

EXCESS ERRORS AND OMISSIONS POLICY COVERAGE FORM

NOTICE: THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished in the application provided to the Insurer and to the issuer(s) of the Underlying Insurance, and subject to all of the terms, conditions and endorsements of this Policy, the Insurer and the Insured Entity, on its own behalf and on behalf of all persons and entity(s) entitled to coverage hereunder, agree as follows:

I. INSURING AGREEMENT

The Insurer will provide the **Insured** with insurance coverage for claims first made against the **Insured** during the **Policy Period** excess of the **Underlying Insurance** stated in Item 4. of the Declarations. Coverage hereunder will apply in conformance with the terms, conditions, endorsements and warranties of the **Primary Underlying Policy** together with the terms, conditions, endorsements and warranties of any other **Underlying Insurance**. The coverage hereunder will attach only after all of the **Underlying Insurance** has been exhausted by the actual payment of loss by the applicable insurers thereunder and in no event will the coverage under this policy be broader than the coverage under any **Underlying Insurance**.

II. DEFINITIONS

- (A) “**Insured**” means, either in the singular or plural, those persons or organizations designated as insureds in the **Underlying Insurance**.
- (B) “**Policy Period**” means the period designated in Item 3. of the Declarations, or to any earlier cancellation date.
- (C) “**Primary Underlying Policy**” means the policy designated in Item 4. A. of the Declarations.
- (D) “**Underlying Insurance**” means all policy(s) designated in Item 4. of the Declarations.

III. DEPLETION OF UNDERLYING LIMITS OF LIABILITY

- (A) This policy, subject to the terms, conditions, limitations and endorsements of this policy and the **Underlying Insurance**, will continue to apply to loss as excess insurance remaining under such **Underlying Insurance**, in the event of the reduction or exhaustion of the limits of liability of the **Underlying Insurance** solely as the result of the actual payment of loss by the applicable insurer thereunder.
- (B) This policy, subject to the terms, conditions, limitations and endorsements of this policy and the **Underlying Insurance**, will continue for subsequent claims or loss as primary insurance in the event of the exhaustion of all of the limits of liability of such **Underlying Insurance** solely as the result of the actual payment of loss by the applicable insurer thereunder.

- (C) Any risk of uncollectibility with respect to the **Underlying Insurance** will be expressly retained by the **Insured** and will not be assumed by the Insurer.

This policy, subject to all its terms, conditions and endorsements, will not drop down for any reason including, but not limited to uncollectibility (in whole or in part) whether because of financial impairment or insolvency of the **Underlying Insurance** or for any other reason except for the actual payment of loss by the applicable Insurer thereunder.

IV. MAINTENANCE OF UNDERLYING INSURANCE

- (A) The limit(s) of liability of the **Underlying Insurance** designated in Item 4. A. of the Declarations shall be maintained during the **Policy Period** in full effect except for any reduction or exhaustion of the aggregate limits of liability available under the **Underlying Insurance** solely by reason of actual payment of loss thereunder. Failure to comply with the foregoing will not invalidate this policy but the Insurer will not be liable to a greater extent than if this condition had been complied with. If for any reason the **Underlying Insurance** is not maintained, then the **Insured** will be deemed to be self-insured for that amount of the limit(s) of liability of such **Underlying Insurance**.
- (B) In the event of a change of any kind to any **Underlying Insurance** by endorsement, rewrite or otherwise, the coverage under this policy will become subject to such change only if and to the extent that the Insurer consents to such change by written endorsement to this policy.
- (C) The Insurer will not be liable under this policy earlier or to any greater extent than it would have been as a result of the actual or alleged failure by the **Insureds** to give notice or to exercise any extensions under any **Underlying Insurance**, or misrepresentation or breach of warranty with respect to any **Underlying Insurance**.

V. CLAIM PARTICIPATION

The Insurer may, at its sole discretion, elect to participate in the investigation, settlement and/or defense of any claim against the **Insured** even if the **Underlying Insurance** has not been exhausted and the **Insured** will provide such information and cooperation as is reasonably requested.

VI. LIMIT OF LIABILITY

The amount stated in Item 5. of the Declarations is the limit of liability of the Insurer and shall be the maximum amount payable, including Defense Expenses, by the Insurer under this policy. Defense expenses are part of and not in addition to the limit of liability and the payment of such will reduce the limit of liability.

VII. NOTICE

The **Insured** will, as a condition precedent to the coverage available under this policy, give written notice as soon as practicable to the Insurer of:

- (A) any claim under any **Underlying Insurance**, or any situation that is required to be reported under any **Underlying Insurance** that could give rise to a claim under any **Underlying Insurance**;
- (B) the cancellation of any **Underlying Insurance**;
- (C) any change to the **Underlying Insurance** by rewrite, endorsement or otherwise; or

- (D) any additional or return premiums charged or allowed in connection with any **Underlying Insurance**.

The Insured Entity will be the sole agent for and will act on behalf, of the **Insured** with respect to all matters under this policy, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or notice of cancellation of this policy, paying premium and receipt of any return premiums.

Notice given to any underlying insurer of any claim or any situation that could give rise to a claim under any **Underlying Insurance** scheduled in Item 4. A. of the Declarations will not be deemed notice to the Insurer. Notice of any claim or situation that could give rise to a claim must be sent by certified mail or the equivalent to:

XL Insurance
Attention Claims Department
P.O. Box 614002
Orlando FL 32861-4002
proclaimnewnotices@xlgroup.com

VIII. **POLICY TERMINATION**

- (A) The Insurer will refund the unearned premium computed at the customary short rate if the policy is canceled by the **Insured**. Under all other circumstances, any unearned premium will be computed pro rata.
- (B) This Policy will terminate immediately upon the termination of any of the policies scheduled in Item 4. of the Declarations, whether canceled by the **Insured** or the applicable insurer. Notice of cancellation or non-renewal of any such policies duly given by any of the applicable insurers shall serve as notice of the cancellation or non-renewal of this policy by the Insurer.

IX. **ALTERATION**

No change in or modification of this policy shall be effective unless made by endorsement signed by an authorized employee of the Insurer.