



Iron-Starr Excess Agency Ltd.
(Hereinafter referred to as the "Company")
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EXCESS LIABILITY INSURANCE POLICY – AEGIS FOLLOW FORM

THIS IS A CLAIMS FIRST MADE **POLICY**. THE **COMPANY** HAS NO DUTY TO DEFEND ANY CLAIM. ANY DEFENSE OR CLAIMS EXPENSES COVERED BY THIS **POLICY** ARE INCLUDED WITHIN AND NOT IN ADDITION TO THE LIMIT OF LIABILITY OF THIS **POLICY**. PLEASE READ THE ENTIRE **POLICY** CAREFULLY.

INSURING AGREEMENTS

Iron-Starr Excess Agency Ltd. (the "**Company**") hereby agrees as follows.

I. COVERAGE

This **Policy** (which includes any attached endorsements) is subject to the same warranties, terms, definitions, conditions and exclusions as are contained in the **Followed Policy** (except as regards the amount of premium, limits of liability, attachment points, annual aggregate, RETROACTIVE DATE, dispute resolution and service of suit, law of construction and interpretation, exclusions, and as otherwise provided, or inconsistent with any provision herein); provided, however, no amendment, addition or modification to the **Followed Policy** by any primary, underlying or any other insurer shall operate to alter the warranties, terms, definitions, conditions or exclusions of this **Policy**, except as set forth by written endorsement hereto.

II. LIMIT OF LIABILITY

- (a) Subject to all the other provisions hereof, and regardless of the number of INSUREDS under this **Policy**, for each layer of coverage as set forth in Item 2 (a) of the Declarations the **Company** shall be liable only for that amount of **Ultimate Net Loss** for each OCCURRENCE covered pursuant to Article I hereof in excess of the greater of either:
- (1) the limits (including, without limitation, any reinstatement thereof) of the **Primary and Underlying Excess Insurance** (which shall apply as if such limits were fully available and collectible, except to the extent that any aggregate limits thereof are reduced or exhausted by actual payment to the INSURED of **Ultimate Net Loss** in respect of other CLAIMS first made in the same POLICY PERIOD that determines the limits of liability applied to such OCCURRENCE) and the self-insured retention(s) set forth (or which should have been set forth) on Schedule A hereto, as to which it is expressly agreed that this **Policy** applies excess thereof; or

- (2) the Minimum per OCCURRENCE retention amount set forth in Item 2(b) of the Declarations for each layer (which may be satisfied only by **Ultimate Net Loss**);

and then only up to a further sum as stated under the per OCCURRENCE limit in Item 2(a) of the Declarations for the applicable layer and further subject to the annual aggregate limit of liability stated in Item 2(c) of the Declarations for all layers for all OCCURRENCES for which a CLAIM is first made against the INSURED during the POLICY PERIOD (or during the DISCOVERY PERIOD with respect to the preceding POLICY PERIOD); provided, however, that for all INSUREDS the applicable aggregate limit of liability, per OCCURRENCE limit, the per OCCURRENCE retention, and the terms of coverage shall be determined under this **Policy** as in effect at the time for which a CLAIM is first made against the INSURED as respects such OCCURRENCE, as determined pursuant to sections (b) and (c) below.

- (b) The provisions of the **Followed Policy** set forth in the second paragraph of Section I. (B)(2) thereof (relating to multiple CLAIMS) shall apply to this **Policy**.
- (c) For the purpose of application of retention and limits of liability, a CLAIM first made, or a NOTICE OF CIRCUMSTANCES first given, during any DISCOVERY PERIOD shall be deemed to have been first made, or first given, as the case may be, on the last day of the POLICY PERIOD.
- (d) The provisions of the **Followed Policy** set forth in Section I.B(3) thereof (relating to JOINT VENTURES) shall apply to this **Policy**, with the term "underlying insurance(s)" replaced by the term **Primary and Underlying Excess Insurance** and "the amount stated in Item 5A of the Declarations" replaced by "the per OCCURRENCE limit in Item 2(a) of the Declarations."
- (e) The inclusion or addition hereunder of more than one INSURED shall not operate to increase the **Company's** limits of liability beyond those set forth herein.

III. DEFINITIONS AND CONFORMING OF TERMS

All terms that are in boldface type in this **Policy** are specifically defined terms herein and all terms that are in capital letters are specifically defined terms in the **Followed Policy**. As respects this **Policy**, references in the **Followed Policy** to (i) the "**Company**," (ii) "this **Policy**," and (iii) Declarations, limits of liability or retentions shall mean, respectively, (i) Iron-Starr Excess Agency Ltd., (ii) this Excess Liability Insurance Policy — AEGIS Follow Form including the Declarations and Schedule A thereto (without changing the substance of any cross-referenced provisions), and (iii) the Declarations, limits of liability or retentions of this **Policy**.

