

**BUSINESSOWNERS EXCESS LIABILITY COVERAGE FORM**

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

With respect to Coverage A, the words "this insurance" mean the excess liability insurance provided under this Coverage Part.

The words "you" and "your" in this policy refer to the named insured shown in the Declarations and all other persons or organizations qualifying as named insureds under this policy. The words "we", "us", and "our" refer to the company providing this insurance. With respect to Coverage A., the word "insured" means any person or organization qualifying as such under any "underlying insurance."

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V—DEFINITIONS.

**SECTION I—COVERAGES**

**COVERAGE A—EXCESS LIABILITY**

**1. Insuring Agreement.**

- a. We will pay those sums, in excess of the amount payable under the terms of any "underlying insurance," that the insured becomes legally obligated to pay as damages to which this insurance applies, provided that the "underlying insurance" also applies, or would apply but for the exhaustion of its applicable limits of insurance. If, however, the Retained Limit applies as set forth in paragraph 4. below, we will pay only those sums in excess of the Retained Limit.

This insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance" except with respect to any provisions to the contrary contained in this insurance.

- b. We will have the right to participate in the defense of "claims" or "suits" against the insured seeking damages because of "injury" to which this insurance may apply. We will have a duty to defend such "claims" or "suits" when the applicable limit of insurance of the "underlying insurance" has been used up by payment of judgments and settlements.

The right or duty to defend is limited as described in paragraph 3. under Defense Of Claims Or Suits.

- c. The amount we will pay for "injury" is limited as described in SECTION III - LIMITS OF INSURANCE.
- d. We will have no obligation under this insurance with respect to any "claim" or "suit" that is settled without our written consent.

**2. Exclusions.**

The use of any exclusion in this Section 2 relating to coverage not provided by this policy is only for clarification that no coverage applies. Use of such exclusions should not be construed to mean or imply that this policy would otherwise cover the excluded liability or any other liability not specifically excluded.

The exclusions applicable to the "underlying insurance" also apply to this insurance. Additionally, this insurance does not apply to:

**a. Medical Payments**

Any liability to pay expenses under any medical payments coverage.

**b. Motor Carrier Act Or Similar Statute**

Any liability to reimburse an insurer as provided by the terms of the "Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980" or under the terms of any similar endorsement required by Federal or state statute.

**c. Obligation Under Certain Laws**

Any liability imposed under any of the following laws:

- (1) Employee Retirement Income Security Act (E.R.I.S.A.) of 1974 as now or hereafter amended; or
- (2) Any automobile no-fault, uninsured motorist, underinsured motorist, workers compensation, disability benefits or unemployment compensation law or any similar law.

**d. Officers And Directors**

Liability of Officers and Directors except with respect to "advertising injury", "bodily injury", "property damage" and "personal injury."

**e. Asbestos**

"Injury" arising out of, resulting from, caused or contributed to by:

- (1) Asbestos or exposure to asbestos; or
- (2) The costs of abatement, mitigation, removal or disposal of asbestos.

This exclusion also includes:

- (a) Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; and
- (b) Any obligation to share damages with or repay someone else who must pay damages because of such injury or damage.

**f. Employment - Related Practices**

"Injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the "injury."

**g. Non-Monetary Damages**

"Claims" seeking redress in any form other than for money damages and for fees or expenses relating to such "claims." This limitation also precludes "defense expenses" and encompasses but is not limited to injunctive relief, criminal allegations, inverse condemnation and other "claims" (whether exclusively or in conjunction with money damages) which seek non-monetary relief.

**h. Damage To Property**

"Property damage" to premise you rent or occupy.

**3. Defense of Claims or Suits.**

- a. When we have the duty to defend, we will pay for all "defense expense" once our duty to defend begins. We may make investigation of any "claim" or "suit" we think appropriate.

If we exercise our right to defend when there is no duty, we will pay only that "defense expense" we incur.

If we provide a defense, we may investigate any "claim" or "suit" at our discretion. We may settle such "claim" or "suit" within the Amount of Insurance available at the time of the settlement.

- b. Our right or duty to defend ends when we have used up the Amount of Insurance available in the payment of any combination of judgments or settlements as provided under SECTION III - LIMITS OF INSURANCE. This applies both to "claims" and "suits" pending at that time and those filed thereafter.
- c. When we control the defense of a "claim" or "suit," we will pay for the "defense expense." If by mutual agreement or court order the insured assumes control before the applicable Amount of Insurance available is used up, we will reimburse the insured for reasonable "defense expense."
- d. As soon as practicable after we become aware that an Amount of Insurance available is used up:
  - (1) We will notify "you" of any outstanding "claims" and "suits" subject to that Amount; and

- (2) You will then arrange to assume control of the defense of all such "claims" and "suits" against you or any other insured when our right or duty to defend them ends.

