

EXCESS LIABILITY INSURANCE

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the company subscribing to this **Policy**, (hereinafter called the "**Insurer**"), including the statements made in the Proposal/Application Form and made a part hereof, and subject to the DECLARATIONS FOR EXCESS LIABILITY INSURANCE attached to and made a part hereof, and subject to all terms, conditions, and limitations of this **Policy**, it is agreed as follows:

SECTION I. PRIMARY AND UNDERLYING INSURANCE

A. Incorporation of Followed Policy:

Except as regards to the **Premium**, the **Limit of Liability**, the **Policy Period**, and except as otherwise provided herein, this **Policy** is subject to the same insuring clauses, warranties, definitions, terms, conditions, exclusions and other provisions as those contained in the **Followed Policy** at its inception.

B. Maintenance of Underlying Policy:

1. It is a condition of this **Policy** that the Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE shall be maintained in full effect during the currency of this **Policy** except for any reduction of the aggregate limits contained therein, as provided for in Section IV.F..
2. It is further a condition of this **Policy** that the **Insurer** be notified in writing, as soon as practicable of cancellation and/or alteration of any terms, conditions, limit(s) of liability, retention or deductible amounts of any of the policies listed in Item 8. and Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE.

SECTION II. DEFINITIONS

All terms that are bold in this **Policy** are either specifically defined terms in the **Followed Policy** or are defined herein. As respects coverage provided by this **Policy**, references in the **Followed Policy** to "**We**", "**Us**" or "**Our**" shall mean Swiss Re International SE and this "**Policy**" or "**Coverage**" shall mean this **Policy** and any similar conforming changes shall be made as required.

- A. "**Insured**" shall mean any person who qualifies as an **Insured** and/or the **Insured Company** under the terms of the **Followed Policy** at its inception.
- B. "**Discovery Period**" shall mean the extended reporting period provided for under the terms of the **Followed Policy** at its inception.
- C. "**Policy Period**" shall mean the period from the inception date of this **Policy** to the Policy expiration date stated in Item 4. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE, or its earlier cancellation date, if any.
- D. "**Underlying Limits of Liability**" shall mean the total limits of liability of the Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE, less any reduction or exhaustion of said limit of liability due to payment of **Loss** under said policy.
- E. "**Interrelated Wrongful Act(s)**" shall mean any Wrongful Act(s) which:
 1. are the same, similar, related or repeated; or
 2. arise from the same, related or common nexus of facts without regard to whether the same or different claims, **Insured(s)**, claimants, causes of action or venues are involved.

- F. **“Loss” or “Damages”** shall have the same meaning in this **Policy** as is attributed to it in the **Followed Policy** except that the term **“Loss” or “Damages”** shall in no event include civil or criminal fines or penalties, or any amounts for which the **Insureds** are not financially liable or which are without legal recourse to the **Insured**, or matters which may be deemed uninsurable under the law pursuant to which this **Policy** shall be construed.

SECTION III. EXCLUSIONS

This **Policy** excludes from coverage any actual or alleged liability whatsoever for any claim:

A. Pending and Prior Litigation Exclusion

alleging, arising out of, based upon or attributable to, as of the **Pending or Prior Date** any pending or prior: 1) litigation; or 2) administrative or regulatory proceeding or investigation of which an **Insured** and/or the **Insured Company** had notice, or alleging or derived from the same or essentially the same facts, or the same or **Interrelated Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation.

SECTION IV. LIMIT OF LIABILITY

- A. Subject to Section IV.D., the **Insurer** shall pay **Loss** in excess of (1) the **Underlying Limits of Liability** plus (2) the applicable retention or deductible under the **Followed Policy** up to the **Limit of Liability** resulting from claims made against the **Insured**, it being warranted that the applicable retention or deductible under the **Followed Policy** shall be uninsured.
- B. Cost of defense shall be part of and not in addition to the **Limit of Liability**, and such costs of defense shall reduce the **Limit of Liability**.
- C. The amount stated in Item 6. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE shall be the maximum aggregate **Limit of Liability** of the **Insurer** for the **Policy Period**, inclusive of the **Discovery Period** for all **Loss**, including costs of defense, resulting from all claims made against the **Insured**, regardless of the time of payment by the **Insurer**.
- D. This **Policy** only provides coverage excess of the **Underlying Limits of Liability**. This **Policy** does not provide coverage for any **Loss** not covered by the **Followed Policy** except and to the extent that such **Loss** is not paid under the **Followed Policy** solely by reason of the reduction or exhaustion of the available **Underlying Limits of Liability** through payments of covered **Loss** thereunder. In the event the insurer under any Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE fails to pay **Loss** in connection with any claim covered under any Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE as a result of the insolvency, bankruptcy or liquidation of said insurer, then the **Insureds** hereunder 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.
- E. The **Insurer** shall be liable only after all insurers subscribing to all Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE shall have agreed to pay or have been held liable to pay the full amount of their respective limits of liability as set forth in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE.
- F. Subject to Section IV.C., in the event of the reduction or exhaustion of the **Underlying Limits of Liability** by reason of payment of **Loss**, this **Policy** shall:
1. in the event of reduction, pay excess of the reduced limits, and
 2. in the event of exhaustion of all Underlying Insurance scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE continue in force as primary insurance;

provided, however, that in the case of exhaustion this **Policy** shall only pay excess of the retention or deductible applicable to the **Followed Policy**, which shall be applied to any subsequent **Loss** in the same manner as specified in the **Followed Policy**.

