

COMMERCIAL EXCESS LIABILITY

Throughout this Policy the words "you" and "your" refer to:

1. The Named Insured shown in the Declaration Page(s).
2. Any person or organization qualifying as a Named Insured in the **immediate underlying insurance**, but only for such risks for which coverage is afforded under such **immediate underlying insurance**. This paragraph does not apply to any Named Insured added by endorsement to the **underlying insurance** after the inception date of this Policy unless such Named Insured is added to this Policy by endorsement.
3. Any Named Insured added to this Policy by endorsement.

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 **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in bold have special meaning. Refer to SECTION V – DEFINITIONS.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Form; these titles have only been inserted for ease of reading.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

SECTION I – COVERAGE

1. INSURING AGREEMENT

Subject to the terms and conditions of this coverage form, including **SECTION III – LIMITS OF INSURANCE**, we will pay the **ultimate net loss** in excess of the applicable limits of insurance of the **underlying insurance** as shown in the Declaration Page(s) arising from an **incident** that takes place during the **policy period**. This Policy shall not apply to any claim, to any **action**, to any loss, or to any liability of the Insured, unless such claim, **action**, loss or liability is insured by the **immediate underlying insurance** and then only for such risks insured by the **immediate underlying insurance**, except as otherwise provided under this Policy.

We will pay under this Policy only after all **underlying insurers** have paid or agreed to pay the full amount of the applicable limits of insurance of the **underlying insurance** as shown in the Declaration Page(s) by reason of losses occurring and paid under such **underlying insurance** during the **policy period**.

This insurance is subject to the terms and conditions of the **immediate underlying insurance**, except with regards to:

- 1.1. Premium;
- 1.2. Any obligation to investigate or defend;
- 1.3. The amount and limits of insurance; and
- 1.4. A renewal agreement, if any;

and except as provided under this Policy.

To the extent that the terms and conditions of the **immediate underlying insurance** conflict with this Policy, the provisions of this Policy will apply. Coverage provided under this Policy will not be broader than that provided by the **immediate underlying insurance**.

2. EXCLUSIONS

This insurance does not apply to:

- 2.1. Access to or Disclosure of Confidential or Personal Information (Privacy Breach)
Compensatory damages arising out of any access to or disclosure of any person's or organization's confidential or personal information, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information.
- 2.2. Electronic Data
Compensatory damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.
- 2.3. Asbestos
Any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, injury, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity.
This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, injury, damage, cost or expense.
- 2.4. Fungi or Spores
 - 2.4.1. Any actual or alleged liability for any injury, damage, or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any **fungi** or **spores** however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of **fungi** or **spores**;
 - 2.4.2. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with sub-paragraph 2.4.1. above; or
 - 2.4.3. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in sub-paragraph 2.4.1. or 2.4.2. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, injury, damage, cost or expense.

2.5. Nuclear Energy Liability

- 2.5.1. Any actual or alleged liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- 2.5.2. Any actual or alleged liability with respect to which an Insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;
- 2.5.3. Any actual or alleged liability resulting directly or indirectly from the **nuclear energy hazard** arising from:
 - 2.5.3.1. The ownership, maintenance, operation or use of a **nuclear facility** by or on behalf of an Insured;
 - 2.5.3.2. 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**;
 - 2.5.3.3. The possession, consumption, use, handling, disposal or transportation of **fissionable substances**, or of other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, injury, damage, cost or expense.

2.6. Pollution

- 2.6.1. Any actual or alleged liability arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**:
 - 2.6.1.1. At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any Insured;
 - 2.6.1.2. At or from any premises, site or location which is or was at any time used by or for any Insured or others for the handling, storage, disposal, processing or treatment of waste;
 - 2.6.1.3. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - 2.6.1.3.1. Any Insured; or
 - 2.6.1.3.2. Any person or organization for whom you may be legally responsible;
 - 2.6.1.4. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the **pollutants** are brought on or to the premises, site or location in connection with such operations by such Insured, contractor or subcontractor;
 - 2.6.1.5. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effect of **pollutants**.
- 2.6.2. Any loss, cost or expense arising out of any:
 - 2.6.2.1. Request, demand, order or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effects of, **pollutants**; or
 - 2.6.2.2. Claim or **action** by or on behalf of a governmental authority for **compensatory damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating or neutralizing, or in any way responding to, or assessing the effects of, **pollutants**.

2.7. Terrorism

Any actual or alleged liability arising directly or indirectly, in whole or in part, out of **terrorism** or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate **terrorism**. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, injury, damage, cost or expense.

