

COMMERCIAL AND ENVIRONMENTAL 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.

Certain sections of this policy include claims-made and reported coverage. Claims-made and reported coverage requires claims to be first made against the insured and reported to the company during the policy period or any applicable extended reporting period.

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 policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance."

The insurance provided under this policy 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 policy will apply. However, the coverage provided under this policy will not be broader than that provided by the applicable "controlling underlying insurance" and if coverage does not exist under any applicable "controlling underlying insurance," coverage shall not exist under this policy.

There may be more than one "controlling underlying insurance" policy listed in the Declarations and there may be terms and provisions in those policies which are in conflict, and which are not superseded by the provisions of this policy. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" policy 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 policy applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" only when the applicable limits of "controlling underlying insurance" and the applicable limits of any other policy of insurance affording coverage for any aspect of the claims asserted in such suit have been exhausted in accordance with the provisions of such "controlling underlying insurance" or other policy of insurance, as the case may be.

When we have no duty to defend, we will have, at our discretion, 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 policy. 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 policy.
- 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 policy. 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 policy.
 - d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this policy. 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."
 - e. "Injury or damage" which occurs during the policy period includes any continuation, change or resumption of that "injury or damage" after the end of the policy period.
 - f. "Injury or damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under the **WHO IS AN INSURED** Section in any "controlling underlying insurance" or any employee authorized by you to give or receive notice of an occurrence or claim:
 - (1) Reports all, or any part, of the "injury or damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "injury or damage"; or
 - (3) Becomes aware by any other means that "injury or damage" has occurred or has begun to occur.

2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this policy. 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 policy.

Insurance provided under this policy does not apply to:

a. 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.

b. Employment Related Practices

Any claim for "injury or damage" based on, directly or indirectly arising out of, or resulting from:

- (1) Any actual or alleged:
 - (a) Refusal to employ any person; or
 - (b) Termination of any person's employment;
- (2) Employment related practices, policies, acts or omissions such as discrimination, criticism, self-defamation, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, assault, battery, abuse including sexual abuse or malicious prosecution directed at any person; or
- (3) 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 Paragraphs (1) or (2) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (1) or (2) above occurs before, during or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

c. E.R.I.S.A.

Any obligation of the insured under the Employees' Retirement Income Security Act (E.R.I.S.A.) and any amendments thereto or any similar federal, state, or local statute.

d. Medical Payments

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

e. Nuclear Energy Liability

Based upon or arising out of radioactive, toxic, or explosive properties of Source Materials, Special Nuclear Material or By-Product Material, as defined in the Atomic Energy Act, and for which the United States Department of Energy or any other governmental authority or agency has indemnified the insured, or for which the Price Anderson Act provides protection for the insured.

f. War

"Injury or damage," however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) 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
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. 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 policy will apply as follows:
 - a. This insurance only applies in excess of the "retained limit."
 - b. The General Aggregate Limit is the most we will pay for the sum of all "ultimate net loss," for all "injury or damage" covered under this policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under **SECTION I – COVERAGES** for all "injury or damage" included within the products-completed operations hazard.

However, this General Aggregate Limit and the Products-Completed Operations Aggregate Limit only apply 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 policy 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.
 - e. Any per location or per project aggregate limit of insurance that is afforded under the applicable "controlling underlying insurance" shown in the Schedule of Controlling Underlying Insurance will not apply to or affect the Limits of Insurance provided by this policy.
3. If any policy period of the "controlling underlying insurance" begins prior to, or extends beyond the policy period of this policy, payment of losses covered by the "controlling underlying insurance" for "events" occurring before or after the policy period of this policy shall not be deemed to reduce or exhaust the limits of insurance of the "controlling underlying insurance."
 4. The Aggregate Limits of the "controlling underlying insurance," where applicable, shall be unimpaired at the attachment date of this policy, and for the purpose of this insurance only, "events" to which this insurance applies, taking place during the term of this policy, shall be considered in determining the extent of any exhaustion of the "controlling underlying insurance" aggregate limits.
 5. Two or more claims arising out of the same, related or continuing offense, wrongful act, occurrence, act, error or omission shall be considered a single claim for the purposes of the Each Occurrence Limit. The claim shall be deemed to have been made at the time the first such claim was made.
 6. If two or more excess policies of insurance issued by us apply to the same claim or claims for which any insured under this policy is legally liable, only one limit of insurance under one excess policy shall apply. The limit shall be the highest of the Each Occurrence limits of the excess policies that cover the claim or claims.

