

## FOLLOW FORM EXCESS LIABILITY COVERAGE FORM

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

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

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

This policy is subject to the same representations and warranties as are contained in the application for any **controlling underlying insurance**, and the insurance provided under this Coverage Form will follow the same terms, conditions, agreements, exclusions, definitions and limitations that are contained in the applicable **controlling underlying insurance**, unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Form will apply. However, the coverage provided under this Coverage Form will not be broader than that provided by the applicable **controlling underlying insurance**.

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underlying insurance** listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Form.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

### SECTION I - COVERAGES

#### 1. Insuring Agreement

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

Where the **controlling underlying insurance** has the duty to defend, we will have the right and duty to defend the insured against any suit seeking damages for such **injury or damage** under this Coverage Form when the applicable limits of **controlling underlying insurance** have been exhausted through the payment of the underlying limits in full in accordance with the provisions of such **controlling underlying insurance**.

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

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

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

But:

- (1) The amount we will pay for **ultimate net loss** is limited as described in Section II - Limits Of Insurance; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of **defense costs**, judgments or settlements under this Coverage Form.
- 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**.

Furthermore, if any **controlling underlying insurance** shown in the Schedule of Underlying Insurance (**SCHEDULE**) attached hereto has a limit of liability:

- (1) Greater than the amount shown in such Schedule of Underlying Insurance, then this policy will apply in excess of the greater amount; or
- (2) Less than the amount shown in such Schedule of Underlying Insurance, then this policy will apply in excess of

the amount shown in such Schedule of Underlying Insurance.

- c. (1) If the **controlling underlying insurance** requires, for a particular claim, that the **injury or damage** occur during its policy period in order for that coverage to apply, then this insurance will only apply to that **injury or damage** if it occurs during the policy period of this Coverage Form. If the **controlling underlying insurance** requires that the **event** causing the particular **injury or damage** takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the **event** causing that **injury or damage** takes place during the policy period of this Coverage Form.

- (2) If any **controlling underlying insurance** is written on a claims-made or discovery basis, the following applies to the insurance provided by this Coverage Form which is excess over that underlying insurance:

If the **controlling underlying insurance** requires, for a particular claim, that the **injury or damage** occur on or after the Retroactive Date shown in the Declarations of that insurance in order for that coverage to apply, then this insurance will only apply to that **injury or damage** which occurs on or after the Retroactive Date shown in the **controlling underlying insurance** but before the end of the policy period of this Coverage Form. If the **controlling underlying insurance** requires, for a particular claim, that the **event** causing the particular **injury or damage** takes place on or after the Retroactive Date shown in the Declarations of that insurance 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 on or after the Retroactive Date shown in the **controlling underlying insurance** but before the end of the policy period of this Coverage Form.

A claim for damages for such **injury or damage** must be first made against the insured during this policy period or any extended reporting period provided under this Coverage Form. A claim will be considered first made under this Coverage Form:

- (1) When notice of such claim is received and recorded by any insured or by us, whichever comes first, if the **controlling underlying insurance** is written on a claims-made and recorded basis; or
- (2) When notice of such claim, after being received by any insured, is reported to us in writing, if the **controlling underlying insurance** is written on any other claims-made basis.

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

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

## 2. Exclusions

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

Insurance provided under this Coverage Form does not apply to:

### a. Medical Payments

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

### b. Auto

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

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

### c. Workers' Compensation And Similar Laws

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

## SECTION II - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations, and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or suits brought, or number of vehicles involved;
  - c. Persons or organizations making claims or bringing suits; or
  - d. Limits available under any **controlling underlying insurance**.
2. The Limits of Insurance of this Coverage Form will apply as follows:
  - a. This insurance only applies in excess of the **retained limit**.
  - b. The Aggregate Limit is the most we will pay for all **ultimate net loss**, for all **injury or damage** including **defense costs** covered under this Coverage Form. **Defense costs** are part of, and not in addition to, the limits of insurance, and the payment of **defense costs** reduces the limits of insurance.  
  
However, this Aggregate Limit only applies to **injury or damage** that is subject to an aggregate limit of insurance
  - c. Subject to Paragraph **2.b.** above, the Each Occurrence Limit is the most we will pay for all **ultimate net loss** including **defense costs** under this insurance because of all **injury or damage** arising out of any one **event**. **Defense costs** are part of, and not in addition to, the limits of insurance, and the payment of **defense costs** reduces the limits of insurance.
3. If any **controlling underlying insurance** has a policy period that is different from the policy period of this Coverage Form then, for the purposes of this insurance, the **retained limit** will only be reduced or exhausted by actual payments made in full by the controlling underlying insurer for **injury or damage** covered under this insurance.
4. The Limits of Insurance shown in the Declarations will not ever be reinstated.

### SECTION III - CONDITIONS

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

#### 1. Appeals

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

#### 2. Bankruptcy

##### a. Bankruptcy Of Insured

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

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

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

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

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

- a. You must see to it that we are notified as soon as practicable of an **event**, regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:
  - (1) How, when and where the **event** took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any **injury or damage** arising out of the **event**.
- b. If a claim is made or suit is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or suit and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or suit as soon as practicable.

c. You and any other insured involved must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the suit; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of **injury or damage** to which this insurance may also apply.

d. No insured will do or omit to do anything to prejudice our rights under this Coverage Form, and no insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 4. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable. At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any **controlling underlying insurance** and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Form.

