – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

## SECTION I – COVERAGES

### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section **II** – Limits Of Insurance; and
  - (2) 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 this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.
- b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".
- c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.

- d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance".

## 2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

### a. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

### b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists coverage.

### c. Pollution

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

### d. Workers' Compensation And Similar Laws

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

## SECTION II – 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, or number of vehicles involved;
  - c. Persons or organizations making claims or bringing suits; or
  - d. Limits available under any "controlling underlying insurance".
2. The Limits of Insurance of this Coverage Part will apply as follows:
  - a. This insurance only applies in excess of the "retained limit".
  - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part.

However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".
  - c. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
  - d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

The Aggregate Limit of this Coverage Part applies separately to each consecutive annual period of this Coverage Part and to any remaining period of this Coverage Part of less than 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 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.

### **SECTION III – CONDITIONS**

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

#### **1. Appeals**

If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section II – Limits Of Insurance.

#### **2. Bankruptcy**

##### **a. Bankruptcy Of Insured**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **b. Bankruptcy Of Controlling Underlying Insurer**

Bankruptcy or insolvency of the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

### **3. Duties In The Event Of An Event, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the "event" 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 "event".

- b. If a claim is made or suit is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or suit 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 or suit as soon as practicable.

- c. You and any other insured involved 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 or settlement of the claim or defense against the suit; and
- (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.

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

#### **4. First Named Insured Duties**

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

## **5. Cancellation**

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of 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 the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

## **6. Changes**

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

## **7. Maintenance Of/Changes To Controlling Underlying Insurance**

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

## **8. Other Insurance**

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

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

## **9. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 10. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "controlling underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "controlling underlying insurer" (or a representative of one or more of these) and us.

## 11. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
- b. To sue us on this Coverage Part 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; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "controlling underlying insurer" and the claimant or the claimant's legal representative.

## 12. Transfer Of Defense

### a. Defense Transferred To Us

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

### b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

## 13. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

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

## SECTION IV – DEFINITIONS

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.
4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".
5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.
6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
  - a. Settlements, judgments, binding arbitration; or
  - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2., **Exclusions**:

#### **2. Exclusions**

##### **NUCLEAR ENERGY LIABILITY**

**a.** Under any Liability Coverage, to "injury or damage":

**(1)** With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

**(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, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**b.** Under any Liability Coverage, to "injury or damage" resulting from "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" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

**(3)** The "injury or damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion **(3)** applies only to property damage to such "nuclear facility" and any property thereat.

**c.** As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

**(a)** Any "nuclear reactor";

**(b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Injury or damage" includes all forms of radioactive contamination of property.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **TOTAL POLLUTION EXCLUSION**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

Exclusion **c.** under Paragraph **2. Exclusions** of **Section I – Coverages** is replaced by the following:

Insurance provided under this Coverage Part does not apply to:

#### **2. Exclusions**

##### **c. Pollution**

- (1)** "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time; or
- (2)** Any loss, cost or expense arising out of any:
  - (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

- (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – FUNGI OR BACTERIA**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

- A.** The following exclusion is added to Paragraph 2.  
**Exclusions of Section I – Coverages:**

**2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

**Fungi Or Bacteria**

- a.** "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such "injury or damage".
- b.** Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

- B.** The following definition is added to the **Definitions** section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – SILICA OR SILICA-RELATED DUST**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverages:**

**2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

**Silica Or Silica-related Dust**

- a.** "Injury or damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b.** Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

**B. The following definitions are added to the Definitions section:**

- 1.** "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
- 2.** "Silica-related dust" means a mixture or combination of silica and other dust or particles.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – COMMUNICABLE DISEASE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2.  
**Exclusions of Section I – Coverages:**

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

##### **Communicable Disease**

"Injury or damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a.** Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;

- b.** Testing for a communicable disease;
- c.** Failure to prevent the spread of the disease; or
- d.** Failure to report the disease to authorities.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – EMPLOYMENT-RELATED PRACTICES**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph **2. Exclusions of Section I – Coverages:**

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to "injury or damage" to:

**a.** A person arising out of any:

- (1)** Refusal to employ that person;
- (2)** Termination of that person's employment; or
- (3)** Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

**b.** The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage" to that person at whom any of the employment-related practices described in Paragraph **(1), (2) or (3)** above is directed.

This exclusion applies whether the injury-causing event described in Paragraph **(1), (2) or (3)** above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE PART**

Any endorsement addressing acts of terrorism (however defined) in any "controlling underlying insurance" does not apply to this excess insurance. The following provisions addressing acts of terrorism apply with respect to this excess insurance:

**A.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM**

"Injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

**B.** The following definition is added:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a.** The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for "injury or damage" that is otherwise excluded under this Coverage Part.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Controlling Underlying Insurance:**

Mesa Underwriters Specialty Insurance Company  
Policy Number: MP002000210012300  
Policy Period: 06/04/2023 - 06/04/2024

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **2. Exclusions** of  
**Section I – Coverages:**

#### **2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

##### **Access Or Disclosure Of Confidential Or Personal Information**

"Injury or damage" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

However, this exclusion does not apply to coverage for "injury or damage" provided under any "controlling underlying insurance" listed in the Schedule above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – UNMANNED AIRCRAFT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS COVERAGE PART**

**A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverages:**

**2. Exclusions**

Insurance provided under this Coverage Part does not apply to:

**Unmanned Aircraft**

"Injury or damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "event" which caused the "injury or damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

As used in this exclusion, 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 "unmanned aircraft";
- b.** While it is in or on an "unmanned aircraft"; or
- c.** While it is being moved from an "unmanned aircraft" 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 "unmanned aircraft".

**B. The following definition is added to the Definitions section:**

"Unmanned aircraft" means an aircraft that is not:

- 1.** Designed;
- 2.** Manufactured; or
- 3.** Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.