The General Aggregate Limit and the Products-Completed Operations Aggregate Limit of this policy apply separately to each consecutive annual period of this policy and to any remaining period of this policy 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 policy 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 policy.

b. Bankruptcy of Controlling Underlying Insurer

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

However, insurance provided under this policy will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer." The insurance provided under this policy 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 policy. 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 unless such payment, assumption of obligation, or incurrence of expense is explicitly authorized by the "controlling underlying insurance".

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 policy.

5. Cancellation

You may cancel this policy by surrendering it to us or one of our authorized agents or by mailing written notice to us and providing to us a future date when cancellation shall be effective. If you cancel this policy, we shall retain the customary short-rate portion of the premium less the minimum earned premium, if applicable.

We may cancel the policy by mailing to you at the address stated in the Declarations written notice stating when, not less than sixty (60) days thereafter; or ten (10) days in the case of cancellation for non-payment of premium or deductible, such cancellation shall become effective. If we cancel the policy, earned premium shall be computed pro-rata. The mailing of Notice of Cancellation as aforementioned shall be sufficient notice of the intent to cancel. The effective date of cancellation specified in the notice shall terminate this **policy period**.

This policy may only be cancelled by us for:

- a. Non-payment of premium or deductible;
- b. Change in your operations that materially increase risks covered under this policy;
- c. Fraud or material misrepresentation by you; or
- d. Your failure to comply with terms and conditions or your contractual obligations under this policy. You shall have a right of sixty (60) days from the date of notice of cancellation to remedy such non-compliance. If the remedy is satisfactory to us, we shall rescind such notice in writing and the policy shall remain in force. Notwithstanding the foregoing, if the policy is cancelled due to non-payment of premium, at the Company's option, upon receipt of all outstanding premium payments, the policy may be reinstated, but only from the date we receive such outstanding premium payments.

6. Changes

This policy 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 policy with our consent. This policy's terms can be amended or waived only by endorsement.

7. Maintenance Of or Changes to Controlling Underlying Insurance

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage, limits, or financial rating of carrier providing "controlling underlying insurance" 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 policy, but insurance provided under this policy 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 policy.

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 policy; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

9. Loss Payable

Liability under this policy 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.

10. Legal Action Against Us

No person or organization has a right under this policy:

- 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 policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, the "controlling underlying insurer" and the claimant or the claimant's legal representative.

11. 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.

Where the settlement of any suit defended by the "controlling underlying insurer" results, or will result, in the exhaustion of the "controlling underlying insurance," and will also require the payment of a portion of the limits of insurance under this policy in order to effectuate the settlement, we will have the right, but not the duty, to defend the insured with respect to that suit, and will be under no obligation to have the defense transferred to us. Where the satisfaction of any judgment entered against the insured in a suit defended by the "controlling underlying insurer" results, or will result, in the exhaustion of the "controlling underlying insurance," and will also require the payment of a portion of the limits of insurance under this policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that suit, and will be under no obligation to have the defense transferred to us.

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 policy 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 policy, we will cooperate in the transfer of control to the insured and its designated representative.

12. When We Do Not Renew

If we decide not to renew this policy, 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.

13. 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.

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, error, omission 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. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed, and is not limited to "waste," as defined with respect to the Nuclear Energy Liability exclusion.
6. "Retained limit" means the available limits of "controlling underlying insurance" and the applicable limits of any other policy of insurance affording coverage for any aspects of claims or suits covered under this policy, including self-insured amounts applicable to such claims or suits.
7. "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; or
 - c. Any loss, cost or expense arising out of any 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".

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