

EXCESS CASUALTY FOLLOW FORM POLICY

THIS POLICY MAY CONTAIN OCCURRENCE, CLAIMS MADE, OR CLAIMS MADE AND REPORTED COVERAGES. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

The term Insurer refers to the insurer providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section II. DEFINITIONS.

In consideration of the payment of premium and in reliance upon the statements in the “Applications” and any information, submitted therewith, and subject to the Declarations, terms and conditions of the Policy, the Insurer and the “Insured” agree as follows:

I. INSURING AGREEMENT

The “Insurer” will pay on behalf of the “Insured,” loss covered under the “Underlying Policies,” subject to the terms and conditions of this Policy, which are in excess of the “Underlying Limits.” This Policy is subject to the same representations as are contained in the “Applications” of the “Underlying Policies,” and except with respect to premium, the limit of liability and as otherwise provided herein, the insurance coverage provided by this Policy shall apply in accordance with the same terms, definitions, conditions, exclusions and limitations as are contained in the “Followed Policy,” and to the extent coverage is further limited or restricted thereby, in any other “Underlying Policies.” The Policy shall not grant broader coverage than the most restrictive of the “Underlying Policies.”

II. DEFINITIONS

Unless listed in this **SECTION II—DEFINITIONS** of this Policy, the definitions in the “Followed Policy” shall apply.

- A. “Applications” means all signed applications and any information submitted therewith for this Policy.
- B. “Claim” has the same meaning in this Policy as the “Followed Policy.”
- C. “Insured” means any persons or entities entitled to coverage under the “Followed Policy.”
- D. “Named Insured” or “You” means the entity named in **Item 1.** of the Declarations.
- E. “Policy Period” means the period from the effective date to the expiration date of this Policy as set forth in **Item 2.** of the Declarations, or any earlier termination date.
- F. “Financial Insolvency” means the status of any “Underlying Insurer” being subject to the appointment, by any state, federal or foreign official, agency or court, of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such “Underlying Insurer.”
- G. “Followed Policy” means the first Policy in excess of primary insurance, as constituted at its inception, named in **Item 5.** of the Declarations.
- H. “Underlying Insurer” means any insurer identified in the above Schedule of “Underlying Policies” as issuing an “Underlying Policy.”
- I. “Underlying Policies” means all policies or coverage sections of policies identified in the above Schedule of “Underlying Policies,” as constituted at their inception (unless the “Insurer” consents to any change thereto by written endorsement to this Policy).

- J. “Underlying Limits” means an amount equal to the total of all aggregate limits of liability for all “Underlying Policies” as set forth on **Item 5.** of the Declarations, plus the uninsured retention or deductible applicable to the “Primary Policy” named in **Item 5.**, Schedule of Underlying Insurance.

III. LIMITS OF LIABILITY

The “Insurer” shall be liable to pay insured loss up to the Limits of Liability stated in **Item 4.** of the Declarations. The aggregate Limit of Liability in this Policy shall apply in the same manner as the aggregate limits of liability in the “Followed Policy.”

IV. REDUCTION OR EXHAUSTION OF “UNDERLYING LIMITS”

- A. The “Insurer” shall not provide any coverage under this Policy until the full amount of the “Underlying Limits” has been exhausted through payments by, on behalf of or in the place of the “Underlying Insurers” of amounts covered as loss under the terms of the “Underlying Policies.”
- B. In the event the “Underlying Limits” are partially reduced by reason of actual payments as described in **SECTION IV.A.** above, then subject to the Limit of Liability this Policy shall continue to apply as excess over the reduced “Underlying Limits.”
- C. In the event the “Underlying Limits” are wholly exhausted by reason of actual payments as described in **SECTION IV.A.** above (and the full amount of any applicable deductible or uninsured retention has been paid under the “Followed Policy” by or on behalf of the “Insured”), then subject to the Limit of Liability, this Policy shall continue to apply as primary insurance in accordance with the terms, definitions, conditions, exclusions and limitations of the “Followed Policy” and the terms, definitions, conditions, exclusions and limitations of this Policy; provided always that this Policy shall pay excess of such deductible or retention, which shall be applied in the same manner as specified in the “Followed Policy.”
- D. This Policy shall only pay in the event of the reduction or exhaustion of the “Underlying Policies” by reason of actual payments, as described above, and shall not drop down for any other reason, including but not limited to the existence of any sub-limit in any “Underlying Policy” or the collectability (in whole or in part) of any of the “Underlying Limits”; provided, however, this Policy will recognize erosion of any of the “Underlying Policies” due to the existence of a sub-limit.
- E. The “Insureds” expressly retain the risk of any gap in coverage or collectability and the “Insurer” does not in any way insure or assume the risk.

V. INVESTIGATION, DEFENSE AND SETTLEMENT

- A. The “Insurer” will have the right to assume charge of the investigation of any “Claim” or defense of any suit against the “Insured.”
- B. The “Insurer” will have the right to be associated with the “Insured” or the “Underlying Insurer” or both in the investigation of any “Claim” or defense of any suit which in the “Insurer’s” opinion may create liability for the “Insurer” for loss under this Policy. If the “Insurer” exercises such right, it will do so at its own expense and it will have the right to withdraw at any time.
- C. The “Insurer” will have the right and duty to defend any suit to which this Policy applies if:
1. all “Underlying Policies” have the right and duty to defend such suit; and
 2. the “Underlying Limits” shown in the Declarations have been exhausted in accordance with **SECTION III—LIMITS OF LIABILITY.**
- D. The “Insurer” will not investigate any “Claim” or defend any suit after it pays its applicable Limits of Liability.

VI. CONDITIONS OF COVERAGE

- A.** As a condition precedent to this Policy's coverage, in the event of the "Financial Insolvency" of any of the "Underlying Policies" or the reduction or exhaustion of any of the "Underlying Policies," the "Insureds" shall notify the "Insurer" in writing as soon as practicable thereafter, with full particulars.
- B.** If during the "Policy Period" or any discovery or extended reporting period, any terms, definitions, conditions, exclusions and limitations of the "Followed Policy" are changed, this Policy shall not be subject to such change unless the "Insurer" consents by written endorsement to this Policy.