

SPECIALTY CASUALTY

Excess Following Form Products Recall Insurance

The **Named Insured** and the Insurer agree, in consideration of the payment of the premium and in reliance upon the **Application(s)** and statements contained therein, subject to the Policy Schedule, the Insurer will indemnify or otherwise compensate the **Named Insured** in accordance with and subject to the terms and conditions of this Policy.

In granting coverage under this Policy, it is understood and agreed that the Insurer has relied upon the statements, representations and warranties contained in all **Application(s)**, warranty statements, together with attachments and any other materials submitted for this Policy (including all such previous Policy applications, and their attachments and materials, for which this Policy is a renewal or succeeds in time), as being accurate and complete.

Boldfaced words within this Policy have special meaning. Refer to SECTION III - DEFINITIONS. Other boldfaced words or phrases that are not defined under this policy but are defined in the **Lead Underlying Insurance** will have the meaning described in the **Lead Underlying Insurance**.

I. Insuring Agreement

1. The Insurer will pay for **Insured Losses** arising out of an **Insured Event** for which coverage is afforded by the **Lead Underlying Insurance** policy only if:
 - a. the **Insured Event** is discovered during the Period of Insurance, and
 - b. is reported to the Insurer in writing
 - i. during the Period of Insurance; or
 - ii. up to period after the expiration per the Lead Underlying Insurance document; and
 - iii. in accordance with the reporting provisions of Section V. CONDITIONS, Paragraph 7; and
 - c. the applicable limits of all **Underlying Insurance** have been exhausted.
2. This Policy follows the same provisions, terms, definitions, exclusions, and conditions contained in the **Lead Underlying Insurance** in effect on the inception date of this Policy, unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage provided under this Policy will not be broader than that provided by the **Lead Underlying Insurance**.
3. **Drop Down Coverage**

Coverage for **Insured Losses** or **Insured Events** below the General Attachment Points that are subject to sub-limits in any **Underlying Insurance** is provided only if such **Insured Loss** or **Insured Event** is listed in the Drop-Down Attachment Points on the Schedule of Coverage.

II. LIMITS OF INSURANCE

1. The maximum the Insurer shall pay for all **Insured Losses** arising from a single **Insured Event** is the applicable sub limit shown for Each **Insured Event** on the Schedule of Coverage.
2. The maximum the Insurer shall pay for all **Insured Losses** in any one Period of Insurance is the Combined Policy Aggregate Limit shown in the Schedule of Coverage. The Policy Aggregate Limit of this Policy will apply in the same manner as the Aggregate Limit in the **Lead Underlying Insurance**.
3. The Limits of this Policy apply only in excess of Underlying Limits shown in the Schedule of Underlying Policies and any other insurance, deductibles or retentions outlined in the **Lead Underlying Insurance**.
4. All sub-limited coverages in any **Underlying Insurance**, shall reduce Underlying Limits shown in the Schedule of Underlying Policies, regardless of whether coverage is provided under this Policy.
5. If the applicable limits of the **Underlying Insurance** are reduced or exhausted by payment of **Insured Losses** to which this insurance applies, this Policy shall:
 - a. in the event of reduction, pay in excess of the remaining Underlying Limits; or
 - b. in the event of exhaustion, continue in force as the applicable **Lead Underlying Insurance** policy.

III - DEFINITIONS

1. **Application(s)** means

a form or document for insurance coverage, including any written or electronic materials or information attached to or incorporated therein, submitted by the **Named Insured** to the Insurer for procurement of this Policy. **Application(s)** also includes any materials submitted or required to be submitted.

Application(s) shall not include any publicly available material, information, or facts unless such material is included in the materials provided or the public availability and means of accessing the material, information or facts is specifically referred to within the **Application(s)** or materials attached to or incorporated therein.

2. **Insured Claim** means

a notification from the **Named Insured** of an incident that is subsequently confirmed by an **Underlying Insurer** as an **Insured Event** for which coverage for **Insured Losses** is afforded.



3. **Insured Event** means
the occurrence, event, incident, or circumstance to which the **Lead Underlying Insurance** applies.
4. **Insured Losses** means
the losses covered in the **Lead Underlying Insurance** arising from an **Insured Event**.
5. **Lead Underlying Insurance** means
the policy of insurance identified as such in the Schedule of **Underlying Insurance** attached to this Policy.
6. **Underlying Insurance** means
the policy or policies of insurance, including the **Lead Underlying Insurance** shown in the Schedule of Underlying Policies.

IV. EXCLUSIONS

The Insurer will not pay **Insured Losses** directly or indirectly caused by, arising out of or resulting from:

1. Asbestos any **Insured Losses** originating from the use of or exposure to asbestos or material or products containing asbestos.
2. Except insofar as coverage is required by law or statute any act of Terrorism as defined in the **Lead Underlying Insurance**. However, this exclusion does not apply to **Malicious Product Tampering** or **Product Extortion Demand**.
3. War, invasion, act of foreign enemy hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, nationalization, confiscation, requisition, seizure or destruction by the government or any official authority.



