

GREENWICH INSURANCE COMPANY
STAMFORD, CONNECTICUT
(A stock Insurance Company Herein Called the Company)

EXCESS LIABILITY INSURANCE POLICY

I. INSURING AGREEMENT

This Policy shall provide the **Insured** with excess liability insurance coverage in accordance with the same warranties, terms, conditions, definitions, exclusions and limitations as are contained in the insurance policy (including endorsements) described in Item 7 of the Declarations ("**Followed Policy**") as of the inception date of this Policy, except as otherwise provided herein. Except where the context otherwise requires, any references to the insurer or the policy itself in the **Followed Policy** shall be deemed to be references to the Company or this Policy, respectively, for the purpose of the excess liability coverage afforded hereunder, and any similar conforming changes shall be made as required.

II. LIMIT OF LIABILITY

A. The Limits of Liability in Item 4 of the Declarations shall apply for any covered **Loss** and attach to the Company only after the full amounts of the **Underlying Limits** and the self-insured retention or deductible have been paid; and shall be the maximum amount that the Company will pay under this Policy with respect to all covered **Loss**.

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

1. greater than the amount shown in such **Schedule**, then this Policy will apply in excess of the greater amount; or
2. less than the amount shown in such **Schedule**, then this **Policy** will apply in excess of the amount shown in such **Schedule**.

B. This Policy shall pay **Loss** only in excess of the **Underlying Limits** and only by reason of the exhaustion by actual payment of Loss of the **Underlying Limits**, and shall not drop down or make any payment (notwithstanding anything to the contrary in any **Underlying Policy**) for any other reason including, but not limited to, uncollectibility (in whole or in part) of any **Underlying Limits**, or cancellation or lapse of any **Underlying Policy**. The risk of uncollectibility of such **Underlying Limits** (in whole or in part) whether due to financial impairment or insolvency of the **Insured**, or the issuer of an **Underlying Policy**, or for any other reason, is expressly retained by the **Insured** and is not in any way or under any circumstances insured or assumed by the Company.

C. Notwithstanding anything to the contrary, if any **Underlying Policy** excludes or otherwise does not cover a **Loss** (for reasons other than the exhaustion of the **Underlying Limits**), then this Policy will not provide coverage for such **Loss**. This Policy will not provide coverage that is broader than coverage provided in any **Underlying Policy**. If any **Underlying Policy** contains a stated sublimit of liability in respect to any coverage which is less than the limit of liability for that coverage set forth in the **Schedule**, this Policy shall not apply to any **Loss** encompassed thereby, except as otherwise provided by written endorsement to this Policy.

III. DEFINITIONS

- A. **Claim** and **Occurrence** shall have the same meanings as such terms or equivalent terms in the **Followed Policy**.
- B. **Followed Policy** means the insurance policy set forth in Item 7 of the Declarations.
- C. **Insured** means each entity or person which is insured under the **Followed Policy** in the same capacity for which insurance is afforded therein.
- D. **Loss** shall have the same meaning as such term or equivalent term in the **Followed Policy**, or, if not defined therein, shall mean the total sum which the **Insured** shall become obligated to pay on account of liability which is covered under the **Followed Policy**.
- E. **Underlying Policy** means any policy set forth in Item 6 of the Declarations, including but not limited to the **Followed Policy** set forth in Item 7 of the Declarations.
- F. **Underlying Limits** means the limits of liability as set forth in Item 5 of the Declarations, plus self-insured retentions or deductibles applicable to the **Followed Policy**.