2.8. Unsolicited Communication

Any actual or alleged liability imposed by or arising from any action or omission that violates or allegedly violates any federal, provincial, territorial, state or municipal act, law, statute, ordinance, rule or regulation, that restricts or prohibits the transmitting of any **unsolicited communication**, regardless of the jurisdiction.

2.9. War Risks

Any actual or alleged liability arising directly or indirectly, in whole or in part, out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, injury, damage, cost or expense.

SECTION II – WHO IS AN INSURED

Each of the following is an Insured:

- 1. The Named Insured shown in the Declaration Page(s).
- 2. Any person or organization qualifying as a Named Insured or Insured in the **immediate underlying insurance**, but only for such risks for which coverage is afforded under such **immediate underlying insurance**. This paragraph does not apply to any Named Insured or Insured added by endorsement to the **underlying insurance** after the inception date of this Policy unless such Named Insured or Insured is added to this Policy by endorsement.
- 3. Any Named Insured or Insured added to this Policy by endorsement at another Named Insured's request and upon our acceptance.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declaration Page(s), subject to the rules below, are the most we will pay regardless of the number of:
 - 1.1. Insureds;
 - 1.2. Claims made or **actions** brought; or
 - 1.3. Persons or organizations making claims or bringing **actions**.
- 2. This insurance only applies to the **ultimate net loss** in excess of the applicable limits of insurance of the **underlying insurance** as shown in the Declaration Page(s). Our liability under this Policy shall not exceed the amount applicable to this Policy as stated in the Declaration Page(s).

3. PROVISIONS GOVERNING THE APPLICATION OF AGGREGATE LIMITS OF INSURANCE

3.1. Aggregate Limits of Insurance

If shown in the Declaration Page(s), the Aggregate Limit of insurance shown in the Declaration Page(s) is the most we will pay for the sum of all **ultimate net loss** during the aggregate period as described in sub-paragraph 3.3. below. The Limit of Insurance described in Paragraph 2. above is a part of, not in addition to, the Aggregate Limit of insurance shown in the Declaration Page(s).

3.2. Reduction and Exhaustion of the Underlying Aggregate Limits of Insurance

In the event that the applicable limits of insurance of the **underlying insurance** as shown in the Declaration Page(s) are Aggregate Limits of insurance, and in the event of reduction or exhaustion of such Aggregate Limits of insurance under the **underlying insurance** by reason of losses occurring and paid under such **underlying insurance** during the **policy period**:

3.2.1. In the event of reduction, we will pay the excess of the reduced underlying limit; and

3.2.2. In the event of exhaustion, this Policy will continue in force as **underlying insurance**;

subject to the terms and conditions of this Policy, including the applicable Limits of Insurance. In no event, however, will we pay under this Policy until the **underlying insurers** have paid or agreed to pay the full amount of the applicable limits of insurance of the **underlying insurance** as shown in the Declaration Page(s) by reason of losses occurring and paid under such **underlying insurance** during the **policy period**.

3.3. Application of the Aggregate to Periods of Time

The Aggregate Limits of insurance of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the **policy period**, unless the **policy period** is extended after issuance for an additional period of less than twelve (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 IV – SPECIAL CONDITIONS

1. MAINTENANCE OF UNDERLYING INSURANCE

Any **underlying insurance** must be maintained in full effect during the **policy period** without reduction of coverage or limits except for the exhaustion or reduction of an Aggregate Limit of insurance as described in sub-paragraph 3.2. under **SECTION III – LIMITS OF INSURANCE**. Such exhaustion or reduction is not a failure to maintain **underlying insurance**. Failure to maintain **underlying insurance** will not invalidate this Policy, but this Policy will apply as if the **underlying insurance** was in full effect.

2. CHANGES TO THE UNDERLYING INSURANCE

No changes to the **underlying insurance** will be binding upon us unless specifically agreed to by endorsement.

3. BANKRUPTCY AND INSOLVENCY

Bankruptcy or insolvency of the Insured or the Insured's estate will not relieve us of our obligations under this Policy. Bankruptcy or insolvency of any **underlying insurer** will not relieve us of our obligations under this Policy. However, in no event will this Policy replace the **underlying insurance** in the event of bankruptcy or insolvency of any **underlying insurer**. This Policy will apply as if the **underlying insurance** was in full effect.

4. PARTICIPATION IN DEFENCE

Irrespective of the provisions contained in the **immediate underlying insurance** or any other **underlying insurance**, we shall have no obligation under this Policy to investigate or defend any loss, claim, or **action** against the Insured. We shall have no obligation under this Policy to pay for or to share in the cost of any investigation or defence.