- e. We will assist the insured in the transfer of control of the defense of "claims" and "suits" under c. or d. above. Until such arrangements are completed, we will take on behalf of any insured those steps that we think appropriate:

- (1) To avoid a default in any "claim" or "suit"; or
- (2) To the continued defense of a "claim" or "suit."

You agree that if we take such steps:

- (1) We do not waive or give up any of our rights under this insurance; and
- (2) You will reimburse us for any "defense expense" that arises out of such steps if the applicable Amounts of Insurance available have been used up.

Our payment of "defense expense" will not reduce the Limits of Insurance or the Amounts of Insurance available.

**4. Retained Limit—Each Incident.**

The retained limit is the amount stated in the Declarations. The retained limit applies to all "injury" arising out of any one "incident," if at the time of the first "claim" or "suit" for any such "injury" the applicable "aggregate limit" of the "underlying insurance" has been used up by payments of judgments and settlements subject to such limit. The retained limit does not apply to the payment of "defense expense."

**SECTION II—LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and rules below fix the most we will pay under the terms of this insurance regardless of the number of:
  - a. Insured;
  - b. "Claims" made or "suits" brought; or
  - c. Persons or organizations making "claims" or bring "suits."
  - d. "Incidents" or "Injuries" alleged or proven, legal or otherwise, or the number of "incidents" or "injuries" sustained or alleged.
2. The Amount of Insurance stated as the General Aggregate Limit is the most we will pay for the sum of damages under Coverages A and B, including "auto," but not including damages because of "injury" included in the "products- completed operations hazard."
 

Each payment we make for such damages reduces by the amount of the payment in the General Aggregate Limit. This reduced limit will then be the Amount of Insurance available for further damages of these kinds.
3. The Amount of Insurance stated as the Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A and B for the sum of

damages because of "injury" included in the "products-completed operations hazard."

Each payment we make for such damages reduces by the amount of the payment the Products-Completed Operations Aggregate Limit. This reduced limit will then be the Amount of Insurance available for further damages of these kinds.

4. Subject to 2. or 3. above, whichever applies, the Each Incident Limit is the most we will pay for the sum of damages under Coverages A and B because of all "injury" arising out of any one "incident."
5. 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—CONDITIONS

If any of the following conditions are contrary to conditions contained in the "underlying insurance," the provisions contained in this policy apply.

#### 1. Appeals.

In the event the "underlying insurer" elects not to appeal a judgment in excess of the limits of the "underlying insurance," we may elect to make such appeal. If we so elect, we shall be liable, in addition to the Amount of Insurance, for all "defense expense" we incur.

#### 2. Bankruptcy of Underlying Insurer.

In the event of bankruptcy or insolvency of any "underlying insurer," the insurance afforded by this Coverage Part shall not replace such "underlying insurance," but shall apply as if the "underlying insurance" was valid and collectible.

#### 3. Duties In the Event of Incident, Claim or Suit.

- a. You must see to it that we are notified promptly of an "incident" which may result in a "claim" to which this insurance applies. To the extent possible, notice should include:
  - (1) How, when and where the "incident" 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 "incident."
- b. If a "claim" is made or "suit" is brought against any insured, you must see to it that we receive prompt written notice of the "claim" or "suit."
- c. You and any other involved insured 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, settlement or defense of the "claim" or "suit";
  - (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; and
  - (5) Notify us immediately of any judgment or settlement of any "claim" or "suit" brought against any insured.
- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our written consent.

#### 4. Loss Payable.

Our liability for any portion of "Ultimate Net Loss" shall not apply until the insured or any "underlying insurer" shall be obligated to pay the applicable limits of any "underlying insurance" or the "retained limit", whichever is applicable. When "Ultimate Net Loss" has been determined, the insured may make "claim" under this policy as soon as practicable thereafter. Such insured's obligation to pay any 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.

#### 5. Maintenance Of Underlying Insurance.

- a. You agree to maintain the "underlying insurance" in full force and effect during the term of this policy, and to inform us within 30 days of any replacement of that "underlying insurance" by the same or another insurer.

Reduction or exhaustion of the "aggregate limit" of any "underlying insurance" by payments for judgments or settlements will not be a failure to maintain "underlying insurance" in full force and effect.

- b. You must notify us immediately:
  - (1) Of any changes to the "underlying insurance." We may adjust our premium accordingly from the effective date of the change to the "underlying insurance."
  - (2) If any "underlying insurance" is cancelled or not renewed and you do not replace it. This insurance shall apply as if the "underlying insurance" was valid and collectible.
- c. No statement contained in this Condition limits our rights to cancel or not renew this Coverage Part.

