



# EXCESS INSURANCE POLICY

## I. INSURING AGREEMENT

The Insurer shall provide insurance coverage to the **Insured**: (1) after exhaustion of all of the limits of liability of the **Underlying Insurance** by payment of **Loss** covered thereunder; and (2) in excess of any applicable retention. Except as otherwise stated herein, coverage under this Policy shall be subject to the same terms, conditions and limitations afforded by the **Primary Policy**.

## II. DEFINITIONS

Terms defined in the **Primary Policy** are used in this Policy with the same meaning as assigned to them in the **Primary Policy**.

**Named Insured** means the person or entity set forth in Item 1 of the Declarations.

**Primary Policy** means the insurance policy set forth in Item 4A. of the Declarations.

**Underlying Insurance** means the **Primary Policy** and all other insurance policies, if any, set forth in Item 4B. of the Declarations.

## III. LIMIT OF LIABILITY AND MAINTENANCE OF UNDERLYING INSURANCE

The Limit of Liability set forth in Item 3A. of the Declarations shall be the maximum amount payable for **Loss** for any one **Claim** during the **Policy Period** in excess of the limits of liability of the **Underlying Insurance**. The Limit of Liability set forth in Item 3B. of the Declarations shall be the maximum amount payable by the Insurer for all **Loss** during the **Policy Period** in excess of the limits of liability of the **Underlying Insurance**.

The Insurer shall be liable to pay **Loss** only after exhaustion of all of the limits of liability of the **Underlying Insurance**. In the event of the reduction or exhaustion of the limits of liability of the **Underlying Insurance** by payment of **Loss**, this Policy shall: (i) in the event of reduction, continue in force as excess insurance for the remaining amount of the limits of liability of the **Underlying Insurance**; or (2) in the event of exhaustion of the limits of liability of the **Underlying Insurance**, continue in force as primary insurance, subject to all terms, conditions and limitation of this Policy, including endorsements attached hereto. However, in the event of this Policy becoming primary insurance, it shall only pay excess of any applicable retention.

If any **Loss** is subject to a sub-limit of liability under any **Underlying Insurance**, then coverage under this Policy shall not apply to such **Loss**. Provided however, this Policy shall recognize payment of such **Loss** by the **Underlying Insurance** as reducing or exhausting the limits of liability of the **Underlying Insurance**.

It is a condition precedent to the attachment of liability of this Policy that the **Underlying Insurance** be maintained in full force and effect during the **Policy Period**. Failure of the **Insured** to maintain the **Underlying Insurance** shall not invalidate this Policy, however, the Insurer shall not be liable under this Policy to a greater extent that it would have been had such maintenance occurred.

This Policy shall not drop down for any reason, except as provided above. The risk of uncollectibility of (in whole or in part) or nonpayment by the **Underlying Insurance** for any reason is expressly retained by the **Insured**.

## IV. GENERAL CONDITIONS AND LIMITATIONS

### A. Notice

1. All notices required to be given to the insurers of the **Underlying Insurance** shall also be given to the Insurer in the same time and manner as required by the **Primary Policy**. Notice shall be sent to the Insurer at the address set forth in Item 8 of the Declarations.
2. Notice shall be given as soon as practicable, with full particulars of: (i) reduction or exhaustion of the limits of liability of the **Underlying Insurance**, (ii) the cancellation, termination or non-renewal of any **Underlying Insurance**, or (iii) any change in the terms, conditions or limitations of any **Underlying Insurance**.

## **B. Claim Participation and Cooperation**

1. The Insurer shall have the right to investigate, adjust and settle any **Claim** under this Policy and it shall not be bound by the **Claim** or loss decisions made by any other insurer. The Insurer shall also have the right to effectively associate with the **Insured** in the defense and settlement of any **Claim** or circumstances which may reasonably be expected to give rise to a **Claim** under this Policy, even if the limits of liability of the **Underlying Insurance** have not been exhausted.
2. The **Insured** shall provide the Insurer with information, assistance and cooperation as the Insurer reasonably requests and shall do nothing to prejudice the Insurer's position or potential rights of recovery. The **Insured** shall not agree to or incur any settlement or **Defense Costs** reasonably likely to be covered under this Policy without the Insurer's prior written consent, which shall not be unreasonably withheld.

## **C. Cancellation and Non-Renewal**

1. The Insurer may cancel this Policy only for nonpayment of premium. The Insurer shall provide not less than ten (10) days written notice stating when the Policy shall be canceled. Notice of cancellation shall be delivered or mailed to the **Named Insured**. The notice shall state the reason for cancellation.
2. The Insurer is under no obligation to renew this Policy upon its Expiration Date. Once the Insurer chooses to non-renew this Policy, the Insurer shall deliver or mail to the **Named Insured** written notice stating such at least forty-five (45) days before the Expiration Date set forth in Item 2 of the Declarations. However, this requirement only applies if the Named Insured has furnished all of the necessary information requested by the Insurer.

## **D. Changes to the Policy and Assignment**

In the event of a change to the terms, conditions or limitations of any **Underlying Insurance**, the coverage under this Policy shall become subject to such change only if and to the extent the Insurer consents to such change by written endorsement to this Policy. No assignment of any interest under this Policy shall bind the Insurer, except by written endorsement to this Policy.

## **E. Representation Clause**

It is agreed that the applications, documents and information made available by or on behalf of the **Insured** in connection with the underwriting of this Policy, are the basis of this Policy and are deemed attached to and made a part of this Policy.