

EXCESS INSURANCE POLICY

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NOTICE: UNLESS OTHERWISE PROVIDED IN THE UNDERLYING INSURANCE, THIS POLICY SHALL ONLY APPLY 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. PLEASE READ THIS POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance upon the statements made in the **Application**, which is incorporated into this Policy and forms a part hereof, the insurer identified on the Declarations, herein called the "**Insurer**," agrees as follows:

I. Insuring Agreement

This Policy provides the **Insureds** with insurance excess of the **Underlying Insurance** for **Claims** during the **Policy Period**. Except as specifically set forth in this Policy or in any written endorsement attached to this Policy, the coverage afforded by this Policy applies in conformance with: (1) the terms, conditions, exclusions and limitations of the **Followed Policy** as they existed on the inception date of this Policy; and (2) any narrower or more restrictive terms of the other **Underlying Insurance**, to the extent the coverage of the **Followed Policy** is limited or restricted by the terms of such other **Underlying Insurance**. This Policy shall not provide coverage broader than that provided by the **Underlying Insurance** unless the **Insurer** specifically agrees to grant such broader coverage herein or by written endorsement attached to this Policy.

II. Definitions

A. "Application" means:

1. the application for this Policy, for the **Underlying Insurance** and for any policy of which this Policy or the **Underlying Insurance** is a direct or indirect renewal or replacement, any attachment to any such application(s), any other materials submitted with or incorporated into any such application(s) and any documents submitted in connection with the underwriting of any such policy (ies); and,
2. to the extent made by or required of the **Insureds**:

any public documents filed prior to the inception date of this Policy by the **Named Insured** with the Securities and Exchange Commission or any similar federal, state, local or foreign regulatory body, and any other written public statement or certification required by law to be made by the chief executive officer, chief financial officer or other executive officer of the **Named Insured** regarding the accuracy, completeness or adequacy of such **Insured's** financial statements, SEC filings, or internal controls;

whether or not such public documents, statements or certifications are furnished to the **Insurer**.

The **Insureds** agree that all warranties and representations contained in the **Application** are deemed made to the **Insurer**. The **Insureds** agree further that the **Application** is deemed attached to and incorporated into this Policy.

- B. "**Claim**" has the same meaning as attributed to that term in the **Followed Policy**.
- C. "**Followed Policy**" means the policy identified in Item 4. of the Declarations.
- D. "**Insureds**" means any natural persons or entities extended coverage in the **Followed Policy**.
- E. "**Named Insured**" means the entity identified in Item 1 of the Declarations.

- F. **"Policy Period"** means the period of time from the inception date and time stated in Item 2. of the Declarations to the earlier of the expiration date and time stated in Item 2. of the Declarations or the effective date and time of the cancellation of this Policy.
- G. **"Underlying Insurance"** means the **Followed Policy** and all Underlying Excess Policies identified in Item 5. of the Declarations, and **"Underlying Insurers"** means the insurers of the **Underlying Insurance**.
- H. **"Underlying Limits"** means an amount equal to the aggregate of all the limits of the **Underlying Insurance** combined (excess of their retentions).

III. Limit of Liability

The Limit of Liability stated in Item 3. of the Declarations is the limit of the **Insurer's** liability for all amounts arising out of all **Claims**. The Limit of Liability for the Discovery Period (if applicable) is part of, and not in addition to, the Limit of Liability for the **Policy Period**.