V. CONDITIONS

1. Cancellation

- a. The **Named Insured** may cancel this Policy by mailing or delivering an advance written notice to the Insurer stating when the cancellation is to take effect.
- b. The Insurer may cancel this Policy. If the Insurer cancels because of non-payment of premium, the Insurer will mail or deliver to the **Named Insured** not less than ten (10) days advance written notice when the cancellation is to take effect. If the Insurer cancels for any other reason, the Insurer will mail or deliver to the **Named Insured**, not less than ninety (90) days advance written notice stating the reason(s) for cancellation, as well as the date when the cancellation is to take effect. Mailing notice to the **Named Insured** at the mailing address shown in the Excess Recall Schedule of Coverage will be sufficient to prove notice.
- c. The Period of Insurance will end on the day and hour stated in the cancellation notice. If this Policy is cancelled, the final premium will be calculated pro rata based on the time this Policy was in force. However, policy premium will be considered fully earned if there is any Insured Loss during the Period of Insurance.
- d. Premium adjustments may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective regardless of whether the Insurer has offered or issued any refund due to the **Named Insured**. The Insurer's check or its representative's check, mailed or delivered, will be sufficient tender of any refund due to the **Named Insured**.

2. Changes

- a. The **Named Insured** must notify the Insurer in writing as soon as practicable, if any **Underlying Insurance** is cancelled, not renewed, replaced, or otherwise terminated, or if the limits or scope of coverage of any **Underlying Insurance** is changed.
- b. Any proposed endorsement, modification, or change (including cancellation or re-write to the terms, conditions or exclusions to the **Lead Underlying Insurance** shall be provided to the Insurer in writing. It is agreed that should any change to any **Underlying Insurance** impact this Policy, this Policy shall not be modified without prior written consent of the Insurer, which shall not be unreasonably withheld. Any such change to this Policy may include modification to the premium due.

3. Choice of Law

All disputes arising under or in relation to this insurance will be governed by the laws of the United States of America and the State of New York, unless the **Lead Underlying Insurance** states differently. The Insurer and the **Named Insured** expressly agree that all **Insured Claims** and disputes will be brought for adjudication in the Supreme Court of the State of New York County or in the United States District Court for the Southern District of New York, unless the **Lead Underlying Insurance** states differently.



4. **Defense**

The Insurer shall have the right to associate with the **Named Insured** and any insurance company providing **Underlying Insurance** in the defense of any claim made, suit brought or proceeding initiated which in the Insurer's opinion may result in payment under this Policy.

5. **Duties of the Named Insured**

The **Named Insured** shall provide assistance and cooperation to the Insurer with respects to the investigation of a claim under this Policy and shall do nothing that may prejudice the Insurer's position or potential rights of recover.

6. **Maintenance of Underlying Insurance:**

- a. The **Named Insured** agrees to maintain in full force and effect the **Underlying Insurance**, or renewals of replacements thereof, except for the reduction of limits due to the payment of **Insured Losses**.
- b. If the **Named Insured** fails to maintain the **Underlying Insurance**, this Policy shall apply as if the **Underlying Insurance** had been so maintained, was available and collectible.
- c. If the Insurer of any **Underlying Insurance** becomes bankrupt or insolvent, this policy does not replace such **Underlying Insurance**; and applies as though such **Underlying Insurance** were available and collectible.

7. **Notifications**

This Policy shall follow the notification provisions of the **Lead Underlying Insurance**. However, notice to the Insurer shall also be sent to the entity in Notifications to the Insurer shown on the Schedule of Coverage.

8. **Premium Payment Clause**

The **Named Insured** undertakes that premium shall be paid in full to the Insurer within thirty (30) days of the inception of this Policy (or, in respect of installment premiums, when due) and shall have the burden of establishing that such payment has been made.

9. **Reinstatement of Limits**

Any reinstatement of limits condition or provision contained in **Underlying Insurance** does not apply to this Policy.

10. **Renewal**

Any renewal condition or agreement contained in **Underlying Insurance** does not apply to this Policy.



11. Rights of the Insurer

- c. The Insurer shall have the right to investigate, adjust, and settle its portion of any claims or **Insured Losses** arising under this Policy and it shall not be bound by the claim decisions made by any other insurance company providing **Underlying Insurance**.
- d. The Insurer shall have the right to join the **Named Insured**, and any other insurance company involved in such claim, in the defense and settlement of any claim that is reasonably likely to involve this Policy.
- e. The Insurer may at any time pay the Limit of Insurance (less any sums already paid) or any lesser amount for which at the Insurer's absolute discretion the **Insured Claim(s)** arising out of any **Insured Event** can be settled. The Insurer will then relinquish control of such **Insured Claim(s)** and be under no further liability in respect thereof for **Insured Losses** and expenses for which the Insurer may be responsible prior to the date of such payment.

12. Sanctions

Whenever coverage provided by this Policy would be in violation of any U.S. economic or trade sanctions such as but not limited to those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void.

13. Several & Not Joint Liability Among Carriers

The obligations of the Insurer shall be several and not joint and is limited solely to the extent of the Insurer's individual share among the insurance companies shown in the Schedule of Underlying Policies. The Insurer is not responsible for the participation of any insurance company shown in the Schedule of Underlying Policies which for any reason does not satisfy all or part of its obligations.

14. Subjectivities

It is a condition that the **Named Insured** fulfill all subjectivities identified in the binder for this Policy as well as all subjectivities identified in the binder(s) for all **Underlying Insurance**. The Insurer shall receive all correspondence in writing related to fulfillment of all such subjectivities within the timeframes outlined at binding of insurance.