

UNDERWRITERS AT LLOYD'S, LONDON

UNDERWATER PROFESSIONAL LIABILITY MASTER POLICY WORDING

CLAIMS MADE BASIS

In consideration of the payment of the premium and in reliance upon the statements in the application which is made a part of this insurance, and subject to the insuring agreements, declarations, coverages, definitions, conditions, limitations, warranties, exclusions, endorsements and any other written material contained in this insurance policy, the Underwriters agree with the Named Insured as follows:-

1. INSURING AGREEMENT

A. COVERAGE

To pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as damages due to **BODILY INJURY** or **PROPERTY DAMAGE** arising out of an **EVENT** that results from a negligent act, error or omission of the **INSURED**. The **EVENT** must take place within the policy territory.

B. BASIS OF CLAIM – CLAIMS MADE CLAUSE

1. The policy applies to claims first made against the **INSURED** during the **POLICY PERIOD** and reported to the Underwriters during the **POLICY PERIOD**.
 - a. for any **EVENT** that takes place during the **POLICY PERIOD**;
 - b. for any **EVENT** that takes place on or after June 30, 1986 if the **INSURED** has maintained continuous claims made coverage since that date. If an **INSURED** has not maintained continuous claims made coverage, then coverage for prior **EVENTS** is afforded only as of the inception date of the most current continuous claims made coverage.
2. Following the termination of this policy by the Underwriters then after the end of the **POLICY PERIOD** there shall be a sixty (60) day period to report claims made for **EVENTS** taking place during the **POLICY PERIOD**; thereafter all coverage of claims shall cease. This discovery period shall not apply in the event of cancellation due to non-payment of premium.

DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

The Underwriters shall:

- A. Defend any suit against the **INSURED** alleging **BODILY INJURY** and/or **PROPERTY DAMAGE** which is payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent. The Underwriters may make such investigation and settlement of any claim or suit as deemed expedient, but the Underwriters shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Underwriters liability has been exhausted by payment for judgments or settlements hereunder.

- B. If the **INSURED** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the Claim, Underwriters' liability for any damages and claims expenses shall not exceed the amount for which the Claim could have been settled, less the remaining deductible, plus the Claims Expenses incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **INSURED**.
- C. Pay in addition to applicable limits of liability but no greater than the Limit of Liability for Defence Expenses specified in this policy.
 - 1. All expenses incurred by the Underwriters, all costs taxed against the **INSURED** in any such suit and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment and before the Underwriters have paid or tendered or deposited to court that part of the judgment which does not exceed the limit of the Underwriters liability thereon.
 - 2. Premiums on appeal bonds required in any such defended suit provided the counsel retained by the Underwriters has a reasonable belief in the success of an appeal and the **INSURED** can qualify for an appeal for such amounts as shall exceed the limits of liability under the policy. The Insurer shall have no obligation to apply for or furnish an appeal bond.
 - 3. All reasonable fees and/or expenses, other than loss of earnings, incurred by the **INSURED** at the Underwriters request, and/or reasonable investigatory fees and/or expenses directly incurred by the **INSURED** with the Underwriters agreement.

3. DEFINITIONS

- A. **BODILY INJURY** means physical injury, sickness, disease, shock, mental anguish, emotional distress or death sustained by any person.
- B. **DAMAGES** means a monetary judgment, award or settlement. Damages do not include:
 - 1. Amounts paid to the **INSURED** as fees or expenses for services performed which are to be reimbursed or discharged as a part of the judgment or settlement;
 - 2. Punitive damages, exemplary damages or any damages which are a multiple of compensatory damages awarded against the **INSURED**, including without limitation double or treble damages.
 - 3. Judgments or awards arising from acts deemed uninsurable by law.
- C. **EVENT** shall mean an accident resulting from a negligent act, error or omission (unintended by the **INSURED**), which occurs while the claimant or decedent is in the water, entering, exiting or preparing to enter the water in connection with Scuba (self contained underwater breathing apparatus), RSSA (recreational surface supplied air), or snorkelling activities including swimming activities related thereto. It includes an accident occurring in a classroom, pool, natural or artificial body of water.
- D. **INSURED** means that the following is an Insured under this policy to the extent described.

1. The **NAMED INSURED** shall be the Association stated in the declaration of the policy.
 2. The certificate holder shall be an Insured to whom a certificate of insurance has been issued under this policy.
 3. Any additional **INSURED** named on the certificate for liability arising out of the negligent acts, errors or omission of the certificate holder that results in an **EVENT**.
- E. **OCCURRENCE** as used in the policy means an **EVENT**.
- F. **POLICY PERIOD** means with respect to the Association, the 12 months following the effective date and hour shown on the declaration page. With respect to the certificate holder, the period of time beginning on the effective date and hour shown on the certificate and ending with the same expiration date as for the Association.
- G. **PROPERTY DAMAGE** means:
1. Physical injury to or destruction of tangible property, including loss of use resulting therefrom.
 2. Loss of use of tangible property which has not been physically injured or destroyed.