- G. If any Underlying Policy scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE bears an effective date which is prior to the effective date of this **Policy** and if any such insurance becomes exhausted or impaired by payment of **Loss** with respect to any claim which shall be deemed to be made prior to the effective date of this **Policy**, then with respect to any claim made after the effective date of this **Policy**, the **Insureds** shall be deemed to be self-insured for the amount of any Underlying Policy scheduled in Item 9. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE which is exhausted or impaired by payment of **Loss** with respect to such claim made prior to the effective date of this **Policy**.
- H. In the event the **Limit of Liability** of this **Policy** is exhausted by payment of **Loss**, any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished, and the **Insurer** shall have no further obligations hereunder of any kind or nature whatsoever.

SECTION V. COSTS OF DEFENSE AND SETTLEMENT

The **Insured** shall not admit liability, consent to any judgment against them, or agree to any settlement which is reasonably likely to involve the **Limit of Liability** of this **Policy** without the **Insurer's** consent, such consent not to be unreasonably withheld. Any admission of liability, consent to any judgment, or agreement to any settlement which is reasonably likely to involve the **Limit of Liability** of this **Policy** without or prior to the **Insurer's** consent shall not be covered hereunder.

SECTION VI. NOTICE OF CLAIM AND RIGHT OF INSPECTION

- A. Unless otherwise agreed to, in writing, by the **Insurer**, the **Insured** shall, as a condition precedent to its rights under this **Policy**, give the **Insurer** notice of any claim in the same manner required by the terms and conditions of the **Followed Policy** and shall give the **Insurer** such information and cooperation as it may reasonably require.
- B. In addition to furnishing notice as provided in Section VI.A., the **Insureds** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connections therewith.
- C. All notices under this **Policy** shall be given to:
- Swiss Re International SE
Claims Department
Mythenquai 60
P.O. Box 4288
CH-8022 Zurich, Switzerland
- D. The **Insured** shall, at all reasonable times, place at the disposal of the **Insurer** or its authorized representatives for inspection and copying at the **Insurer's** expense all books, records, and papers recorded in any form by the **Insured**. The **Insurer's** right of inspection shall exist after termination of this agreement as long as one of the parties hereto has a claim arising under this agreement against the other.

SECTION VII. GENERAL CONDITIONS**A. Cancellation or Non-Renewal:**

1. This **Policy** may be cancelled by the entity named in Item 1. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE at any time by surrender of this **Policy** to the **Insurer**, or by mailing to the **Insurer** written notice stating when after such written notice such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. This **Policy** may also be cancelled by or on behalf of the **Insurer** by mailing to the entity named in Item 1. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE written notice stating when, not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
3. If this **Policy** shall be cancelled pursuant to (1) hereinabove, the **Insurer** shall retain the customary short rate portion of the premium. If this **Policy** shall be cancelled pursuant to (2) hereinabove the **Insurer** shall retain the pro-rata portion of the premium. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation.
4. If the period of limitation relating to the giving of notice as provided for in (2) hereinabove is prohibited or made void by any law controlling the construction thereof, such period shall be amended so as to be equal to the minimum period of limitation permitted by such law.

B. Assignment:

Assignment of interest under this **Policy** shall not bind the **Insurer** unless its consent is endorsed hereon.

C. Authorization:

By acceptance of this **Policy**, the **Insured** and the **Insurer** agree that the entity named in Item 1. of the DECLARATIONS FOR EXCESS LIABILITY INSURANCE shall act on behalf of the **Insured** for all purposes including, but not limited to, exercising the right to purchase the **Discovery Period**, giving and receiving of all notices and correspondence, the cancellation or non-renewal of this **Policy**, the payment of premiums, and the receipt of any return premium that may be due under this **Policy**.

