

FOLLOW-FORM EXCESS INSURANCE POLICY
PROFESSIONAL LIABILITY
Claims Made and Reported Form

Except as regards Premium, as regards the Limits of Liability, and except as otherwise provided herein, this Policy shall be subject to the same terms, definitions, conditions and exclusions as are contained in the **Underlying Insurance** policy stated in the Declarations.

I. Insuring Agreement

A. Following Form Policy

This excess insurance Policy shall follow same terms, definitions, conditions and exclusions as are contained in the **Underlying Insurance** policy except for:

1. the Limits of Liability of this Policy, as stated on the Declarations page, and referenced in I. Insuring Agreement, C. Policy Limits;
2. the **Policy Period**;
3. the **Retroactive Date**;
4. any extended reporting period provisions;
5. Premium;
6. any policy renewal agreement;
7. any loss settlement by any underling insurer or by any insured, without the Company's prior written consent;
8. cancellation provisions; and
9. Covered Services.

B. Covered Services

The Company, as stated in the Declarations, agrees to pay on behalf of the Insured all sums in excess of **Underlying Insurance**, that the Insured becomes legally obligated to pay as **Damages**, and associated **Claims Expenses**, arising out of acts, errors or omissions, in the rendering or failure to render **Professional Services**, as described in the Declarations, provided that:

- a) The **Claim** is first made against the Insured and reported during the **Policy Period**; and,
- b) The act, error, or omission took place after the **Retroactive Date** shown in the Declarations.

C. Policy Limits

1. Regardless of the number of **Claims**, persons, or entities insured or included in the definition of Insured, or the number of claimants or **Claims** made against the Insured:
 - a. The maximum liability of the Company for damages and **Claims Expenses** from each **Claim** made against the Insured during the **Policy Period**, and the **Extended Reporting Period**, if purchased, shall not exceed the amount shown in the Declarations for each per Claim Limit of Liability.
 - b. The maximum liability of the Company for all damages and **Claims Expenses** as a result of all **Claims** first made against the Insured during the **Policy Period** and the **Extended Reporting Period**, if purchased, shall not exceed the amount shown in the Declarations as the Aggregate Limit of Liability.
2. The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of

Liability.

3. In the event two or more **Claims** arise out of a single act, error or omission, or a series of related acts, errors or omissions, all such **Claims** shall be treated as a single **Claim**. Whenever made, all such **Claims** shall be considered first made and reported to the Company during the **Policy Period** in which the earliest **Claim** arising out of such act, error or omission was first made and reported to the Company, and all such **Claims** shall be subject to the same Limit of Liability.

4. If the Limits of Liability are explicitly stated in the Declarations as operating on a Contributing Excess basis, the limits of the Company's liability shall be the pro-rata percentage so stated of all loss to which this Policy applies which is in excess of **Underlying Insurance**, up to the limits stated in the Declarations.

5. If the Limits of Liability are explicitly stated in the Declarations as operating on an Excess of Loss basis, the limits of the Company's liability shall be the amount of all loss to which this Policy applies which is in excess of **Underlying Insurance** up to the limits stated in the Declarations.

6. If the aggregate limits of liability of the **Underlying Insurance** should be exhausted by reason of payment of loss, then this Policy shall, subject to its terms of and conditions of this Policy continue in force as the applicable **Underlying Insurance**, subject to all the terms and conditions of the controlling **Underlying Insurance** and the terms and conditions of this Policy.

7. The Company shall not be obligated to pay any **Claim** or judgment after the applicable Limit of Liability has been exhausted by payment of judgments, settlements, or **Claims Expenses** or any combination thereof.

8. All **Claims Expenses** shall be part of and not in addition to the applicable Limits of Liability. Payment of **Claims Expenses** by the Company shall reduce and exhaust the applicable Limits of Liability.

D. Extended Reporting Period

1. If the Policy is not renewed for any reason or is canceled for any reason by either the Company or the Insured by other than for non-payment of premium or deductible, the Insured shall have the right to purchase an extension of the coverage granted by this Policy. This **Extended Reporting Period** will be for a period of 12 months after the effective date of such cancellation or non-renewal but only with respect to any act, error or omission committed before the effective date of the cancellation or non-renewal and after the Retroactive Date and otherwise covered by this Policy. An increased premium, deductible, or change in, modification of coverage terms or conditions upon renewal does not constitute a cancellation or non-renewal.

