



Excess Insurance Policy

THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on the Application to Darwin Professional Underwriters, Inc., the Underwriter for the Insurer identified in the Declarations (hereinafter, the Insurer), and to the insurer(s) of the Underlying Insurance, and subject to the terms and conditions of, and endorsements to, this Policy, the Insurer and the Insured agree as follows:

I. INSURING AGREEMENT

The Insurer will provide the **Insured** with insurance excess of the **Underlying Insurance** specified in ITEM 4 of the Declarations for claims first made against the **Insured** during the **Policy Period**. Except as otherwise provided in this Policy, coverage under this Policy will apply in conformance with the terms and conditions of, and endorsements to, the **Primary Policy** and any other **Underlying Insurance**. In no event will the coverage under this Policy be broader than the coverage under any **Underlying Insurance**. Coverage under this Policy will attach only after all **Underlying Insurance** has been exhausted by the actual payment of loss by the **Underlying Insurers**.

II. DEFINITIONS

- (A) “**Application**” means the application attached to and forming part of this Policy, including any material submitted or obtained by the Underwriter in connection with such application.
- (B) “**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**.
- (C) “**Insured**” means any and all persons and entities designated as insureds in the **Underlying Insurance**.
- (D) “**Policy Period**” means the period from the inception date to the expiration date set forth in ITEM 2 of the Declarations, or any lesser period of time if the Policy is cancelled before the expiration date.
- (E) “**Primary Policy**” means the policy specified in ITEM 4 (A) of the Declarations.
- (F) “**Underlying Insurance**” means all policies, including the **Primary Policy**, specified in ITEM 4 of the Declarations.
- (G) “**Underlying Insurers**” means any or all of the companies that issued the policies of **Underlying Insurance**, as specified in ITEM 4 of the Declarations.

III. MAINTENANCE OF UNDERLYING INSURANCE

- (A) The limit(s) of liability of the **Underlying Insurance** specified in ITEM 4 of the Declarations must be maintained in full effect during the **Policy Period** except for any reduction or exhaustion of such limit(s) of liability solely by reason of actual payment of loss by the **Underlying Insurers**. Failure to comply with this condition will not invalidate this Policy; however, the Insurer will 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 any **Underlying Insurance** is not maintained, the **Insured** will be deemed to be self-insured for the limit(s) of liability of such **Underlying Insurance**. 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) In the event of a modification to any **Underlying Insurance** by endorsement or otherwise, the coverage under this Policy will become subject to such modification only if and to the extent that the Insurer consents to such modification by written endorsement to this Policy.

IV. REDUCTION OR EXHAUSTION OF UNDERLYING INSURANCE

- (A) Subject to the terms and conditions of, and endorsements to, both this Policy and the **Underlying Insurance**, this Policy will provide coverage in excess of the **Underlying Insurance** for loss incurred in connection with a claim in the event that the **Underlying Insurance** is exhausted during the pendency of such claim solely as a result of the actual payment of loss by the **Underlying Insurers**.
- (B) Subject to the terms and conditions of, and endorsements to, both this Policy and the **Underlying Insurance**, this Policy will provide coverage as primary insurance for loss incurred in connection with any subsequent claim in the event that the **Underlying Insurance** is exhausted solely as a result of the actual payment of loss by the **Underlying Insurers** in connection with a prior claim or claims. If this Policy provides coverage as primary insurance, such coverage will be subject to the retention(s) set forth in the **Primary Policy**.
- (C) 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 any of the **Underlying Insurers**. Coverage under this Policy will not be available unless and until all **Underlying Insurance** has been exhausted by the actual payment of loss by the **Underlying Insurers**.

V. LIMIT OF LIABILITY

The amount stated in ITEM 3 of the Declarations is the limit of liability under this Policy and is the maximum amount payable by the Insurer under this Policy for all loss, including **Defense Expenses**. **Defense Expenses** are part of, and not in addition to, the limit of liability, and the payment of **Defense Expenses** reduces the limit of liability.

VI. NOTICES

As a condition precedent to the Insurer's obligations under this Policy, the **Insured** will provide the Insurer with prompt notice of:

- (A) any claim under any **Underlying Insurance**, or any circumstance that could give rise to a claim under any **Underlying Insurance**;
- (B) any settlement offers that the **Insured** intends to make or any settlement demands made by any claimant, even if such offers or demands would not implicate coverage under this Policy;
- (C) the payment of any claims under any **Underlying Insurance**;
- (D) the cancellation of any **Underlying Insurance**;
- (E) the modification of any **Underlying Insurance** by endorsement or otherwise; or
- (F) any additional or return premiums charged or allowed in connection with any **Underlying Insurance**.

The entity named in ITEM 1 of the Declarations will be the sole agent for, and will act on behalf of, all **Insureds** with respect to all matters under this Policy, including, but not limited to, giving notice of claim, communications regarding coverage, the issuance of any endorsements, notice of cancellation or non-renewal, and any notice regarding the payment or return of any premium for this Policy.

Notice given to any of the **Underlying Insurers** of any claim or circumstance that could give rise to a claim under any **Underlying Insurance** will not be deemed notice to the Insurer. Notice of any claim or circumstance that could give rise to a claim under any **Underlying Insurance** must be sent by certified mail or prepaid courier to the Insurer at the address specified in ITEM 5 of the Declarations.

VII. MODIFICATION, CANCELLATION AND NON-RENEWAL

- (A) No modification of this Policy will be effective unless made by endorsement signed by an authorized agent of the Insurer.
- (B) The **Insured** may cancel this Policy prior to the expiration date set forth in ITEM 2 of the Declarations by mailing to the Insurer written notice stating when such cancellation will be effective.
- (C) The Insurer may cancel this Policy only for non-payment of premium, and only by delivering or mailing to the **Insured** written notice stating when, not less than thirty (30) days after such notice, such cancellation will be effective. The delivery or mailing of such notice will be sufficient proof of notice, and this Policy will terminate at the date and hour specified in the notice.
- (D) The Insurer will refund the unearned premium computed at the customary short rate if this Policy is cancelled by the **Insured**. Under all other circumstances, any unearned premium will be computed pro rata.
- (E) The Insurer has no obligation to renew this Policy upon its expiration. If the Insurer decides not to renew this Policy, it will provide written notice of non-renewal to the **Insured** no less than sixty (60) days prior to the expiration of the Policy.