

## FOLLOW FORM EXCESS POLICY



**THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR, SOLELY IF APPLICABLE, ANY EXTENSION PERIOD FOR REPORTING CLAIMS. DEFENSE EXPENSES ARE PART OF AND NOT IN ADDITION TO THE LIMITS OF LIABILITY. DEFENSE EXPENSES WILL REDUCE AND MAY EXHAUST COMPLETELY THE LIMIT OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter and to any issuer of the **Underlying Insurance**, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the Underwriter and the **Insured** agree as follows:

### **I. INSURING AGREEMENT**

The Underwriter will pay on behalf of the **Insured**, up to the applicable Limit of Liability shown in ITEM 3 of the Declarations, any loss, damages, judgments, settlements, and defense expenses in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a covered **Claim**; provided that:

- (A) such **Underlying Insurance** also applies and has been exhausted by actual payment thereunder, or would apply but for the exhaustion of the total limits of liability thereunder;
- (B) this Policy will apply in conformance with, and will follow the form of, the terms and conditions of the **Followed Policy** (including all endorsements thereto), except:
  - (1) with respect to any provision to the contrary contained in this Policy;
  - (2) the applicable limits of liability of such **Underlying Insurance** shall be deemed to be reduced or exhausted solely as a result of payments for loss, damages, judgments, settlements, or defense expenses that are covered under this Policy; and
  - (3) the coverage provided by this Policy shall not be broader than the **Followed Policy** unless expressly provided in this Policy;
- (C) the Underwriter will not have any obligation to make any payment hereunder unless and until the full amount of the total limits of liability of such **Underlying Insurance** has been paid by the issuer or issuers of such **Underlying Insurance** or by the **Insured**; and

- (D) the Underwriter's obligation to pay loss, damages, judgments, settlements, and defense expenses as a result of a covered **Claim** after the date of exhaustion of the full amount of the total limits of liability of such **Underlying Insurance** shall be excess of any applicable deductible or retention under the **Underlying Insurance**.

## II. DEFINITIONS

- (A) "**Claim**" has the meaning ascribed to it (or similar term) in the applicable **Underlying Insurance**.
- (B) "**Followed Policy**" means the policy scheduled as such in ITEM 4(A) of the Declarations.
- (C) "**Insured**" means any person or entity included within the definition of "Insured" (or similar term) in the applicable **Underlying Insurance**.
- (D) "**Policy Period**" means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations, or to any earlier cancellation or termination date of this Policy.
- (E) "**Underlying Insurance**" means all insurance policies, bonds, self-insurance programs, trust agreements, or other risk transfer arrangements scheduled in ITEM 4 of the Declarations and all renewals or replacements thereof.

## III. LIMITS OF LIABILITY AND EXHAUSTION OF LIMITS

- (A) **Each Claim Limit of Liability.** The amount stated in ITEM 3(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all loss, damages, judgments, settlements, and defense expenses from each **Claim** for which this Policy provides coverage. This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 3(B) of the Declarations.
- (B) **Policy Aggregate Limit of Liability.** The amount stated in ITEM 3(B) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all loss, damages, judgments, settlements, and defense expenses from all **Claims** for which this Policy provides coverage.
- (C) Defense expenses are part of, and not in addition to, the Underwriter's applicable Limits of Liability, and payment of defense expenses by the Underwriter will reduce, and may exhaust, this Policy's applicable Limits of Liability.
- (D) The Underwriter will have no obligation to pay any loss, damages, judgments, settlements, or defense expenses after the Policy Aggregate Limit of Liability stated in ITEM 3(B) of the Declarations has been exhausted by payments under this Policy. If the Policy Aggregate Limit of Liability is exhausted by payments under this Policy, the premium will be fully earned, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the Underwriter will have no further obligations of any type, nature, or kind under this Policy.

## IV. UNDERLYING INSURANCE

- (A) As long as this Policy is in effect, all **Underlying Insurance** must continuously:
- (1) be kept in full force and effect;
  - (2) provide no less coverage than provided by all of the insurance policies, bonds, self-insurance programs, trust agreements, or other risk transfer arrangements scheduled in ITEM 4 of the Declarations;
  - (3) provide no lower limits of liability than those scheduled in ITEM 4 of the Declarations, except to the extent such limits are reduced or exhausted due to the payment of covered **Claims** under such **Underlying Insurance**; and
  - (4) be available and collectible.

- (B) If at any time any **Underlying Insurance**:
- (1) is not kept in full force and effect;
  - (2) provides less coverage or otherwise contains provisions with changes from the provisions originally applicable to such **Underlying Insurance** as scheduled in ITEM 4 of the Declarations;
  - (3) has limits of liability of a lesser amount than those scheduled in ITEM 4 of the Declarations;
  - (4) is unavailable or uncollectible due to the bankruptcy, insolvency, liquidation, trusteeship, or receivership of any **Insured** or any issuer of such **Underlying Insurance**; or
  - (5) is unavailable or uncollectible due to any other reason, including but not limited to any **Insured's** failure to comply with any provision of such **Underlying Insurance**,

then the Underwriter will not be liable under this Policy earlier or to any greater extent than it would have been if such **Underlying Insurance** was still in full force and effect, contained its original provisions, had the original scheduled limits of liability, and was fully available and collectible.