#### 6. Other Insurance.

This insurance is excess over any other valid and collectible insurance or self-insurance, whether primary, excess, contingent or any other basis, except other insurance written specifically to be excess over this insurance. This insurance will not contribute with any other applicable insurance or self-insurance and this insurance will, under no circumstances, be considered primary, pro rata,

concurrent to co-existent with any other valid and collectible insurance.

The other insurance will be deemed valid and collectible regardless of:

- a. Any defense asserted by any other insurer because of the insured's failure to comply with the terms of that insurance; or
- b. The inability of any other insurer to pay for a loss due to bankruptcy or insolvency.

## 7. Policy Period.

This insurance will respond only to:

- a. "Bodily injury" or "property damage" that occurs; and
- b. "Personal injury" or "advertising injury" arising from an offense;

during the policy period of this insurance shown in the Declarations.

## SECTION IV—DEFINITIONS

1. "Advertising injury" means "injury" arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication or material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.
2. "Aggregate Limit" means the maximum amount stated in the policy for which the insurer will be liable, regardless of the number of covered "claims."
3. "Auto" means land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."
4. "Claims" means a written demand upon any insured (or the first named insured) for damages and shall include service of a "suit" of institution of arbitration proceedings against the insured (or first named insured). "Claim" does not include reports of accidents, acts, errors, occurrences, offenses or published news reports describing facts that may give rise to a "claim" under this policy.
5. "Defense expense" means payments allocated to a specific "claim" or "suit" for its investigation, settlement, or defense, including:
  - a. Attorney fees and all other litigation expenses.
  - b. The cost of bonds to appeal a judgment or award in any "suit" we defend.
  - c. Up to \$250 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which liability coverage for "bodily injury" provided by this Coverage Part applies.

- d. The cost of bonds to release attachments, but only for bond amounts within the Amount of Insurance available.
- e. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit," including actual loss of earnings up to \$100 a day because of time off from work.
- f. All costs taxed against the insured in the "suit."
- g. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- h. Interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of SECTION III—LIMITS OF INSURANCE.

"Defense expenses" does not include:

- a. Salaries and expenses of our employees or the insured's employees, other than:
    - (1) That portion of our employed attorneys' fees, salaries and expenses allocated to a specific "claim" or "suit", and
    - (2) The expenses described in e. above.
  - b. Fees and expenses of independent adjusters we hire.
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  7. "Incident" means:
    - a. With respect to "bodily injury" to persons other than your employees and "property damage," an accident, including continuous or repeated exposure to substantially the same general harmful conditions;
    - b. With respect to "bodily injury" to your employees arising out of and in the cause of their employment by you, the accident or disease which causes the "bodily injury"; and
    - c. With respect to offenses committed by the insured resulting in "personal injury" or "advertising injury," all such "injury" sustained by any one person or organization.
  8. "Injury" means "bodily injury," "property damage," "advertising injury" or "personal injury."
  9. "Loading or unloading" means the handling of property:
    - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or vehicle; or
    - b. While it is in or on an aircraft, watercraft or vehicle; or
    - c. While it is being moved from an aircraft, watercraft or vehicle to the place where it is finally delivered;

but, "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or vehicle.

10. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. and d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

11. "Personal injury" means injury, other than "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor.

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

12. "Pollutants" means 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.

13. "Products - completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

14. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
15. "Retained limit" is the amount stated in the Declarations.
16. "Suit" means a civil proceeding in which damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
17. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
18. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and
  - b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- "Your product" includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability or performance or use of "your product"; and
  - b. The providing or failure to provide warnings or instructions.
- "Your product" does not include vending machines or other property rented to or located for the use of others but not sold.
19. "Your work" means:
- a. Work or operations performed by you or on your behalf; and
  - b. Materials, parts or equipment furnished in connection with such work or operations.
- "Your work" includes:
- a. Warranties or representations made at any time with respect to fitness, quality, durability, performance or use of any of "your working"; and
  - b. The providing of or failure to provide warnings or instructions.
20. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
21. "Underlying insurance" means the liability insurance coverage provided under policies shown in the Declarations, for the limits and periods indicated. It includes any policies issued to replace those policies during the term of this insurance that provide:
- a. At least the same policy limits; and
  - b. Liability insurance coverage for the same hazards insured against, except those changes we agree to in writing.
22. "Underlying insurer" means any insurer who issues a policy of "underlying insurance."
23. "Underlying policy" means a policy providing "underlying insurance."