IV. UNDERLYING INSURANCE

- A. This Policy is subject to the same representations and warranties as are contained in the Application for any **Underlying Policy**, and the same terms, definitions, conditions, exclusions and limitations as are contained in the **Followed Policy** (except as regards the premium, the limits of liability, the policy period and except as otherwise provided herein). In no event shall this policy grant broader coverage than would be provided by any **Underlying Policy**.
- B. It is a condition of this Policy that each **Underlying Policy** shall be maintained in full effect with solvent insurers during the policy period except for any reduction or exhaustion of the aggregate limits contained therein by reason of **Loss** paid thereunder. If any **Underlying Policy** is not so maintained, then the Company shall not be liable under this Policy to a greater extent than it would have been had such **Underlying Policy** been so maintained.
- C. If during the policy period or any discovery period, if applicable, the terms, definitions, conditions, exclusions or limitations of any **Underlying Policy** are changed in any manner, the **Insured** shall provide the **Company** written notice of the full particulars thereof as soon as practicable, but in no event later than thirty (30) days following the effective date of such changes, and such change shall not be effective with respect to this Policy without the Company's written consent. This Policy shall become subject to any such changes upon the effective date of the changes in the **Underlying Policy**, provided that the **Insured** shall pay any additional premium reasonably required by the Company for such changes.
- D. The **Insured** shall provide the Company as soon as practicable with written notice and the full particulars of (i) the exhaustion of the aggregate limit of liability of any **Underlying Policy**, (ii) any **Underlying Policy** not being maintained in full effect during the policy period, or (iii) any insurer issuing any **Underlying Policy** becoming subject to receivership, liquidation, dissolution, rehabilitation or similar proceeding or being taken over by any regulatory authority.

- E. The **Insured** warrants that the **Underlying Limits**, where applicable, as shown in Item 5b. of the Declarations 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 Policy**, 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, and the Insured shall retain any resulting gap.

V. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

- A. As a condition precedent to the obligations of the Company under this Policy, the Named **Insured** must see to it that the Company is notified as soon as practicable of any **Loss** that may result in a claim or Suit under this Policy. The Named **Insured** shall also provide other claim information or reports as reasonably requested by the Company from time to time.
- B. No costs, charges or expense shall be incurred, nor payments made, obligations assumed or remediation commenced without the Company's prior written consent which shall not be unreasonably withheld.
- C. The **Insured** shall not do or omit to do anything to prejudice the Company's rights under the Policy. If the Company recommends a settlement of a claim:
1. for an amount within any remaining amount of the **Underlying Limits** and the **Insured** refuses such settlement, the Company shall not be liable for any **Loss** in excess of the recommended settlement, or
 2. for a total amount in excess of the **Underlying Limits** and the **Insured** refuses such settlement, the Company's liability for **Loss** shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the **Insured's** refusal which exceed the **Underlying Limit**.
- D. Until the **Underlying Limits** have been exhausted, the Company shall have the right, but not the duty, and shall be given the opportunity to effectively associate with the **Insured** at the Company's expense in the investigation, settlement or defense of any **Claim**, lawsuit, or legal, equitable, administrative or any other proceeding affecting the rights of the **Insured**. In the event the **Underlying Limits** have been exhausted, the Company shall have the right and the duty to defend any **Claim** and such costs shall erode the limits of liability in accordance with the terms and conditions of the **Followed Policy**. If the Company exercises such right or assumes such obligation, the Company shall not be obligated to defend any **Claim** after the applicable limits of this policy have been exhausted.

VI. GENERAL CONDITIONS

- A. Notwithstanding any statement to the contrary in this Policy, if the **Insured** elects a discovery period or similar extension as set forth in the **Followed Policy** upon cancellation or non-renewal of the **Followed Policy** or any **Underlying Policy**, the Company shall not be obliged to follow such extension.
- B. All recoveries or payments recovered or received subsequent to a **Loss** settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the **Insured** and the Company, provided always that the foregoing shall not affect the time when the **Loss** under this Policy shall be payable.

- C. All notices under this Policy shall be given as provided for in the **Followed Policy**. In addition, all notices to the Company under this Policy shall be sent to the address below or any substitute address as provided by the Company:

XL Insurance
Attention: Claims Department
505 Eagleview Boulevard
P.O. Box 636
Exton, PA 19341-0636
USA

- D. Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy. The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest under this Policy shall bind the Company, except as provided by endorsement to form a part hereof, signed by the Company or its authorized representative.
- E. The Named **Insured**, listed in Item 1 of the Declarations, shall be responsible for and act on behalf of all **Insureds** with respect to the payment of any premiums and determination and receipt of payments of **Loss** due under this Policy.
- F. Cancellation provisions of this **Policy** shall follow the cancellation provisions of the **Followed Policy**, including cancellation for non-payment of the premium as set forth in Item 8 of the Declarations, except as provided by endorsement hereto.