

EXCESS LIABILITY INSURANCE POLICY

NOTICE: This coverage is provided on a Claims Made and Reported Basis.

The Underwriters agree with the **Named Assured**, in consideration of the payment of the premium and in reliance upon the statements in the application which is made a part of and attached to this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, conditions and other terms of this Insurance:

I. INSURING AGREEMENT

To pay on behalf of the **Assured** claim or claims first made against the **Assured** during the **Period of Insurance** and reported to Underwriters in accordance with Clause IX. of this Policy.

II. CONFORMANCE WITH PRIMARY POLICY

This Policy is subject to the same terms, exclusions, conditions and definitions as the **Primary Policy**, except:

- A. any 'non-renewal' or 'conditional renewal' provision (or any other similar provision) as may be contained in the **Primary Policy**, regardless of whether or not such provision forms part of a State Amendatory Endorsement;
- B. any 'liberalization' provision (or any other similar provision) as may be contained in the **Primary Policy**;
- C. any coverage provision which provides a sub-limit of liability; and
- D. as otherwise provided herein.

No amendment to the **Primary Policy** shall be effective in amending any terms, exclusions, conditions or definitions of this Policy or extending the scope of this Policy until agreed in writing or by endorsement by the Underwriters.

III. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. "**Assured**" shall mean all persons and entities insured under the **Primary Policy**.
- B. "**Named Assured**" shall mean the person or entity set forth in Item 1 of the Declarations.
- C. "**Period of Insurance**" shall mean the period set forth in Item 2 of the Declarations.
- D. "**Primary Policy**" shall mean the policy identified in Item 4 of the Declarations.
- E. "**Underlying Policies**" shall mean the policies identified in Items 4 and 5 of the Declarations.

- F. “**Underlying Policy Limits**” shall mean the combined limits of liability of the **Underlying Policies**, including costs and expenses incurred in the defense or settlement of any claim.

IV. **LIMIT OF LIABILITY**

- A. The Underwriters shall be liable to pay claims and costs and expenses incurred in the defense or settlement of such claims which are in excess of:
1. the **Underlying Policy Limits**, plus
 2. the applicable retention or deductible under the **Primary Policy**
- up to the Limit of Liability shown in Item 3(a) of the Declarations resulting from each claim first made against the **Assured**.
- B. The amount shown in Item 3(b) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters under this Policy.

V. **ATTACHMENT PROVISION**

Liability to pay under this Policy shall not attach unless and until the insurers of the **Underlying Policies** shall have paid or have admitted liability or have been held liable to pay, the full amount of the **Underlying Policy Limits**.

VI. **MAINTENANCE OF UNDERLYING POLICIES**

It is a condition of this Policy that the **Underlying Policies** shall be maintained in full effect during the **Period of Insurance** except for any reduction of the **Underlying Policy Limits** solely by payment of any claims 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 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 **Assured** 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.

VII. **REDUCTION / EXHAUSTION OF THE UNDERLYING POLICIES**

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

- A. partially reduced, then this Policy shall 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; provided, however that this Policy shall only pay in excess of the retention or deductible applicable to the **Primary Policy**, which shall be applied to any subsequent claim in the same manner as specified in the **Primary Policy**.

VIII. RETROACTIVE LIMITATION

The coverage under this Policy does not apply to any claim arising out of or resulting from any negligent act, error or omission (or arising out of conduct covered in the **Primary Policy**) committed prior to the inception date of this Policy:

- A. if any **Assured** on or before the inception date knew or could have reasonably foreseen that such negligent act, error or omission (or conduct covered in the **Primary Policy**) might be expected to be the basis of a claim; or
- B. in respect of which any **Assured** has given notice of a circumstance which might lead to a claim to the insurer of any other policy in force prior to the inception date of this Policy.

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

All claims and circumstances that might lead to a claim reported under the **Primary Policy** must be reported to the Underwriters in writing via the entity named in Item 7 of the Declarations before the end of the **Period of Insurance** or any additional claims reporting period granted by the **Primary Policy** provided such additional claims reporting period is no greater than 90 days. However, the **Assured** must provide immediate written notice to the Underwriters via the entity named in Item 7 of the Declarations of any claim made against the **Assured** where the **Assured** or the **Assured's** defense counsel evaluates the potential liability of all claims plus costs and expenses incurred in the defense or settlement of such claims at an amount equal to or greater than the amount set forth in Item 8 of the Declarations.

X. CONDITIONS

- A. In the event of a claim arising to which the Underwriters hereon may be liable to contribute, no costs or expenses shall be incurred on their behalf without their written consent being first obtained (such consent not to be unreasonably withheld). No settlement of a claim shall be effected by the **Assured** for such a sum as will involve this Policy without the written consent of the Underwriters hereon.
- 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 costs and expenses incurred in the defense or settlement of such claims by the Underwriters hereon, third to claims 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 **Assured's** ultimate net loss has been finally ascertained.

- C. If the **Assured** shall profer any claim 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 **Assured** agrees the Underwriters may at their own discretion and expense retain counsel to associate in the defense or settlement of any claim and to cooperate with such counsel.

