

**EXCESS PROFESSIONAL LIABILITY  
INSURANCE POLICY**

THIS IS A CLAIMS-MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

**Notice: This Policy, subject to all of its terms, conditions, exclusions and endorsements, applies only to any claim first made against the Assureds during the Policy Period. The Limit of Liability available to pay damages or settlements shall be reduced by amounts incurred as defense expenses. This Policy does not provide for any duty by the Insurer to defend any Assured.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer in the application, including all attachments, a copy of which is attached hereto and made a part hereof, and subject to the Declarations and Endorsements of this Policy, the Insurer agrees with the Assureds as follows:

**I. INSURING AGREEMENT**

The Insurer will provide the Assureds with Excess Professional Liability insurance during the Policy Period excess of the Underlying Insurance. Coverage shall attach only after all such Underlying Insurance has been exhausted solely as a result of actual payment or payment in fact of losses of all applicable Underlying Insurance limits, and this Policy shall then apply subject to the following:

- A. the terms, conditions, exclusions and endorsements of the Underlying Insurance; and
- B. the Limit of Liability as stated in the Declarations; and
- C. the terms, conditions, exclusions and endorsements of this Policy.

In no event shall this Policy grant broader coverage than would be provided by the underlying policy identified in the Declarations.

**II. DEFINITIONS**

The following terms shall have the meaning set forth below when used throughout this Policy:

- A. The term "**Assureds**" shall mean the "Parent Company" in the Declarations, including any partner, officer, director or employee thereof solely while acting within the scope of their duties and who was at or after the policy retroactive date insured by the terms of each of the Underlying Insurance policies.
- B. **Policy Period** shall mean the period stated in the Declarations from the effective date of this Policy to the expiration date or the cancellation date, if any, of this Policy.
- C. **Underlying Insurance** shall mean the insurance policy(ies) stated in the Declarations and by endorsement.

**III. EXCLUSION(S)**

The Insurer shall not be liable for loss arising from, by reason of, or in connection with any circumstance of which notice of claim or potential claim has been reported, or for which the Assureds are entitled to coverage under any insurance policy(ies) (including any discovery period applicable thereto) in force prior to the Policy Period.

**IV. LIMIT OF LIABILITY (Inclusive of Defense Expenses)**

- A. The Limit of Liability stated in the Declarations shall be the maximum liability of the Insurer for all losses arising from claims Insurable hereunder. The Limit of Liability shall apply jointly to all losses arising from claims first made during the Policy Period and discovery period, if applicable, and not separately to the Policy Period and discovery period.
- B. Only those defense expenses allocable to the Assureds and consented to by the Insurer shall be recoverable or reimbursable under this Policy. Such consent shall not be unreasonably withheld. The Insurer shall be entitled to all information and full particulars it may request in order to reach a decision as to reasonableness.

**V. MAINTENANCE OF UNDERLYING INSURANCE**

- A. All of the Underlying Insurance shall be maintained during the Policy Period in full force and effect, except for any reduction of the Limit(s) of Liability available under the Underlying Insurance solely by reason of actual payment or payment in fact of claims thereunder. Failure to comply with the foregoing shall not invalidate this Policy, but the Insurer shall not be liable to a greater extent than if this condition had been complied with by the Assureds.
- B. The Insurer's obligations under this Policy shall not be increased, expanded or otherwise changed as a result of the receivership, insolvency, bankruptcy or inability or refusal of any Underlying Insurance to fund or pay any claims, or uncollectible losses, or the cancellation or nonrenewal of any Underlying Insurance.

**VI. DEPLETION OR EXHAUSTION OF UNDERLYING INSURANCE LIMITS**

- A. In the event of the depletion of the Limit(s) of Liability of the Underlying Insurance solely as a result of actual payment or payment in fact of claim(s) thereunder, this Policy shall apply to any subsequent

claim(s) as excess insurance over the amount of Limit(s) of Liability, if any, remaining under such Underlying Insurance.

- B. In the event of the exhaustion of the Limit(s) of Liability of the Underlying Insurance solely as a result of actual payment or payment in fact of claim(s) thereunder, the remaining Limit of Liability available under this Policy shall, subject to (1) the other terms, conditions, exclusions and endorsements of this Policy and (2) the terms, conditions, exclusions and endorsements contained in the Underlying Insurance, apply to subsequent claims, if any, as primary insurance. Any applicable self-insured retentions, deductibles or coinsurance set forth in the Underlying Insurance shall continue to apply in the same manner as set forth in the Underlying Insurance.

**VII. CLAIM PARTICIPATION**

- A. The Insurer shall have the right, at its sole discretion, to elect to participate in the investigation, settlement or defense of any insurable claim

**VIII. NOTICE OF CLAIM**

- A. The Assureds shall give written notice as soon as practicable of any claim first made against the Assureds during the Policy Period or discovery period, if applicable, and the Assureds shall provide the Insurer with such information and cooperation as it may reasonably require.
- B. Notice of any claim made shall be given in writing to:

Tamarack American, Inc.  
205 East 42nd Street, 16th Floor  
New York, NY 10017  
Attn: Errors & Omissions Liability  
Claims Department.

**IX. GENERAL CONDITIONS**

- A. **NOTICE**  
The Insurer shall be given written notice as soon as practicable in the event of cancellation

or nonrenewal of or material change to any Underlying Insurance. Written notice shall be given to:

Tamarack American, Inc.  
205 East 42nd Street, 16th Floor  
New York, NY 10017  
Attn: Errors & Omissions Liability  
Claims Department.

**B. CANCELLATION AND  
NONRENEWAL**

1. The Assureds agree that this Policy is subject to all terms, conditions, exclusions and endorsements of the Underlying Insurance as respect cancellation.
2. Renewal of this Policy is subject to the following conditions precedent:
  - (a) the Assureds must submit at least thirty days prior to the expiration date of this Policy a properly executed and complete renewal application and all other information as the Insurer may reasonably require; and
  - (b) the Assureds must renew the same Underlying Insurance policy limits set forth by endorsement and give the Insurer sufficient proof thereof.

Notwithstanding the above conditions precedent, the Insurer is not obligated to renew this Policy or to offer a quotation for the renewal of this Policy.

**C. SUBROGATION**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery therefore, and the Assureds shall execute and deliver all papers and instruments required and shall do everything that may be necessary to secure such rights to enable the Insurer to effectively bring suit in the name of the Assureds.

**D. SETTLEMENT AND ASSIGNMENT**

1. The Assureds shall not admit liability, agree to any settlement or confess or otherwise consent to any judgment with respect to any claim insurable hereunder without the written consent of the Insurer.
2. This Policy and any all rights hereunder are not assignable without the written consent of the Insurer.

**E. PARENT COMPANY  
AUTHORIZATION**

Other than giving notice for any discovery period, the Parent Company agrees to act on behalf of the Assureds regarding the payment or return of premium, receipt and acceptance of any endorsement, the cancellation or renewal of the Policy and the giving or receipt of any notice required by the terms, conditions, and endorsements of this Policy.

**In Witness Whereof**, the Insurer has caused this Policy to be executed and attested by its President and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.

Secretary

President