D. Arbitration:

No provision of the **Followed Policy** as respects service of suit, submission to the jurisdiction of any courts or other provision of the **Followed Policy** relating to the resolution of disputes, controversies or claims shall apply to this **Policy**, and the following shall apply to this **Policy**:

1. Any dispute, controversy or claim arising out of or relating to this **Policy** or the breach, termination or alleged invalidity thereof shall be finally and fully determined in London, England under the provisions of the Arbitration Act of 1996 (the "Act"), and/or any statutory modifications or amendments thereto, for the time being in force, by a Board composed of three arbitrators to be selected for each controversy as follows:

Any party may, in the event of a dispute, controversy or claim, notify the other party or parties to such dispute, controversy or claim of its desire to arbitrate the matter, and at the time of such notification the party desiring arbitration shall notify the other party or parties of the



name of the arbitrator selected by it. The other party who has been so notified shall within thirty (30) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire for arbitration shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of thirty (30) calendar days, apply to a judge of the High Court of Justice of England and Wales for the appointment of a second arbitrator and in such a case the arbitrator appointed by such a judge shall be deemed to have been nominated by the party or parties who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within thirty (30) calendar days after the appointment of the second arbitrator choose a third arbitrator. In the event of the failure of the first two arbitrators to agree on a third arbitrator within said thirty (30) calendar day period, either of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, apply to a judge of the High Court of Justice of England and Wales for the appointment of a third arbitrator and in such a case the person so appointed shall be deemed and shall act as a third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Board of Arbitration for the controversy in question shall then be deemed fixed. All claims, demands, denials of claims and notices pursuant to this Subsection D. shall be given in accordance with Section VI. C. above.

2. The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable, time and place for the hearing and may prescribe reasonable rules and regulations governing the course and conduct of the arbitration proceeding, including , without limitation, discovery by the parties.
3. The Board of Arbitration shall, within ninety (90) calendar days following the conclusion of the hearing, render its decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all the parties thereto. In case the Board of Arbitration fails to reach a unanimous decision, the decision of the majority of the members of said Board shall be deemed to be the decision of the board and the same shall be final and binding on the parties thereto. Such decision shall be a complete defence to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Without limiting the foregoing the parties waive any right to appeal, and/or seek collateral review of the decision of the Board of Arbitration by any court or other body to the fullest extent permitted by applicable law, including, without limitation, application or appeal under Sections 45 or 69 of the Act.
4. Any order as to the costs of arbitration shall be in the sole discretion of the Board of Arbitration, who may direct to whom and by whom and in what manner the costs, shall be paid.
5. The **Insurer** and the **Insureds** agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the **Insurer** by any of the **Insureds'** other insurers in any jurisdiction or forum other than that set forth in this Subsection D., the **Insureds** will in good faith take all reasonable steps requested by the **Insurer** to assist the **Insurer** in obtaining a dismissal of these claims (other than on the merits) and will, without limitation, undertake the court or other tribunal to reduce any judgement or award against such other insurers to the extent that the court or tribunal determines that the insurer would have been liable to such insurers for indemnity or contribution pursuant to this **Policy**. The **Insureds** shall be entitled to assert claims against the **Insurer** for coverage under this **Policy**, including, without limitation, for amounts by which the **Insureds** reduced its judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the **Insurer** and the **Insureds** pursuant to this Subsection D. which arbitration may take place before, concurrently with and/or after the action or proceeding involving such other insurers; provided, however, that the **Insurer** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this **Policy** and any

other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers. No determination in any such action or proceeding involving such other insurers shall have collateral estoppel, res judicata or other issue preclusion or estoppel effect against the **Insurer** in such arbitration, irrespective of whether or not the **Insurer** remained a party to such action or proceeding.

E. Governing Law and Interpretation:

This **Policy**, and any dispute, controversy or claim arising out of or relating to this **Policy**, shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, except insofar as such laws:

1. may prohibit payment hereunder in respect of punitive damages;
2. pertain to the procurement, issuance, delivery, renewal, nonrenewal or cancellation of policies of insurance or the regulation under New York Insurance Law, or regulations issued by the Insurance Department of the State of New York pursuant thereto, applying to insurers doing insurance business within the State of New York or as respects risks or **Insureds** situated in the State of New York; or
3. are inconsistent with any provisions of this **Policy**.

Notwithstanding anything herein to the contrary, the provisions, stipulations, exclusions and conditions of this **Policy** are to be construed in an even-handed fashion as between the parties. Without limitation, where the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favour of either the **Insureds** or the **Insurer**, without reference to the "reasonable expectations" of either thereof or to contra proferentem and without reference to parol or other extrinsic evidence). To the extent that New York law is inapplicable by virtue of any exception or provision enumerated above or otherwise, and as respects any arbitration procedure pursuant to this Section D., the internal laws of England and Wales shall apply.

F. State Amendatory Endorsements:

Notwithstanding any other provision of this **Policy**, in no event shall any "state amendatory endorsement" (or similar endorsement relating to one or more specific states of jurisdictions) to the **Followed Policy** apply to this **Policy** and this **Policy** shall not be subject to any such endorsement.

Swiss Re International SE



Yvan Wyrgarsch

Date of issuance: 29 August 2014



Katharina Rockstroh