

FOLLOW FORM EXCESS LIABILITY COVERAGE

THIS POLICY SHALL APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD. 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 Insurer shown on the Declarations Page (hereinafter called the "Underwriter") including the **Application**, and subject to the Declarations Page and the terms, conditions and limitations of this Policy, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENT

Following the exhaustion of applicable retentions and limits of liability of the **Underlying Insurance**, the Underwriter will provide the **Insured** with insurance up to the applicable Limit of Liability shown in the Declarations Page, subject to the same terms, definitions, conditions, exclusions and limitations:

(A) of the **Primary Policy**; and

(B) of such other **Underlying Insurance**, to the extent coverage is further limited or restricted by any other **Underlying Insurance**;

except as otherwise stated in this Policy. The coverage provided by this Policy shall not be broader than the coverage afforded by any **Underlying Insurance**.

The **Underlying Insurance** shall be reduced and exhausted only by actual payment of the limits of liability of the **Underlying Insurance** by the underlying insurers, the **Insured** or any third party. Retentions shall be reduced and exhausted only by actual payment. For the purposes of determining when the coverage afforded under this Policy shall attach, only actual payments for covered loss count towards reduction or exhaustion of the applicable retention(s) and the limits of liability of the **Underlying Insurance**. This Policy shall continue in force as primary insurance only upon exhaustion of applicable retentions and limits of liability of the **Underlying Insurance**.

II. DEFINITIONS

(A) **Application** means:

(1) the application(s) attached to and forming a part of this Policy, including any materials submitted in connection to the underwriting of this Policy or for any renewal or replacement of this Policy; provided, that any such statements or filings submitted in connection with the application(s) were made within twelve (12) months of the inception date of this Policy; and

(2) all warranties provided to the Underwriter in connection to the underwriting of this Policy or for any renewal replacement of this Policy;

all of which are on file with the Underwriter and are part of and incorporated into this Policy. If any **Application** uses any terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms and conditions of this Policy.

(B) **Policy Period** means the period from the inception date to the expiration date of this Policy stated in the Declarations Page or any earlier cancellation of this Policy.

(C) **Primary Policy** means the policy scheduled as such in the endorsement attached to and forming part of this Policy.

(D) **Insured** means the person or organization shown in the Declarations Page and any person or organization included within the definition of insured in the **Primary Policy**.

(E) **Underlying Insurance** means all the insurance policies scheduled as such in the endorsement attached to and forming part of this Policy, including the **Primary Policy**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for, loss from any claim:

PRIOR AND PENDING LITIGATION

Based upon, arising out of, in relation to, or directly or indirectly resulting from any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Prior or Pending Litigation Date shown on the Declarations Page, or the same or substantially the same fact, circumstance, situation, transaction, event or wrongful act underlying or alleged therein.

IV. LIMITS OF LIABILITY

(A) The amount stated in the Declarations Page is the Underwriter's maximum aggregate Limit of Liability under this Policy for all loss.

(B) This Policy shall attach only in the event of exhaustion of applicable retentions and the limits of liability of the **Underlying Insurance** and shall not drop down for any reason, including partial or total uncollectibility of the **Underlying Insurance**.

V. UNDERLYING INSURANCE

(A) The **Underlying Insurance** must be maintained in full force and effect during the **Policy Period** stated in the Declarations Page. If at any time any **Underlying Insurance** is not maintained in full force and effect, or is unavailable or uncollectible for any reason, including financial impairment or insolvency, 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.

(B) If any **Underlying Insurance** contains a coverage part, insuring agreement or other grant of coverage with a sublimit of liability of a lesser amount than that scheduled in the Declarations Page, then this Policy shall not be subject to such coverage part, insuring agreement or other grant of coverage unless agreed to by written endorsement to this policy. However, for the purposes of determining when the coverage afforded under this Policy shall attach, the limits of liability of the **Underlying Insurance** shall be reduced or exhausted by actual payments of loss under a coverage part, insuring agreement or grant of coverage with such sublimit.

(C) The **Insured** will provide the Underwriter with notice as soon as practicable of:

(1) any payment under any **Underlying Insurance**;

(2) reduction or exhaustion of the limits of liability of any **Underlying Insurance**;

(3) any cancellation, termination or non-renewal of any **Underlying Insurance**; or

(4) any change in or modification of any **Underlying Insurance** by endorsement or otherwise.

VI. CONDITIONS

- (A) **Association:** The Underwriter has the right, but not the duty, to associate in the defense, investigation, or settlement of any claim reasonably likely to reach the attachment point of this Policy, even if the applicable **Underlying Insurance** retentions and limits of liability have not been exhausted.
- (B) **Cooperation:** The **Insured** will cooperate with the Underwriter and provide the Underwriter with all information that the Underwriter reasonably requests.
- (C) **Changes and Assignment:** No change in or modification of this Policy shall be effective, and no assignment of any interest under this Policy shall bind the Underwriter, unless agreed to in writing by the Underwriter.
- (D) **Notice:** The **Insured** is obligated to separately provide the Underwriter all notices, including notices of any claim, that is required to be given by the **Primary Policy**. Such notices shall be given to the Underwriter in writing at the address shown in the Declarations Page.

All other terms and conditions of the Policy remain unchanged.