- (C) If any **Underlying Insurance** contains an insuring agreement or a grant of coverage with a limit of liability of a lesser amount than that scheduled in ITEM 4 of the Declarations, then this Policy shall not apply to such insuring agreement or grant of coverage, and no payment under such insuring agreement or grant of coverage shall reduce or exhaust the applicable limits of liability of such **Underlying Insurance**.
- (D) The **Insured** will provide the Underwriter with prompt notice of:
- (1) any payment of any **Claim** under any **Underlying Insurance**;
  - (2) any cancellation, termination, or non-renewal of any **Underlying Insurance**; or
  - (3) any change in or modification of any **Underlying Insurance** by endorsement or otherwise.

- (E) This Policy shall automatically be rescinded upon the rescission of any **Underlying Insurance**.

## **V. REPORTING OF CLAIMS AND CIRCUMSTANCES**

As a condition precedent to any right to coverage under this Policy, the **Insured** must comply with the following:

- (A) the **Insured** must provide the Underwriter with written notice of any **Claim** as soon as practicable, and in any event within the time period set forth by the **Followed Policy** with respect to notice of **Claims**;
- (B) the **Insured** must provide the Underwriter with written notice of any **Claim**, loss, act, error, omission, circumstance, or other matter with respect to which notice has been provided under any **Underlying Insurance**; and
- (C) if, during the **Policy Period**, the **Insured** first becomes aware of any act, error, omission, or other circumstance that might subsequently give rise to a **Claim** and the **Insured** exercises any right under any **Underlying Insurance** to report such act, error, omission, or other circumstance, then the **Insured** must also report such act, error, omission, or other circumstance to the Underwriter as soon as practicable but in any event before the Expiration Date or earlier cancellation or termination of this Policy. Any covered **Claim** subsequently made against the **Insured** arising out of such act, error, omission, or other circumstance and for which written notice is given to the Underwriter as soon as practicable thereafter shall be treated as if it had been first made and reported to the Underwriter during the **Policy Period**, provided that the applicable **Underlying Insurance** is also treating such **Claim** as if it had been first made and reported during the **Policy Period**.

## **VI. SETTLEMENT AND ASSOCIATION**

- (A) With respect to any **Claim** that is reasonably likely to involve the coverage afforded by this Policy, the **Insured** shall not settle such **Claim**, or incur any expense, make any payment, admit any liability, or assume any obligation with respect to such **Claim**, without the Underwriter's prior written consent, which consent shall not be unreasonably withheld.
- (B) The Underwriter has the right to associate in the defense, investigation, or settlement of any **Claim**, even if the **Underlying Insurance** has not been exhausted. If the Underwriter elects to associate in the defense, investigation, or settlement of a **Claim**, the **Insured** will cooperate with the Underwriter and provide the Underwriter with all information that the Underwriter reasonably requests.

## **VII. SUBROGATION**

In the event of any payment under this Policy, the Underwriter shall be subrogated to the extent of

the payment to all of the **Insured's** rights of recovery. The **Insured** must do everything necessary to secure these rights, including but not limited to executing any documents necessary to allow the Underwriter to effectively bring suit in the **Insured's** name. The **Insured** also must do nothing that may prejudice the Underwriter's position or the Underwriter's potential or actual rights of recovery.

#### **VIII. CANCELLATION AND NON-RENEWAL**

- (A) The **Insured** may cancel this Policy at any time by delivering by hand delivery or overnight mail service or by mailing registered, certified, or other first-class mail, written notice stating when thereafter, and prior to the Expiration Date of this Policy, such cancellation is to be effective.
- (B) The Underwriter may cancel this Policy only in accordance with the terms and conditions of the **Followed Policy**.
- (C) The Underwriter will refund any unearned premium computed at the customary short rate table and procedure if this Policy is canceled by the **Insured**. Under all other circumstances, any unearned premium shall be computed pro rata.
- (D) The Underwriter will not be required to renew this Policy upon its expiration.

#### **IX. AUTHORIZATION AND NOTICES**

The person or entity first named in ITEM 1 of the Declarations will act on behalf of all **Insureds** with respect to: the giving and receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; and the receiving and acceptance of any endorsements issued to form a part of this Policy.

#### **X. REPRESENTATIONS**

The **Insured** represents that the particulars and statements contained in any application submitted in connection with this Policy or with any **Underlying Insurance** are true, accurate and complete, and agree that:

- (A) this Policy is issued and continued in force by the Underwriter in reliance on the truth of that representation;
- (B) those particulars and statements are the basis of this Policy; and
- (C) such application and those particulars and statements are incorporated into and form a part of this Policy.

#### **XI. CHANGES**

No change in or modification of this Policy shall be effective unless made by written endorsement

issued by the Underwriter to form a part of this Policy.

**In Witness Whereof, the Underwriter has caused this Policy to be executed by its authorized representative.**