

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

Each section in this Coverage Form may contain exclusions, limitations or restrictions of coverage. Please read the entire Coverage Form carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Form the words “you” and “your” refer to the Named Insured shown in the Declarations. 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 “controlling underlying insurance”.

Other words and phrases that appear in quotation marks have special meaning. Please refer to **SECTION IV - DEFINITIONS**.

SECTION I - COVERAGE

A. Insuring Agreement

We will pay on behalf of an insured, or indemnify the insured if we are prevented from paying on their behalf, the “loss” that an insured becomes legally obligated to pay in excess of “underlying limits of insurance” and covered by “underlying insurance” and this insurance.

The terms, including exclusions, conditions, definitions and limitations of “controlling underlying insurance” apply unless they conflict or are inconsistent with the provisions of the policy of which this Coverage Form is a part, in which case the terms of our policy will apply.

If “underlying insurance” does not provide coverage for “loss”, for a reason or reasons other than the exhaustion of an aggregate limit of insurance then we will not provide coverage for such “loss”.

If “controlling underlying insurance” applies on a claims made basis and includes an offer of an extended reporting period then this insurance will also offer an extended reporting period on the same terms and conditions, including but not limited to any formula for calculating additional premium except any additional premium due will be calculated using the premiums of this policy.

The amount we pay for damages is limited as described in **SECTION II – LIMITS OF INSURANCE**.

B. Defense and Supplementary Payments

1. We have no duty to defend an insured against any claim or suit seeking any damages for which this insurance does not apply.
2. If the limits of “underlying insurance” have been exhausted due to the payment of claims, we will have the right and duty to defend the insured against any claim or suit seeking damages due to a “loss” for which this insurance applies.

3. Other than as described in **B.2.** above, we will not be obligated to investigate, settle or defend any claim or suit against you. However, we will have the right at our discretion, but not the duty, to participate in the investigation, settlement or defense of any claim or suit that, in our opinion, may involve insurance under this Coverage Form.
4. We will pay with respect to any claim or suit we defend:
 - a. All expenses we incur;
 - b. All court costs taxed against an insured on amounts payable by this insurance;
 - c. Pre-judgment interest awarded against an insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
 - d. All interest on the amount of any judgment we pay that occurs after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our applicable Limit of Insurance.
5. Costs of Defense and Supplementary Payments will not reduce the Limits of Insurance of this Coverage Form unless the limits of insurance provided by “controlling underlying insurance” are reduced by such defense and expense payments, in which case these payments are included within and will reduce the Limits of Insurance of this Coverage Form.
6. If defense is transferred to us due to the limits of “underlying insurance” being exhausted due to the payment of claims or if we transfer defense to another insurer specifically written as excess over this Coverage Form or to an insured or their designated representative, we will cooperate in the transfer of control of defense.
7. All obligations for Defense and Supplementary Payments end when we have used up our applicable limits of insurance.

C. Exclusions

Unless otherwise stated in the Declarations, this insurance does not apply to, nor shall we have a duty to defend, any claim or suit arising out of or resulting from:

1. Anything excluded by the “underlying insurance”; or
2. Any coverage that is provided in any “underlying insurance” with a limit that is included within and lower than “underlying limits of insurance”, commonly referred to as a sub-limit.

SECTION II - LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations page and the rules below fix the most we will pay regardless of the number of:
1. Insureds;
 2. Claims made or suits brought; or
 3. Persons or organizations making claims or bringing suits.
- B. The Limits of Insurance apply only in excess of “underlying limits of insurance” listed in the Schedule of Underlying Insurance.
- C. The General Aggregate Limit is the most we will pay for all damages covered under the policy. However, the General Aggregate Limit will not apply to “underlying insurance” that does not contain an aggregate limit and will not apply to damages arising out of the products-completed operations hazard which are subject to **D.** below.
- D. The Products-Completed Operations Aggregate Limit is the most we will pay because of damages arising out of the products-completed operations hazard.
- E. Subject to **C.** or **D.** above, the Each Occurrence Limit is the most we will pay for all “loss” arising out of any one occurrence or offense.
- F. Subject to **C.** or **D.** above, if “underlying limits of insurance” are reduced or exhausted by payment of “loss”, and/or are reduced or exhausted by payment of costs of Defense and Supplementary Payments if they reduce the “underlying limits of insurance”, the insurance provided by this Coverage Form will apply in excess of the reduced “underlying limit of insurance”, or, if all “underlying limits of insurance” are exhausted, will apply in place of “underlying insurance”.

The Limits of Insurance of this Coverage Part 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 Limits of Insurance.

SECTION III - COMMERCIAL EXCESS POLICY CONDITIONS

Unless otherwise stated in the Declarations, the following Conditions apply.

- A. Appeals.**
1. If the insured or any provider of “underlying insurance” elects not to appeal a judgment that exceeds “underlying limits of insurance”, at our discretion we may do so.

2. If we do elect to appeal a judgment, we will pay all costs of the appeal and any pre-judgment or post-judgment interest awarded against the insured attributable to such appeal. However, while we may be subject to pre-judgment or post-judgment interest on the entire amount of the judgment for the period after the judgment described in **A.1.** above and attributable to the appeal, we will not be required to pay pre-judgment or post-judgment interest owed by “underlying insurance” on the portion of the loss they have offered to pay prior to our appeal.

In no event shall this provision increase our liability beyond the applicable Limit of Insurance described in Section II of this Coverage Form.