4. **POLICY TERRITORY**

"POLICY Territory" means anywhere in the world.

5. **LIMITS OF LIABILITY**

- A. The limits of liability shall be specified in this policy or in the certificate of insurance. Such limit shall be the aggregate for any one Event regardless of the number of **INSUREDS**.
- B. Regardless of the number of Events, the limit shown on the certificate is the maximum annual limit available to each certificate holder.

6. **WARRANTIES AND LIMITATIONS OF COVERAGE**

The Named Insured, certificate holder or any additional insured warrants compliance with the following agreements:

- A.
 1. During open water instruction and/or tests, no instructor shall knowingly permit any uncertified student to leave the immediate area without supervision and attendance of an instructor or a certified assistant.
 2. On the first three scuba dives for entry level certification, the students are to be under direction supervision of the instructor for all underwater skill evaluations. On the first four scuba dives for entry level certification, the instructor may conduct the navigation exercise under the indirect supervision provided all required skill evaluations have been completed.
 3. Advanced Training and/or Training dives shall be planned within accepted recreational diving limits. For the purpose of this warranty, recreational training dives are defined as dives:
 - Planned to 130' / 40 meters or shallower.
 - Planned without mandatory stage decompression (safety stops are acceptable)
 - Made using compressed air or oxygen enriched air (Nitrox) only.

For technical training dives - If the **INSURED** is a technically certified professional the above paragraph – A 3 will not apply.

- B. During open water instruction and/or tests, no instructor, certified assistant or divemaster shall leave or permit any uncertified student to be unattended.
- C. The instructor shall require each student to complete and sign a medical history form and their Certification Agencies written waiver and release agreement, at the beginning of training.

If the medical history form or the appearance of the student indicates any condition contrary to safe participation in diving activities, the student shall be required to obtain medical approval by a licensed physician based on medical examination prior to any further water training. The medical history forms and waiver of minors are to be signed by parent(s) and/or legal guardian(s).

- D. No instructor shall provide instruction to a minor without first having secured a release signed by parent(s) and/or legal guardian(s) and no scuba instruction shall be given to anyone under the age of 10 except that courses which are taught in confined water only (e.g. swimming pools) may be offered to anyone age 8 and older.
- E. In no event will medical approval be accepted wherein the physician signing the certificate is the student.
- F. Records used for the purpose of evaluating the student's progress shall be maintained by instructor.
- G. Records of knowledge tests for the purpose of evaluating the student's understanding of the instructional material shall be maintained by instructor.
- H. All records relating to individual students shall be retained for a minimum of five (5) years by instructor.

It is agreed that failure of a certificate holder to conform to the foregoing warranties shall result in the certificate issued to that holder being considered null and void as a breach of warranty and the Underwriters agree to remit the unearned premium upon demand.

7. EXCLUSIONS

Coverage is not afforded:

- A. To any claim made against an **INSURED** by his/her employer or by any other Insured.
- B. To liability assumed by the **INSURED** under any contract or agreement.
- C. To **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, aircraft or watercraft. However, this exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** from watercraft due to any negligent act, error or omission of the **INSURED**.
- D. To any obligation for which the **INSURED** or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law.

- E. To **BODILY INJURY** to, or death of, any employee of an **INSURED** arising out of and in the course of his employment for an **INSURED**.
- F. To **PROPERTY DAMAGE** to:
1. Property owned or occupied by or rented to the **INSURED**.
 2. Property used by the **INSURED**, or
 3. Property in the care, custody or control of the **INSURED** or for which the **INSURED** is for any purpose exercising physical control. This exclusion does not apply to swimming pools rented by, used by, or occupied by the **NAMED INSURED**.
- G. To liability arising from acts other than approved, sanctioned, organizational instruction, orientation or supervision.
- H. To any claim based upon or attributable to (1) any **EVENT** which is the subject of any notice given under a prior policy or to (2) any **EVENT** alleged in any prior or pending litigation as of the effective date of this policy or, claims alleging or derived from the same facts as alleged in the prior or pending litigation.
- I. 1. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
- (a) with respect to which an **INSURED** under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **INSURED** under any such policy but for its termination upon exhaustion of its limit of liability;
- or
- (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain amendatory thereof, or (2) the **INSURED** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to **BODILY INJURY**, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
3. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **INSURED** or (2) has been discharged or dispersed therefrom;

- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **INSURED**; or
- (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an **INSURED** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

4. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

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

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

NMA 1256 amended

- J. For any claim relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.