2. The premium for this **Extended Reporting Period** shall not exceed 100% of the full annual premium set forth in the Declarations and any endorsements, and must be elected and paid for within thirty (30) days after the effective date of cancellation, non-renewal or Policy expiration. Such additional premium shall be deemed fully earned immediately upon the inception of this **Extended Reporting Period**.

3. The **Extended Reporting Period** does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the **Extended Reporting Period** shall be part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

II. Definitions:

- A. Claim** means a written or verbal demand received by the Insured for money or services, including service of suit or institution of arbitration proceeding against the Insured.
- B. Claim Expenses** means expenses incurred by the Company, or the Insured with the Company's consent, in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, including the following:
1. Expenses the Company incurs, such as, but not limited to, independent adjusting and/or investigative expenses;
 2. Attorneys fees;
 3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
 4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable Policy limit and only if said **Claims** are covered by the Policy;
 5. Reasonable expenses incurred by the Insured at the Company request other than:
 - a. Loss of earnings, and;
 - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- C. Damages** mean a money judgment, award or settlement, except those for which insurance is prohibited by law. **Damages** do not include fines, penalties, or disputed fees, deposits, commissions or charges for goods or services.
- D. Policy Period** means the period of time stated in the Declarations or any shorter period resulting from Policy cancellation or amendment to the Policy.
- E. Professional Services** means those services described on the Declarations Page.
- F. Retroactive Date** means the date on or after which any alleged or actual act, error or omission must have taken place in order to be considered for coverage under this Policy.
- G. Underlying Insurance** means the insurance policy immediately underlying this Policy and any other insurance policies contributing to the Underlying Limits stated in the Declarations, including any deductible amount, Insured's participation or self-insurance retention of any policy, and includes any renewal or replacements thereof.
- H. Underlying Limits** means the limits of the **Underlying Insurance**, as stated on the Declarations page.

III. General Conditions

1. Maintenance of **Underlying Insurance**
 - a. The **Underlying Insurance** shall be maintained in full effect during the period of this Policy except for reduction of underlying insurance limits or exhaustion of such limits due solely because of **Claims** made during the Policy Period or any Extended Reporting Period, if any. If **Underlying Insurance** is not maintained in full force and effect, the Insured will become self-insured for the amount stated in the Declarations and will assume all the obligations of the underlying insurer.
 - b. The insolvency, bankruptcy, receivership or refusal or inability to pay of the Insured or of any underlying insurers shall not operate to reduce or exhaust

- any underlying limit.
- c. The Company's obligation under this Policy shall not be increased, expanded or otherwise changed as a result of:
1. Any positions taken by the underlying insurer with respect to coverage;
 2. the Insured's failure to comply with any condition of any such policy, or
 3. the receivership, insolvency, or the inability or refusal to pay of any underlying insurer or the cancellation of the **Underlying Insurance**.
2. Notice of Claim
- a. In event of an incident, occurrence, offense, act, error, or omission which involves or may reasonably be expected to involve the insurance afforded by this Policy, written notice containing particulars sufficient to identify the Insured and reasonably obtainable information regarding the time, place and circumstances thereof, and the names and addresses of available witnesses shall be given by or for the Insured to the Company or any of its authorized agents as soon as practicable.
 - b. The Insured must immediately send copies of any demands, notices, summonses or legal papers received in connection with any **Claim** or a suit, and provide Authorization to the Company to obtain records and other information. This includes any notice of an attempt to certify a class in a proposed class action lawsuit or the filing of a class action lawsuit.
 - c. Notice to any underlying insurer shall not constitute notice to the Company under this Policy.
 - d. The Insured shall cooperate with the underlying insurers and comply with all of the terms and conditions of the underlying insurance policies. The Insured shall upon request by the underlying insurers assist in making settlements, in the conduct of suits and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the Insured because of liability with respect to which insurance is afforded by the underlying insurance.
3. Investigation Settlement and Defense of Claims and Suits
- a. The Insured shall use due diligence and prudence to settle all claims and suits which involve or are likely to involve this Policy and which in the exercise of sound judgment should be settled, but the Insured shall not make or agree to make any settlement for any sum in excess of the underlying insurance without the approval of the Company.
 - b. The Company shall have the right, but not the duty, to participate with the Insured and the underlying insurers in the investigation, adjustment, and/or defense (including appeal) of any claim or suit which involves or is likely to involve the insurance afforded by this Policy, and the Insured shall cooperate with the Company and the underlying insurers in the investigation, adjustment and defense of such claim or suit.
 - c. In the event that the Insured and the underlying insurers elect not to appeal a judgment in excess of the insurance afforded by the underlying insurance, the Company shall have the right to conduct such appeal. The Company's limit of liability under this Policy shall not be increased because of such appeal, but the Company shall bear the costs and expenses of the appeal, including attorney's fees and expenses, bond premiums, court fees, costs and expenses taxed against the Insured by the appellate court, and interest on the entire amount of any judgment against the Insured which accrues after entry of the

judgment by the appellate court and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon.