The following terms in boldface type in this **Policy** are defined as follows:

- (a) "**Followed Policy**" means the Policy of Excess Liability Insurance effected with Associated Electric & Gas Insurance Services Limited and endorsements agreed to by the **Company**.
- (b) "**Ultimate Net Loss**" means the total INDEMNITY and DEFENSE COSTS with respect to each OCCURRENCE which is, and/or but for the amount thereof would be, covered under this **Policy**.
- (c) "**Primary and Underlying Excess Insurance**" means the policies of insurance issued by the primary and underlying excess insurers with the stated limits and self-insured retentions set forth (or which, should have been set forth) on Schedule A hereto.

IV. EXCLUSIONS

Except as provided in this Article IV, all of the Exclusions of the **Followed Policy** shall apply to this **Policy**, and in addition, the following Exclusions shall apply:

(a) **POLLUTION**

The following provisions of the **Followed Policy** do not apply to this **Policy**: definition X (POLLUTION LIABILITY) of Article II, that portion of Exclusion E which excepts "POLLUTION LIABILITY," Exclusion F (relating to POLLUTANTS and POLLUTION LIABILITY) and any other provisions of the **Followed Policy** which grant coverage as respects POLLUTION LIABILITY, and in place of the foregoing, the following provisions apply to this **Policy**.

This **Policy** does not apply to actual or alleged:

- (1) (i) liability for BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE arising out of the **Discharge** of POLLUTANTS into or upon land or real estate, the atmosphere, or any watercourse or body of water whether above or below ground or otherwise into the environment; or
- (ii) liability, loss, cost or expense of any INSURED or others arising out of any direction or request, whether governmental or otherwise, that any INSURED or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize POLLUTANTS.

This Exclusion applies whether or not such **Discharge** of such POLLUTANTS:

- (i) results from the INSURED'S activities or the activities of any other person or entity;
 - (ii) is sudden, gradual, accidental, unexpected or unintended; or
 - (iii) arises out of or relates to industrial operations or the waste or by-products thereof.
- (2) Paragraph (1) of this Exclusion does not apply to:
- (i) liability of the INSURED for BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE caused by a **Discharge** of POLLUTANTS which is not expected or intended and which results solely from a **Covered Pollution Peril** provided that (a) such **Discharge** commences upon a date (i.e., a specific day) which can be determined, and (b) the **Covered Pollution Peril** which caused such **Discharge** ceases (or moves out of the vicinity of the **Discharge**) no more than 168 hours after the commencement of the **Discharge**;
 - (ii) (a) liability of the INSURED for BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE caused by an intentional **Discharge** of POLLUTANTS solely for the purpose of mitigating or avoiding BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE which would be covered by this **Policy**; or
 - (b) liability of the INSURED for BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE caused by a **Discharge** of POLLUTANTS which is not expected or intended, but only if the INSURED becomes aware of the commencement of such **Discharge** within thirty (30) days of such commencement;

provided that the INSURED gives the **Company** written notice in accordance with Condition (a) of Article V of this **Policy** of such commencement of the **Discharge** under subparagraphs (2)(ii) (a) or (b) of this Exclusion within ninety (90) days of such commencement. Such notice must be provided irrespective of whether notice as soon as practicable otherwise would be required pursuant to Condition (a) of Article V of this **Policy**.

For purposes of this Exclusion, the following definitions shall apply:

"Covered Pollution Peril" means hostile fire, explosion, lightning, earthquake, windstorm, flood, the collision of an aircraft with a building, another ground-based fixed structure or watercraft or the upset, overturn or collision of an automobile or rail vehicle.

"Discharge" means discharge, emission, dispersal, migration, release or escape (or any series of such of a similar nature at the same site) but does not include any discharge, emission, dispersal, migration, release or escape to the extent that the POLLUTANTS involved remain confined within the building or other man-made structure in which they initially were located.

(b) **PROFESSIONAL SERVICES**

This **Policy** shall not apply to actual or alleged liability for PROPERTY DAMAGE arising out of any act, error or omission in the rendering of professional services, other than architectural and engineering services including, but not limited to, the rendering of legal, accounting, data processing, consulting, or investment advisory services.

(c) **ASBESTOS**

This **Policy** shall not apply to actual or alleged BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE arising out of the manufacture, distribution, sale, installation, removal, utilization, ingestion or inhalation of, or exposure to or existence of, as the case may be, asbestos or any asbestos-containing materials; provided, however, that this Exclusion shall not apply (1) to PROPERTY DAMAGE arising out of asbestos not contained in the INSURED'S PRODUCTS as a result of explosion, hostile fire or lightning; and/or (2) to actual or alleged BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE where such BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE is not related to the asbestos content of goods, materials or products or completed operations. The listing of asbestos herein shall not give rise to an inference that BODILY INJURY, PERSONAL INJURY or PROPERTY DAMAGE attributable to other materials was neither expected nor intended by the INSURED.