For any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the **INSURED** or by others.

Pollutants means any electromagnetic transmissions or field, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed

- K. To any claim based on or attributable to any **EVENT** occurring prior to the effective date of this policy if any **INSURED** as of the effective date of this policy, knew or could have foreseen that such **EVENT** might be the basis for a claim.
- L. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 2. any act of terrorism.

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

This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

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

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

NMA 2918 amended

- M. For any claim arising out of any intentional, wilful or deliberate act committed by or at the instigation of the **INSURED**.
- N. For any claim arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such claim.
- O. For any claim based on the insolvency or bankruptcy of any person, firm or organization.

- P. For any claim arising out of the performance of a criminal act or caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substances.
- Q. For liability arising out of the failure of any product, including Scuba and snorkelling equipment, whether owned or non-owned by an **INSURED**.
- R. For liability arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities.
- S. For any claim arising out of or resulting from sexual abuse or harassment or licentious, immoral or sexual behaviour, whether or not such act is intended to lead to, or culminate in any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons or from any causes whatsoever.

8. **INSURED'S DUTIES ARISING OUT OF AN EVENT, CLAIM OR SUIT**

- A. Upon the **INSURED** becoming aware of any act or omission which might reasonably be expected to be the basis of a claim or suit covered hereunder, written notice shall be given by, or on behalf of the **INSURED** to the Underwriters as soon as practical, together with the fullest information obtainable. Any subsequent claim made against the **INSURED** which is subject of the written notice shall be deemed to have been made at the time written notice was first given to the Underwriters. If claim is made or suit is brought against the **INSURED**, the **INSURED** shall immediately forward to Gale, Smith & Co., Inc. or other persons appointed by or on behalf of the Underwriters every demand, notice, summons or other process received by him or his representative.
- B. The **INSURED** shall cooperate with the Underwriters and upon the Underwriters' request, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the **INSURED** because of **BODILY INJURY** or **PROPERTY DAMAGE** with respect to which insurance is afforded under this policy and the **INSURED** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **INSURED** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to other at the time of the **EVENT**.

9. **OTHER INSURANCE**

If the **INSURED** has other insurance which is stated to be applicable to the loss, the Underwriters shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss. The insurance provided an **INSURED** under this policy shall be excess insurance over any other valid and collectible insurance.

10. **ADDITIONAL AGREEMENTS**

- A. Nothing herein contained shall be held to vary, alter, waive or extend any other terms, conditions, agreements or limitations of this policy, other than as stated above.
- B. It is expressly agreed that the premium shown on the premium schedule is a minimum premium and fully earned upon the issuance of the certificate. This premium is not subject to return premium adjustment unless the policy is cancelled by the Underwriters or a certificate is considered null and void as a result of any breach of a policy warranty.
- C. Only certified instructors, skin diving leaders, divemasters and assistant instructors providing evidence of valid liability insurance shall be engaged or involved in diving training or their authorized activities in a supervisory capacity.

11. CONDITIONS

- A. Bankruptcy or insolvency of the **INSURED** or of the **INSURED'S** estate will not relieve the Underwriters of their obligations under this policy.
- B. Any certificate may be cancelled by the Underwriters by mailing to the certificate holder at the address shown in that certificate written notice stating when not less than thirty (30) days thereafter such cancellation shall be effective. In the case of cancellation for non-payment of premium, written notice stating not less than ten (10) days thereafter shall such cancellation be effective. The mailing of notice of aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **POLICY PERIOD**. Delivery of such written notice either by the **NAMED INSURED** or by the Underwriters shall be equivalent to mailing.

If this insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain only the pro rata proportion of the premium.

- C. Notice, Authority and Changes – By acceptance of this **CERTIFICATE** the **NAMED INSURED** agrees to act on behalf of all **INSUREDS** with respect to giving and receiving of notice of cancellation or non-renewal, payment of premiums and the receiving of any return premiums and the receipt and acceptance of any endorsements issued to form a part of this **CERTIFICATE**.
- D. Application – By acceptance of this policy or the certificate, all **NAMED INSUREDS** and all certificate holders agree that the statements in the application(s) and all other materials furnished with the application(s) are their agreements and representations and that this policy and the certificates are issued in reliance of the truth of such agreements and representations.
- E. Assignment or transfer of this policy shall not be valid except with the written consent of the Underwriters.
- F. Subrogation Clause

In the event of any payment under this policy, the Underwriters shall be subrogated to all the **INSURED'S** rights of recovery therefore, against any person or organization and the **INSURED** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **INSURED** shall do nothing at the time of the loss to prejudice such rights.

UNDERWATER PROFESSIONAL LIABILITY