IV. Reduction or Exhaustion of Underlying Insurance

- A. This Policy does not provide coverage for any **Claim** not covered by the **Underlying Insurance**. Liability for any amount shall attach to the **Insurer** only after the **Underlying Insurers** shall have paid the full amount of the **Underlying Limits** and the **Insureds** shall have paid the full amount of the applicable retention amounts and any other financial obligation under the **Underlying Insurance**.
- B. In the event the **Underlying Limits** are partially reduced solely due to actual payment by the **Underlying Insurers**, this Policy shall continue as excess insurance over the reduced **Underlying Limits**.
- C. In the event the **Underlying Limits** are exhausted due to actual payment by the **Underlying Insurers**, this Policy shall continue in force as primary insurance; provided always that this Policy shall only pay excess of the retention or deductible amount set forth in the **Followed Policy**, which retention or deductible amount shall be applied to any subsequent **Claim** in the same manner as specified in the **Followed Policy**.
- D. This Policy shall pay only in the event of reduction or exhaustion of the **Underlying Limits** as described above and shall not drop down for any reason including, but not limited to, the uncollectibility in whole or in part of the **Underlying Limits** or the existence of a sub-limit of liability in any **Underlying Insurance**; provided, however, this Policy will recognize erosion of any **Underlying Policy** due to the existence of a sub-limit. The **Insureds** expressly retain the risk that such **Underlying Insurance** is uncollectible in whole or in part, for any reason, and the **Insurer** does not in any way or under any circumstances insure or assume that risk.
- E. If any **Underlying Insurance** bears an inception date prior to the inception date of this Policy, the **Insureds** shall be deemed to be self-insured for the amount of any such insurance that is exhausted or impaired by payment of amounts with respect to any **Claim** prior to the inception date of this Policy.

V. Maintenance of Underlying Insurance

- A. It is a condition of this Policy that the **Underlying Insurance** shall be maintained in full effect with solvent insurers during the **Policy Period** except for any reduction or exhaustion of the aggregate limits contained therein by reason of amounts paid thereunder (as provided for in Section IV. above). Except as provided in Section X., below, failure to comply with this condition will not invalidate this Policy; however, the **Insurer** shall not be liable under this Policy to any greater extent than it would have been if there had been full compliance with this condition. If for any reason the underlying insurance is not maintained, then the **Insureds** will be deemed to be self-insured for that amount of the limit(s) of liability that were not maintained. Notwithstanding anything to the contrary in this Policy, all coverage under this Policy will be void from its inception in the event that any **Underlying Insurance** is rescinded by agreement or legal process for fraud or other material misrepresentation by the **Insured**.

- B. If, during the **Policy Period** or any Discovery Period, the terms, conditions, exclusions or limitations of any **Underlying Insurance** are changed in any manner, as a condition precedent to their rights under this Policy the **Insureds** shall give to the **Insurer** written notice of the full particulars thereof, as soon as practicable, but in no event later than thirty (30) days following the effective date of such change(s). The coverage provided by this Policy shall apply in conformance with such change(s) only: (1) upon the effective date of the change(s) in the **Underlying Insurance**; and (2) if the **Insurer** agrees to follow such change(s) by written endorsement attached to this Policy, the **Named Insured** agrees to any additional premium and/or amendment of the provisions of this Policy the **Insurer** requires and the **Named Insured** pays any such additional premium when due.

VI. Exclusions

In addition to such exclusions or limitation stated in any **Underlying Insurance**, this Policy provides no coverage in connection with any **Claim** arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:

- A. any demand, suit, proceeding or other claim, or any investigation of which any **Insured** had notice, pending on or prior to the Pending or Prior Date stated in Item 6. of the Declarations;
- B. any fact, matter, circumstance, situation, transaction or event underlying or alleged in such demand, suit, proceeding, claim or investigation;
- C. any other fact, matter, circumstance, situation, transaction or event which has been the subject of written notice given to any prior insurer;

regardless of the legal theory upon which such **Claim** is predicated.

VII. Notice of Claims

As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insureds** shall, contemporaneously with and according to the terms of the **Followed Policy**, give written notice of any **Claim** to the **Insurer** at the address indicated in Item 8. of the Declarations.

VIII. Claim Participation

- A. The **Insurer** shall have the right but not the obligation to associate with the **Insureds** in the defense, investigation and settlement of any **Claim**, even if the **Underlying Insurance** has not been exhausted. The **Insureds** shall give the **Insurer** full cooperation and such information as it may reasonably require. The failure of the **Insurer** to exercise any right under this paragraph at any point in a **Claim** shall not act as a waiver or limit the right of the **Insurer** in any manner to exercise such right at any other point in that **Claim**.
- B. With respect to any **Claim** that appears reasonably likely to involve the **Insurer**, the **Insureds** shall not admit or assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment or incur any amount without the prior written consent of the **Insurer**. Only those amounts to which the **Insurer** has consented shall be recoverable under this Policy, such consent not to be unreasonably withheld so long as the **Insured** did not prevent the **Insurer** from associating in the defense, investigation or settlement of such **Claim**.

