

EXCESS LIABILITY INSURANCE POLICY

Various provisions in this policy restrict coverage. Read the entire policy and any **Underlying Insurance** carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us", and "our" refer to the Company providing this insurance.

The word "Insured" refers to any person or organization which qualifies as such in the **Underlying Insurance**.

Other words and phrases that appear in bold have special meaning. Refer to **III. DEFINITIONS**.

I. INSURING AGREEMENT

Subject to the applicable limits of insurance, we will pay those sums that the Insured becomes legally obligated to pay as **damages** in excess of the self insured retention and all **Underlying Insurance**, but only after all **Underlying Insurance** has been exhausted by payment of the limits of such insurance. This insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the **Underlying Insurance** except with respect to any provisions to the contrary contained in this insurance. No other obligation or liability to pay sums or perform acts or services is covered. In no event shall this policy grant broader coverage than would be provided by any **Underlying Insurance**.

Notwithstanding the foregoing, if any **Underlying Insurance** shown in the Schedule of Underlying Insurance (Schedule) attached hereto has a limit of liability:

1. Greater than the amount shown in such Schedule of Underlying Insurance, then this policy will apply in excess of the greater amount; or
2. Less than the amount shown in such Schedule of Underlying Insurance, then this policy will apply in excess of the amount shown in such Schedule of Underlying Insurance.

II. LIMITS OF INSURANCE

1. The amounts stated in the Declarations are the limits of insurance under this policy and are the maximum amount payable by us under this policy for all **damages**, including **defense expenses**. **Defense expenses** are part of, and not in addition to, the limits of insurance, and the payment of **defense expenses** reduces the limits of insurance.
2. Notwithstanding anything to the contrary, if any **Underlying Insurance** excludes or otherwise does not cover **damages** (for reasons other than the exhaustion of the **Underlying Limits**), then this policy will not provide coverage for such **damages**. If any **Underlying Insurance** contains a stated sub-limit of liability in respect to any coverage which is less than the limit of liability for that coverage set forth in the Schedule of Underlying Insurance, this policy shall not apply to any **damages** encompassed thereby, except as otherwise provided by written endorsement to this policy.

III. DEFINITIONS

1. **Damages** means money damages.
2. **Defense expenses** means reasonable and necessary legal fees and expenses incurred in defense of claims. **Defense expenses** do not include salaries, wages or other overhead expenses of the Insured.
3. **Loss** means the total sum which the Insured shall become obligated to pay on account of liability which is covered under the **Underlying Insurance**.

4. **Underlying Insurance** means the liability insurance provided under the policy or policies shown in the Schedule of Underlying Insurance.
5. **Underlying Limits** means the limits of liability as set forth in the Schedule of Underlying Insurance, plus self-insured retentions or deductibles applicable to the **Underlying Insurance**.

IV. UNDERLYING INSURANCE

1. This policy is subject to the same representations and warranties as are contained in the application for any **Underlying Insurance**, and the same terms, definitions, conditions, exclusions and limitations as are contained in the **Underlying Insurance** (except as regards the premium, the limits of liability, the policy period, and except as otherwise provided herein).
2. The policy or policies referred to in the Schedule of Underlying Insurance or renewals or replacements thereof not more restrictive, shall be maintained as insurance in full force and effect during the term of this policy without alteration in their terms or conditions, except for any reduction of the limits of liability contained therein solely by payment there under. Failure to comply with the foregoing shall not invalidate this policy but, in the event of such failure, we will only be liable to the same extent as we would have been had you so maintained such policy or policies.
3. If during the policy period, the terms, conditions, exclusions or limitations of **Underlying Insurance** are changed in any manner, the Insured shall as a condition precedent to its rights under this policy give to us as soon as practicable written notice of the full particulars thereof. This policy shall become subject to any such changes upon the effective date of the changes in the **Underlying Insurance** but only upon the condition that we agree to follow such changes by written endorsement attached hereto and the Insured pays when due any additional premium required by us relating to such changes and/or agrees to any amendment of the provisions of this policy required by us relating to such changes.
4. The Insured shall provide us as soon as practicable with written notice and the full particulars of (i) the exhaustion of the aggregate limit of liability of any **Underlying Insurance**, (ii) any **Underlying Insurance** not being maintained in full effect during the policy period, or (iii) any insurer issuing any **Underlying Insurance** becoming subject to receivership, liquidation, dissolution, rehabilitation or similar proceeding or being taken over by any regulatory authority.
5. The Insured warrants that the **Underlying Limits**, where applicable, as shown in the Schedule of Underlying Insurance shall be unimpaired as of the effective date of this policy. In the event of non-concurrent policy periods between this policy and the **Underlying Insurance**, only covered events taking place during the policy period of this policy shall be considered in determining the extent of any erosion or exhaustion of the underlying aggregate limits.
6. The Insured, not the Insurer, will bear the risk that any **Underlying Insurance** is or may be uncollectible. This policy will not drop down for any reason, including, but not limited to, the uncollectibility (in whole or in part) of the **Underlying Insurance**, even if such uncollectibility is due to the financial impairment or insolvency of the issuer of any **Underlying Insurance**. Coverage under this policy will not be available unless and until all **Underlying Insurance** has been exhausted by the actual payment of **loss**.

V. NOTIFICATION, SETTLEMENT AND DEFENSE

1. As a condition precedent to the obligations of us under this policy, you must see to it that we are notified as soon as practicable of any incident that may result in a claim under this policy. You shall also provide other claim information or reports as reasonably requested by us from time to time.
2. The Insured shall not do or omit to do anything to prejudice our rights under the policy. If we recommend a settlement of a claim:
 - a. For an amount within any remaining amount of the **Underlying Limits** and the Insured refuses such settlement, we shall not be liable for any **loss** in excess of the recommended settlement or

