



EXCESS INSURANCE POLICY

In consideration of the payment of the premium, in reliance on all statements made in the application, and subject to all of the provisions of this Policy, the Insurer and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING CLAUSES

To pay on behalf of the **Insured** excess of the **Underlying Policies** any claim or loss which triggers coverage under the **Underlying Policies**, and is not otherwise excluded by the terms, conditions or endorsements of this Policy, and which is reported to the Insurer in accordance with Clause VI. of this Policy.

II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

- A. **“Insured”** shall mean all persons and entities insured under the **Primary Policy**.
- B. **“Named Insured”** shall mean the person or entity set forth in Item 1. of the Declarations.
- C. **“Policy Period”** shall mean the period set forth in Item 2. of the Declarations.
- D. **“Primary Policy”** shall mean each policy identified as such in the Schedule of Underlying Insurance.
- E. **“Sublimit”** means any **Underlying Policy Limits** which:
 - 1. apply only to a particular grant of coverage under such **Underlying Policy**; and
 - 2. reduce and are part of the otherwise applicable limits of liability of such **Underlying Insurance** set forth in the Declarations.
- F. **“Underlying Policies”** shall mean all policies identified in the Schedule of Underlying Insurance.
- G. **“Underlying Policy Limits”** shall mean the combined limits of liability of the **Underlying Policies** for each type of insurance, including costs and expenses incurred in the defense or settlement of any claim.

III. LIMIT OF LIABILITY

- A. The amount shown in Item 3. of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy.
- B. Payment by the Insurer of any amount, including but not limited to defense costs, shall reduce the limits of liability available under this Policy.

IV. MAINTENANCE OF UNDERLYING POLICIES

It is a condition of this Policy that the **Underlying Policies** shall be maintained in full effect during the **Policy Period** except for any reduction of the **Underlying Policy Limits** solely by payment of any claims or losses or costs and expenses incurred in the defense or settlement of such claims. If this condition is breached then this Policy shall automatically and immediately terminate with effect from the date when the **Underlying Policies** cease to be maintained or are deemed to have ceased to be maintained.

In the event the insurer under one or more of the **Underlying Policies** fails to pay any claim or loss or costs and expenses incurred in the defense or settlement of such claim as a result of the insolvency, bankruptcy or liquidation of said insurer, then the **Insured** shall be deemed self-insured for the amount of the limit of liability of said insurer which is not paid as a result of such insolvency, bankruptcy or liquidation.

V. REDUCTION / EXHAUSTION OF THE UNDERLYING POLICIES

If by reason of the payment of any claims or losses or costs and expenses incurred in the defense or settlement of such claims or losses by the insurers of the **Underlying Policies**, the amounts of the **Underlying Policy Limits** are:

- A. Partially reduced, then this Policy shall continue to apply in excess of the reduced amounts of the **Underlying Policy Limits**; or
- B. Totally exhausted, then this Policy shall continue in force as primary insurance with respect to any subsequent claim; provided, however that this Policy shall only pay in excess of the retention or deductible applicable to the **Primary Policy** and in conformance with the terms, conditions and limitations of the **Primary Policy** except as stated herein, which shall be applied to any subsequent claim in the same manner as specified in the **Primary Policy**.
- C. If any **Underlying Limits** are subject to a **Sublimit** then coverage hereunder shall not apply to any claim which is subject to such **Sublimit**, provided however, that the **Underlying Limit** shall be recognized hereunder as depleted to the extent of any payment of such claim subject to such **Sublimit**.

VI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

For all claims and circumstances that might lead to a claim the **Insured** must provide written notice in the same manner as required by the **Primary Policy**, and must be reported to the Insurer in writing via the entity named in Item 5.a. of the Declarations. Notice to any underlying carrier is not notice to the Insurer.

VII. CONDITIONS

- A. In the event of a claim or loss for which the Insurer may be liable to contribute, no costs or expenses shall be incurred without the Insurer's written consent being first obtained (such consent not to be unreasonably withheld). No settlement of a claim or loss shall be effected by the **Insured** for such a sum as will involve this Policy without the written consent of the Insurer.
- B. All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied first to subrogation expenses, second to claims or loss or costs and expenses incurred in the defense or settlement of such claims by the Insurer, third to claims or loss or costs and expenses incurred in the defense or settlement of such claims by the insurers of the **Underlying Policies**, and fourth to the applicable retention or deductible under the **Primary Policy**. Provided always that nothing in this Policy shall be construed to mean that loss settlements under this Policy are not payable until the **Insured's** ultimate net loss has been finally ascertained.
- C. If the **Insured** shall proffer any claim or loss knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.
- D. By acceptance of this Policy, the **Insured** agrees the Insurer may at its own discretion and expense retain counsel to associate in the defense or settlement of any claim and to cooperate with such counsel.
- E. If during the **Policy Period** the provisions of the **Primary Policy** are changed in any manner, as a condition precedent to coverage under this Policy, the **Insured** shall give written notice to the Insurer of the full particulars of such change as soon as practicable but in no event later than thirty (30) days following the effective date of such change. No amendment to any **Primary Policy** or **Underlying Policies** during the **Policy Period** shall be effective in broadening or extending the coverage afforded by this Policy or extending or increasing the limits of liability afforded by this Policy unless the Insurer so agrees in writing. The Insurer may, in its sole discretion, condition its agreement to follow any changes to the **Primary Policy** or the **Underlying Policies** on the **Insured** paying any additional premium required by the Insurer for such change.

As soon as practicable, but in no event later than thirty (30) days thereafter, the **Insured** must give the Insurer written notice of any additional or return premiums charged or allowed in connection with any **Underlying Policies**.

VIII. SINGULAR FORM OF A WORD

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

IX. TITLES OF PARAGRAPHS

The titles of paragraphs, sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference. Such titles are not deemed in any way to limit, expand or define the provisions to which they relate and are not part of this Policy.