(d) **RADIOACTIVE CONTAMINATION (OUTSIDE U.S.)**

This **Policy** does not apply to actual or alleged liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity outside the United States, its territories or possessions or Puerto Rico from any nuclear fuel or from any nuclear waste from the combustion, fission or fusion of nuclear fuel.

(e) **ERISA**

This **Policy** shall not apply to actual or alleged liability arising out of any negligent act, error or omission of any INSURED, or any other person for whose acts any INSURED is allegedly liable, in the **Administration** of any INSURED'S **Employee Benefits Programs**, as defined below, including, without limitation, liability or alleged liability under the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of state statutory law or common law or any other law.

As used in this Exclusion, the term "**Employee Benefits Programs**" means group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social benefits, disability benefits, and any other similar employee benefits.

As used in this Exclusion, the term "**Administration**" means any of the following acts if such acts are authorized by the INSURED:

- (1) giving counsel to employees with respect to the **Employee Benefits Programs**;
- (2) interpreting the **Employee Benefits Programs** ;
- (3) handling of records in connection with the **Employee Benefits Programs**; or
- (4) enrolling, terminating or cancelling employees under the **Employee Benefits Programs**.

(f) **SECURITIES, ANTITRUST, ETC.**

This **Policy** shall not apply to actual or alleged liability arising under any statute, law, ordinance, rule or regulation, whether established pursuant to legislative, administrative, judicial, executive or other authority, of any nation or federal, state, local or other governmental or political body or subdivision thereof relating to:

- (1) the purchase, sale or distribution of securities or offers to purchase or sell securities, or investment counseling or management, including liability under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the so-called "blue-sky" laws of the various states or other jurisdictions;
- (2) antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitation, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Lanham Act and the Hart-Scott-Rodino Antitrust Improvements Act;
- (3) fraud or breach of fiduciary duty;
- (4) criminal penalties;
- (5) the failure to pay when due any governmental tax including income, excise, property, value added and sales tax, or tariff, license fee or other governmental fee which is incidental to the conduct of business, or any assessment, fine, or penalty related thereto;
- (6) copyright, patent or trademark infringement other than with respect to titles or slogans;

- (7) any defect in or impairment to title to real property, including fixtures, whether or not owned by an INSURED;
- (8) disclosure relating to, or other regulation of sales of or offers to sell, real property;
- (9) liability or alleged liability arising out of employee, officer or director dishonesty; or
- (10) any liability of an employee, officer or director of an INSURED entity to such INSURED entity.

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No inference shall be made from the express exclusion of liabilities in this Exclusion that this **Policy** would otherwise cover such liabilities or similar liabilities.

V. GENERAL CONDITIONS

In addition to such conditions of the **Followed Policy** as are not inconsistent with the provisions of this **Policy** and conditions in attached endorsements (if any), this **Policy** is subject to the following conditions:

(a) Notice of Claim or Circumstances/Other Notice

The provisions of Article IV, Section (C) of the **Followed Policy** ("Notice of CLAIM or Circumstances") shall apply to this **Policy**, except that:

- (1) the phrase "UNDERLYING LIMITS shown in ITEM 6" is replaced by "the Minimum per OCCURRENCE retention amount shown in Item 2(b) of the Declarations"; and
- (2) Notices of CLAIMS or NOTICES OF CIRCUMSTANCES under this **Policy** must be given, in writing, to the **Company** at the address set forth in Item 10(a) of the Declarations, and such notice will be deemed given when received by the **Company**.
- (3) Notices, other than those described in subsection (2) above, under this **Policy**, including, but not limited to notices as respects cancellation under condition (Q) of the **Followed Policy**, must be given in: if to the **Company**, at the address set forth in Item 10(b) of the Declarations, and if to the INSURED, at the address set forth in Item 1(b) of the Declarations, and such notice shall be deemed given when received by the recipient.