4. Prohibition of Voluntary Payments and Settlements Provision

The Insured shall not, with respect to any **Claim** covered under this Policy, except at the Insured's cost, make any payment, admit liability, settle **Claims** assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claims Expenses** without prior written Company approval.

5. Cooperation Clause

The Insured shall cooperate with the Company in the conduct of the investigation and defense of a **Claim**, and upon the Company's request submit to examination and interrogation by the Company representative, under oath if required, and shall attend hearings and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits.

6. Notice of Cancellations and Non-renewal

- a. The Named Insured may cancel this Policy by mailing or delivering to the Company written notice of cancellation.
- b. For other than Non-Payment of Premium, the Company will give the Named Insured sixty (60) days written notice prior to cancellation or non-renewal of this Policy by mailing or delivering the notice to the first Named Insured's last known mailing address.
- c. If the Company cancels the Policy because the Insured failed to pay a premium or deductible amounts when due, this Policy may be canceled by the Company by giving not less than 10 days written notice of cancellation.
- d. The cancellation will state the effective date of the cancellation and the Policy Period will end on that date.
- e. If canceled by the Company, the earned premium shall be computed pro-rata. If canceled by the Insured, the earned premium shall be computed short rate.

7. Premium and Audit

- a. Premium for this coverage are computed in accordance with our rules and rates. Any premiums shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable upon notice.
- b. The Company may examine and audit the Insured's books and records at any time during the Policy Period and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy.
- c. The first Named Insured must keep records of information the Company will need for premium computation and send the Company copies of the information upon request.

8. Authorization

The first person or entity named in the Declarations agrees to act as the Named Insured with respect to the giving and receiving of all notices, the exercising of Extended Reporting Periods, the cancellation of the Policy, the payment of premiums and deductibles, and receiving of any return premiums that may become due.

9. Change
This Policy contains all of the agreement concerning the insurance provided.
The first Named Insured shown in the Declarations is authorized to make changes in the terms of this Policy with the Company's consent. The Policy terms can be amended or waived only by endorsement issued by the Company and made a part of this Policy.
10. Subrogation
 - a. In the event of any payment under this Policy, the Company shall be subrogated to all Insured's rights of recovery against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the loss to prejudice such rights. The Insured shall not waive the Company's right of recovery in advance of any **Claim**.
 - b. Since the insurance afforded by this Policy is excess insurance, the Insured's right of recovery against others cannot always be exclusively subrogated to the Company. The Company agrees, therefore, that it shall act in concert with all other interests concerned in the enforcement of any subrogation rights. The apportioning of any amounts so recovered shall follow the principle that any interest, including the Insured, that shall have paid an amount over and above any payment under this Policy shall first be reimbursed up to the amount so paid by such interest. The Company shall then be reimbursed out of any balance remaining up to the amounts paid as the result of loss covered under this Policy. Then, if any balance remains from the recovery, it shall be applied to reimburse the Insured and any other insurers with respect to whom this insurance is excess, as their interests may appear. The expenses of such recovery proceedings shall be apportioned between the interests involved in proportion to their respective recoveries or if there is no recovery, in proportion to the respective amounts sought to be recovered.
11. Other Insurance Clause, Excess Clause, and Pro Rata Clause
 - a. This Policy shall be excess over, and shall not contribute with, any other existing insurance, unless such other insurance is specifically written to be excess of this Policy.
 - b. If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company shall not be liable under this Policy for a greater proportion of the Damages or **Claims Expenses** than the applicable Limit of Liability under the Policy for such Damages bears to the total applicable Limit of Liability of all valid insurance whether or not collectible against such **Claims**.
12. Actions against the insurer
No action shall lie against the Company unless, as a condition precedent, there shall have been full compliance with all of the terms of this Policy, and until the amount of the Insured's obligations to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and the Company.
13. Non-transferability
The Insured's rights and duties under this Policy may not be transferred without the written consent of the Company.
14. Coverage in bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of its obligations under this Policy.