B. Duties in the Event of Occurrence, Offense, Claim or Suit.

1. You must see to it that we are notified as soon as practicable of an occurrence or offense that may result in a claim under this Coverage Form. To the extent possible, notice should include:
 - a. How, when and where the occurrence or offense took place;
 - b. The names and addresses of any injured persons and witnesses, and any person or organizations who may make claims; and
 - c. The nature and location of any injury or damage arising out of the occurrence or offense.
2. If a claim or suit against any insured may reasonably involve coverage provided by this Coverage Form, you must see to it that we receive written notice as soon as practicable.
3. You and any other involved insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation or settlement of the claim or defense against the suit; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.
4. As respects insurance provided by this Coverage Form, 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.

C. Duties in Regard to a Copy of “Underlying Insurance”

The first Named Insured in the Declarations is responsible to provide us with a copy of “controlling underlying insurance” and any subsequently issued endorsements that may in any way affect it.

D. Financial Impairment

Bankruptcy, insolvency, rehabilitation, receivership, liquidation, or other financial impairment of the insured, the insured’s estate, or an insurer listed in the Schedule of Underlying Insurance will not relieve us of our obligations under this Coverage Form. However, in no event will such bankruptcy, insolvency, rehabilitation, receivership, liquidation, or other financial impairment require us to provide coverage or assume any obligation of “underlying insurance”.

E. Legal Action Against Us.

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

1. To join us as a party or otherwise bring us into a suit asking for damages from an insured;
or
2. To sue us unless all of the terms of this Coverage Form have been fully complied with.

F. Maintenance of “Underlying Insurance”

You agree to effect and maintain “underlying insurance” shown in the Schedule of Underlying Insurance, or renewal or replacement policies not more restrictive in their terms and conditions, in full force and effect during the policy period of the policy of which this Coverage Form is a part.

The limits of “underlying insurance” must be in effect and maintained without reduction other than by payment of losses covered thereunder.

You must notify us in writing as soon as practicable of exhaustion of “underlying insurance” aggregate limits. You must also inform us within 30 days of any cancellation of any policy of “underlying insurance”, or replacement of the provider of any policy of “underlying insurance.”

You must give us a written notice of any change in “underlying insurance” as respects:

1. Coverage;
2. Limits of insurance;
3. Termination of any coverage; or
4. Exhaustion of aggregate limits.

Your failure to comply with the foregoing shall not invalidate the policy of which this Coverage Form is a part, but in the event of such failure, we shall be liable only to the extent that we would have been liable had you complied with these obligations.

G. Other Insurance.

1. If other insurance is available to an insured for loss covered under this Coverage Form, this insurance will apply as excess over any other insurance, including self-insured retentions, or insurance deductibles. This provision does not apply to a policy specifically written to apply in excess of this insurance and which specifically references the policy of which this Coverage Form is a part.
2. We will have no duty to defend any claim or suit that any other insurer has a duty to defend. If no other insurer defends, at our discretion we may undertake to do so, but we will be entitled to the insured's rights against all other insurers

H. Premium and Audit.

1. We will compute all premiums for the policy of which this Coverage Form is a part in accordance with our rules and rates.
2. Unless shown as advance premium, the premium for the policy of which this Coverage Form is a part is a flat premium and is not subject to adjustment except as provided herein or amended by endorsement. If any additional premium charge is made to any "underlying insurance" due to a change in exposure during the policy period you must notify us and our premium may be adjusted accordingly.
3. Premium shown in the Declarations as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period.

Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, but not if such audit premium is less than the minimum premium shown in the Declarations.

4. If we cancel the policy any return premium will be pro-rated. If you cancel the policy, return premium will be pro-rated but will be subject to a minimum retained premium, which may be a dollar amount or percentage of the total policy premium, if a minimum retained premium is stated in the Declarations.
5. 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.

I. Transfer of Rights of Recovery Against Others to Us.

If an insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

Reimbursement will be made in the following order:

1. First, to any interest (including the insured) who has paid any amount in excess of the limits of this insurance;
2. Next, to us; and
3. Then to any interest (including the insured and a provider of "underlying insurance") as are entitled to claim the remainder, if any.

When we assist in pursuit of an insured's rights of recovery, reasonable expenses resulting therefrom shall be apportioned among all interests in the ratio of their respective recoveries. If there should be no recovery as a result of proceedings instituted solely at our request, we shall bear all expenses of such proceedings.

J. When We Do Not Renew

If we decide not to renew this Coverage Form, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the non-renewal not less than 60 days before the expiration date, unless a different number of days is shown in the Declarations. If notice is mailed, proof of mailing will be sufficient proof of notice.

K. When "Loss" is Payable.

As soon as practicable, we will pay the amount of "loss" after:

1.
 - a. An insured's liability is established by court decision; or
 - b. There is a written agreement between the claimant, the insured, and us; and
2. The amount of "underlying insurance" is paid by or on behalf of an insured.

We will pay all claims, as soon as practicable, provided all terms of this insurance are met.

SECTION IV - DEFINITIONS

- A. "Controlling underlying insurance" means the policy or policies shown in the Schedule of Underlying Insurance as such. When there are multiple types of "underlying insurance" there may be multiple instances of "controlling underlying insurance" that will apply individually to each type.

- B.** “Loss” means the sums that you are legally obligated to pay, and are actually paid, in the settlement or satisfaction of a claim or suit after making deductions for all recoveries and salvage.
- C.** “Underlying insurance” means the self-insured retention, policy or policies shown in the Schedule of Underlying Insurance, including any self-insured retentions that are a provision of such policies.
- D.** “Underlying limits of insurance” means the total sum of the limits of all applicable “underlying insurance” specifically listed in the Schedule of Underlying Insurance.