#### 5. Cancellation

a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

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

#### 6. Changes

This Coverage Form contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Form with our consent. No change in, modification of, or assignment of interest under this Coverage Form shall be effective except when made by written endorsement to this Coverage Form which is signed by our authorized representative. This Coverage Form shall become subject to any changes upon the effective date of the changes in the **controlling underlying insurance**, but only upon the condition that we agree to follow such changes by written endorsement attached hereto and the Insured pays when due any additional premium required by us relating to such changes and / or agrees to any amendment of the provisions of this Coverage Form required by us relating to such changes.

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

The insured warrants that the **retained limit**, where applicable, as shown in the Schedule of Underlying Insurance, shall be unimpaired as of the effective date of this policy.

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

Such exhaustion or reduction is not a failure to maintain **controlling underlying insurance**.

The Insured, not the Insurer, will bear the risk that any **controlling underlying insurance** is or may be uncollectible. This Coverage Form will not drop down for any reason, including, but not limited to, the uncollectibility (in whole or in part) of the **controlling underlying insurance**, even if such uncollectibility is due to the financial impairment or insolvency of the issuer of any **controlling underlying insurance**. Coverage under this policy will not be available unless and until all **controlling underlying insurance** has been exhausted by the actual payment by the controlling underlying insurer of the applicable **retained limit** as shown in the Schedule of Underlying Insurance.

The first Named Insured must notify us in writing with full particulars as soon as practicable in the event:

- a. Any **controlling underlying insurance** is cancelled, not renewed, replaced or otherwise terminated;
- b. The limits or scope of coverage of any **controlling underlying insurance** is changed;
- c. The aggregate limits of liability of any **controlling underlying insurance** become exhausted;
- d. Any **controlling underlying insurance** is not maintained in full effect during the policy period; or
- e. Any insurer issuing any **controlling underlying insurance** becomes subject to receivership, liquidation, dissolution, rehabilitation, or similar proceeding or being taken over by any regulatory authority.

#### 8. Other Insurance

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

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:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Form; plus

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

#### 9. Premium Audit

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

#### 10. Loss Payable

Liability under this Coverage Form 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, and first-party claim amount that we, at our sole discretion, agree in writing to be necessary and reasonable.

#### 11. Legal Action Against Us

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

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

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

## 12. Transfer Of Defense

### a. Defense Transferred To Us

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

### b. Defense Transferred By Us

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

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

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

## 13. When We Do Not Renew

If we decide not to renew this Coverage Form, 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.

## 14. Claims-Made Extended Reporting Period

- a. Any provisions under the **controlling underlying insurance** relating to an Extended Reporting Period for which a separate premium charge is made do not apply to this insurance, unless an Extended Reporting Period is purchased under this insurance.
- b. An Extended Reporting Period, consistent with the terms, conditions and duration of any Extended Reporting Period available in accordance with the terms of any **controlling underlying insurance**, will be available for this Coverage Form by endorsement, for an additional charge, if:
  - (1) This policy is cancelled or not renewed; or
  - (2) This policy is renewed or replaced with insurance that:
    - i. Has a Retroactive Date later than the date shown in the **controlling underlying insurance**; or
    - ii. Does not apply to **injury or damage** on a claims-made basis.
- c. If this policy and the **controlling underlying insurance** are cancelled or not renewed and an Extended Reporting Period has been provided under the **controlling underlying insurance**, then an Extended Reporting Period will be available for this Coverage Form. The Extended Reporting Period available under this Coverage Form will be consistent with the terms, conditions and duration of any Extended Reporting Period provided in accordance with the terms of the **controlling underlying insurance**.
- d. You must give us a written request for the Extended Reporting Period endorsement under this Coverage Form no later than the time allowed to purchase such endorsement under the **controlling underlying insurance**. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due and any premium you owe us for coverage provided under this policy.
- e. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
  - (1) The exposures insured;
  - (2) Previous types and amounts of insurance;
  - (3) Limits of Insurance available under this policy for future payment of damages; and
  - (4) Other related factors.

## 15. Notices

All notices under this policy shall be given as provided for in the **controlling underlying insurance**. In addition, all notices to us under this policy shall be sent to the address below or any substitute address as provided by us:

Berkley Environmental

## 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. **Defense Costs**

means any reasonable and necessary fees charged by an attorney and designated by the company, and where the insured has the right to select independent counsel, the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of a similar claim or suit in the community where the claim or suit arose or is being defended, as well as other reasonable and necessary costs, including expert witness and court reporters, in connection with the investigation, adjustment, settlement, defense or appeal of a claim or suit. It does not include the salaries of our regular employees or supervisory counsel retained by us, or any cost or expense incurred by the insured in assisting in the investigation or defense of the claim or suit.

### 4. **Event**

means an occurrence, offense, accident, act, discovery, claim or suit or other event, to which the applicable **controlling underlying insurance** applies.

### 5. **Injury or damage**

means any injury or damage, covered in the applicable **controlling underlying insurance** arising from an **event**.

### 6. **Retained limit**

means the available limits of **controlling underlying insurance** applicable to the claim.

### 7. **Ultimate net loss**

means the amount covered by this Coverage Form, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:

- a. **Defense costs**, settlements, judgments, binding arbitration; plus
- b. Other binding alternate dispute resolution proceeding entered into with our consent, plus
- c. Any first-party claim amount that we, at our sole discretion, agree in writing to be necessary and reasonable.