The Insured will give us or any of our authorized agents prompt notice of an **incident** that may involve this Policy. If we should choose to participate in the investigation, defence or settlement of any claim or **action**, without being required to, such participation will not obligate us to pay for the cost of such investigation, defence or settlement. If, however, we choose to pay for the cost of such investigation, defence or settlement, we shall contribute to such defence costs incurred by the Insured in the ratio that our proportion of the **ultimate net loss** as finally adjusted bears to the whole amount of such **ultimate net loss**.

5. SETTLEMENT OF THE ULTIMATE NET LOSS

No indemnity is payable under this Policy unless the **underlying insurers** have paid or agreed to pay the full amount of the applicable limits of insurance under the **underlying insurance** as shown in the Declaration Page(s) by reason of losses occurring and paid under such **underlying insurance** during the **policy period**; nor until the amount of **ultimate net loss** shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and us. All losses covered by this Policy shall be due and payable within sixty (60) days after they are respectively claimed and proven in conformity with this Policy.

6. OUR RIGHT TO APPEAL

In the event the Insured or the **underlying insurers** elect not to appeal a judgment in excess of the underlying limits, we may elect to make such appeal at our own costs, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event will this provision increase our liability for **ultimate net loss** beyond the applicable Limits of Insurance described in **SECTION III – LIMITS OF INSURANCE**.

7. OTHER INSURANCE

If other valid and collectible insurance with any other insurer is available to an Insured covering a loss also covered under this insurance, other than insurance that is specifically stated to be in excess of this Policy, the coverage afforded by this insurance will be excess of, and will not contribute with, such other insurance.

8. PRIOR INSURANCE AND NON-ACCUMULATION OF LIABILITY

If any loss covered under this insurance is also covered in whole or in part under any other excess policy issued to an Insured prior to the inception date of this Policy, the limits of insurance as described in **SECTION III – LIMITS OF INSURANCE** will be excess of any amounts due to the Insured on account of such loss under such prior insurance.

SECTION V - DEFINITIONS

1. **Action** means a civil proceeding in which **compensatory damages** because of injury or damage to which this insurance applies are alleged. **Action** includes:

- 1.1. An arbitration proceeding in which such **compensatory damages** are claimed and to which the Insured must submit or does submit with our consent; or
- 1.2. Any other alternative dispute resolution proceeding in which such **compensatory damages** are claimed and to which the Insured submits with our consent.

2. **Compensatory damages** means damages (including prejudgment interest) due or awarded in payment for actual injury or economic loss. **Compensatory damages** does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.

3. **Electronic data** means information, facts or programs in any form or representations of information or concepts in any form stored as or on, created or used on, or transmitted to or from computer or data processing software (including systems and application software), memory devices, data processing devices or any other media that are used with electronically controlled equipment.

4. **Fissionable substance** means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
5. **Fungi** includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any **fungi** or **spores** or resultant mycotoxins, allergens or pathogens.
6. **Immediate underlying insurance** means the **underlying insurance** which provides the layer of coverage, whether primary or excess, immediately preceding the layer of coverage provided by this Policy.
7. **Incident** means an occurrence, accident, offence, act, or other event, to which the **immediate underlying insurance** applies.
8. **Nuclear energy hazard** means the radioactive, toxic, explosive, or other hazardous properties of **radioactive material**.
9. **Nuclear facility** means:
 - 9.1. Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - 9.2. Any equipment or device designed or used for:
 - 9.2.1. Separating the isotopes of plutonium, thorium and uranium or any one or more of them; or
 - 9.2.2. Processing or packaging waste;
 - 9.3. Any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them 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;
 - 9.4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste **radioactive material**;and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
10. **Policy period** means each consecutive period of twelve (12) months included in the **policy period** shown in the Declaration Page(s). The first twelve-month period starts on the inception date of the Policy and the subsequent period starts at the expiry of the first twelve-month period.
11. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, odour, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
12. **Radioactive material** means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
13. **Spores** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any **fungi**.
14. **Terrorism** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.
15. **Ultimate net loss** means the total sum that the Insured becomes legally obligated to pay as **compensatory damages** by reason of settlement or judgments or any arbitration or other alternative dispute resolution proceeding entered into with our consent, after making deductions for:
 - 15.1. Collectible non-insurance recoveries and any salvage; and
 - 15.2. Other insurance, whether recoverable or not.
16. **Underlying insurance** means all insurance policies preceding the layer of coverage provided by this Policy.
17. **Underlying insurer** means any insurer of the **underlying insurance**.
18. **Unsolicited communication** means communication in any form sent to any person or organization, without their prior consent.