IX. Discovery Clause

The **Insured** shall be entitled to a Discovery Period (or Extended Reporting Period) pursuant to the terms and conditions of the **Followed Policy**. The Discovery Period (or the Extended Reporting Period) is not available unless the **Named Insured** has elected the Discovery Period (or Extended Reporting Period) in all **Underlying Insurance**. The Additional Premium for the Discovery Period is specified in Item 7. of the Declarations and shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancellable.

X. Termination

- A. This Policy shall terminate immediately upon cancellation of any **Underlying Insurance**, whether such cancellation is by the **Insureds** or an **Underlying Insurer**.
- B. Notice of cancellation or non-renewal by any of the **Underlying Insurers** shall serve as notice of cancellation or non-renewal by the **Insurer**.
- C. This Policy may be canceled by the **Named Insured** by mailing or delivering prior written notice to the **Insurer** or by surrender of this Policy to the **Insurer**. This Policy may also be canceled by or on behalf of the **Insurer** by delivering to the **Named Insured** or by mailing to the **Named Insured** by registered, certified or other first class mail, at the address of the **Named Insured** as stated in the Declarations, written notice stating when not less than thirty (30) days after the date of such notice the cancellation shall be effective; provided, the **Insurer** may cancel this Policy on twenty (20) days notice for nonpayment of premium due. The mailing of such notice as aforesaid shall be sufficient proof of notice.
- D. If this Policy is canceled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium hereon. If this Policy is canceled by or on behalf of the **Insurer**, the **Insurer** shall retain the pro-rata proportion of the premium hereon.

XI. Notice of Material Changes

As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insureds** shall give written notice to the **Insurer** at the address set forth in Item 8. of the Declarations as soon as practicable but in no event later than thirty (30) days after the **Insured** becomes aware of the following events:

- A. Any **Underlying Insurance** being canceled or non-renewed or otherwise ceasing to be in effect or being uncollectible, in part or in whole;
- B. Any of the **Underlying Insurers** being subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or being taken over by any regulatory authority;
- C. Any changes to the **Underlying Insurance** by re-write, endorsement or otherwise;
- D. Reduction or exhaustion of any **Underlying Insurance**; or
- E. The **Named Insured** consolidating with or merging into, or selling all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert, or any person or entity or group of persons and/or entities acting in concert acquiring an amount of the outstanding securities representing more than fifty percent (50%) of the outstanding stock or other interest representing the present right to vote, designate or select a majority of the board of directors or managers of the **Named Insured**.

XII. Subrogation

- a. In the event of payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the rights of recovery of the **Insureds** against any person or organization. The **Insureds** shall execute and deliver all papers and instruments required and shall and do whatever else is necessary to enable the **Insurer** effectively to bring suit in their name and otherwise secure such rights. The **Insureds** shall do nothing to prejudice any such rights.
- b. Any amount recovered after payment under this Policy shall be apportioned in the inverse order of payment to the extent of the actual payment. The expenses incurred in obtaining any such recoveries shall be apportioned in the ratio of the respective recoveries.

XIII. Authorization

The **Insureds** agree that the **Named Insured** will act on behalf of all of the **Insureds** with respect to the payment or return of premium, the receipt and acceptance of any endorsements, the cancellation of the Policy, the negotiation of renewal, and the giving and receiving of any notice provided for by the terms and conditions of this Policy.

XIV. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws.

XV. Headings

The descriptions in the headings and any subheading of this Policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

XVI. Service of Suit

If the **Insurer** fails to pay any amount claimed to be due under this Policy, the **Insurer**, at the request of any of the **Insureds**, will submit to the jurisdiction of any court of competent jurisdiction within the United States, and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of the **Insurer's** 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.

The **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance or similar officer specified by law for that purpose, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any **Insured** under the Policy. Upon receipt of process lawfully served, that official may mail such process to Claim Manager- Professional Liability at the address stated at Item 8. of the Declarations.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF A DECLARATION PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

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