XI. CANCELLATION

- A. This Policy may be cancelled by the **Named Assured** by surrender thereof to the Underwriters or by mailing to the Underwriters written notice stating when thereafter the cancellation shall be effective.
- B. This Policy may be cancelled by the Underwriters by mailing to the **Named Assured** written notice stating when, not less than 60 days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Named Assured** has failed to pay a premium when due this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the **Named Assured** stating when, not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Period of Insurance**.
- C. If the **Named Assured** cancels this Policy, earned premium shall be computed in accordance with the attached short rate table and procedure. If the Underwriters cancel this Policy, earned premium shall be computed pro rata. Payment or tender of unearned premium is not a condition of cancellation.

XII. EXTENDED REPORTING PERIOD

- A. Notwithstanding anything contained in any 'extended reporting period', 'optional extended reporting period' or 'automatic extended reporting period' (or any other similar provision) of the **Primary Policy**, in the event of cancellation or non-renewal of this Policy by the Underwriters, the **Named Assured** shall have the right, upon payment in full of 100% of the Premium set forth in Item 6 of the Declarations to have issued an endorsement providing a 12 month Extended Reporting Period for any claim or claims first made against the **Assured** and reported to the Underwriters during the Extended Reporting Period arising out of any negligent act, error or omission (or arising out of conduct covered in the **Primary Policy**) committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Insurance.
- B. In order for the **Named Assured** to invoke the Extended Reporting Period, the **Named Assured** must:
 - 1. pay the additional premium for the Extended Reporting Period to the Underwriters within 30 days of the non-renewal or cancellation of this Policy, and

2. purchase an extended reporting period under all **Underlying Policies**:
 - (i) for a period of no less than 12 months from the cancellation or non-renewal date of this Policy, and
 - (ii) with no reduction of the **Underlying Policy Limits** except for any reduction solely by payment of any claims or costs and expenses incurred in the defense or settlement of such claims.
- C. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the **Period of Insurance**.
- D. The quotation by the Underwriters of a different premium or retention or deductible or limit of liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew.
- E. The right to the Extended Reporting Period shall not be available to the **Named Assured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of the **Assured** to pay such amounts in excess of the Limit of Liability or within the amount of the applicable retention or deductible or failure of the **Assured** to comply with the terms and conditions of this Policy.
- F. At the commencement of the Extended Reporting Period the entire premium shall be deemed fully earned and in the event the **Assured** terminates the Extended Reporting Period for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the Extended Reporting Period.
- G. All notices and premium payments with respect to the Extended Reporting Period shall be directed to the Underwriters through the entity named in Item 9 of the Declarations.

XIII. 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.

XIV. 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.

XV. WARRANTY BY THE ASSURED

By acceptance of this Policy, the **Assured** agrees and warrants that the statements contained in the application and any supplemental materials submitted therewith are their agreements, warranties and representations, that they shall be deemed material to the risk assumed by Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Assured** or its agent in the application or any supplemental materials submitted therewith will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

XVI. SERVICE OF SUIT

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this Insurance, the Underwriters hereon, at the request of the **Assured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the persons named in Item 10 of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The persons named in Item 10 of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the **Assured** to give a written undertaking to the **Assured** that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Assured** or any beneficiary hereunder arising out of this Policy, and hereby designate the persons named in Item 10 of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

XVII. CHOICE OF LAW

Any dispute concerning the interpretation of this Policy shall be governed by the laws of the state designated in Item 11 of the Declarations.

XVIII. SHORT RATE CANCELLATION TABLE

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Named Assured** the Earned Premium shall be computed as follows:

SHORT RATE CANCELLATION TABLE

A. For insurances written for one year:

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1 - 73	30	206 - 209	66
74 - 76	31	210 - 214 (7 months)	67
77 - 80	32	215 - 218	68
81 - 83	33	219 - 223	69
84 - 87	34	224 - 228	70
88 - 91 (3 months)	35	229 - 232	71
92 - 94	36	233 - 237	72
95 - 98	37	238 - 241	73
99 - 102	38	242 - 246 (8 months)	74
103 - 105	39	247 - 250	75
106 - 109	40	251 - 255	76
110 - 113	41	256 - 260	77
114 - 116	42	261 - 264	78
117 - 120	43	265 - 269	79
121 - 124 (4 months)	44	270 - 273 (9 months)	80
125 - 127	45	274 - 278	81
128 - 131	46	279 - 282	82
132 - 135	47	283 - 287	83
136 - 138	48	288 - 291	84
139 - 142	49	292 - 296	85
143 - 146	50	297 - 301	86
147 - 149	51	302 - 305 (10 months).....	87
150 - 153 (5 months)	52	306 - 310	88
154 - 156	53	311 - 314	89
157 - 160	54	315 - 319	90
161 - 164	55	320 - 323	91
165 - 167	56	324 - 328	92
168 - 171	57	329 - 332	93
172 - 175	58	333 - 337 (11 months).....	94
176 - 178	59	338 - 342	95
179 - 182 (6 months)	60	343 - 346	96
183 - 187	61	347 - 351	97
188 - 191	62	352 - 355	98
192 - 196	63	356 - 360	99
197 - 200	64	361 - 365 (12 months).....	100
201 - 205	65		

B. For Insurances written for more or less than one year:

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
 - (a) Determine full annual premium as for an insurance written for a term of one year.
 - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

Furthermore and notwithstanding the foregoing, the Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned upon inception of the Policy if any claim or any circumstance that could reasonably be the basis for a claim is reported to the Underwriters under this Policy on or before such date of cancellation.

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