(b) Arbitration

Article IV, Section R ("Dispute Resolution and Service of Suit") of the **Followed Policy** is deleted and replaced by the following provisions:

Any dispute, controversy or CLAIM arising out of or relating to this **Policy** or the breach, termination or invalidity thereof shall be finally and fully determined in London, England under the provisions of the Arbitration Act of 1996 ("Act") and/or any statutory modifications or amendments thereto, for the time being in force, by a Board composed of three arbitrators to be selected for each controversy as follows:

Any party may, in the event of such a dispute, controversy or CLAIM, notify the other party or parties to such dispute, controversy or CLAIM of its desire to arbitrate the matter, and at the time of such notification the party desiring arbitration shall notify any other party or parties of the name of the arbitrator selected by it. The other party who has been so notified shall within thirty (30) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire

for arbitration shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of thirty (30) calendar days, apply to a judge of the High Court of Justice of England and Wales for the appointment of a second arbitrator and in such a case the arbitrator appointed by such a judge shall be deemed to have been nominated by the party or parties who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within (30) calendar days after the appointment of the second arbitrator choose a third arbitrator. In the event of the failure of the first two arbitrators to agree on a third arbitrator within said thirty (30) calendar day period, either of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, apply to a judge of the High Court of Justice of England and Wales for the appointment of a third arbitrator and in such case the person so appointed shall be deemed and shall act as the third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Board of Arbitration for the controversy in question shall be deemed fixed. All CLAIMS, demands, denials of CLAIMS and notices pursuant to this Condition (b) shall be given in accordance with Condition (a) above.

The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable time and place for the hearing and may prescribe reasonable rules and regulations governing the course and conduct of the arbitration proceeding, including without limitation discovery by the parties.

The Board shall, within ninety (90) calendar days following the conclusion of the hearing, render its decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all the parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board and the same shall be final and binding on the parties thereto. Such decision shall be a complete defense to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Without limiting the foregoing, the parties waive any right to appeal to, and/or seek collateral review of the decision of the Board of Arbitration by, any court or other body to the fullest extent permitted by applicable law, including, without limitation, application or appeal under Sections 45 and 69 of the Act.

Any order as to the costs of the arbitration shall be in the sole discretion of the Board, who may direct to whom and by whom and in what manner they shall be paid.

The **Company** and the INSURED agree that in the event that CLAIMS for INDEMNITY or contribution are asserted in any action or proceeding against the **Company** by any of the INSURED's other insurers in any jurisdiction or forum other than that set forth in this Condition (b), the INSURED will in good faith take all reasonable steps requested by the **Company** to assist the **Company** in obtaining a dismissal of these CLAIMS (other than on the merits) and will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the **Company** would have been liable to such insurers for INDEMNITY or contribution pursuant to this **Policy**. The INSURED shall be entitled to assert CLAIMS against the **Company** for coverage under this **Policy**, including, without limitation, for amounts by which the INSURED reduced its judgment against such other insurers in respect of such CLAIMS for INDEMNITY or contribution, in an arbitration between the **Company** and the INSURED pursuant to this Condition (b), which arbitration may take place before, concurrently with and/or after the action or proceeding involving such other insurers; provided, however, that the **Company** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this **Policy** and any other defenses (other than

jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers (and no determination in any such action or proceeding involving such other insurers shall have collateral estoppel, res judicata or other issue preclusion or estoppel effect against the **Company** in such arbitration, irrespective of whether or not the **Company** remained a party to such action or proceeding).

(c) **Law of Construction and Interpretation**

This **Policy**, and any dispute, controversy or CLAIM arising out of or relating to this **Policy**, shall be governed by and construed in accordance with the internal laws of the State of New York, except insofar as such laws:

- (1) may prohibit payment in respect of punitive damages hereunder;
- (2) pertain to regulation under the New York Insurance Law, or regulations issued by the Insurance Department of the State of New York pursuant thereto, applying to insurers doing insurance business, or issuance, delivery or procurement of policies of insurance, within the State of New York or as respects risks or INSUREDS situated in the State of New York; or
- (3) are inconsistent with any provision of this **Policy**;

provided, however, that the provisions, stipulations, exclusions and conditions of this **Policy** are to be construed in an evenhanded fashion as between the INSURED and the **Company**; without limitation, where the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the INSURED or the **Company** or reference to the "reasonable expectations" of either thereof or to contra proferentem and without reference to parol or other extrinsic evidence). To the extent that New York law is inapplicable by virtue of any exception or proviso enumerated above or otherwise, and as respects arbitration procedure pursuant to Condition (b), the internal laws of England and Wales shall apply.

(d) **Discovery Period**

The provisions of Article IV, Condition (N) ("DISCOVERY PERIOD") of the **Followed Policy** apply to this **Policy**, except as follows:

- (1) In Section (1), subparts (a) and (b) of Condition (N), the words "the DISCOVERY PERIOD shall be unlimited" are changed to "the DISCOVERY PERIOD shall be a period of five (5) years" and the reference in Section (2) thereof to "POLICY PREMIUM stated in Item 4" is changed to "the Gross Premium stated in Item 9."
- (2) The following is added as a second paragraph to Section (3) of Condition (N):

As respects limits of liability and retentions during any DISCOVERY PERIOD, the provisions of Article II of this **Policy** shall apply, and the aggregate limit of liability applicable to the last POLICY PERIOD shall apply and shall not be reinstated for the DISCOVERY PERIOD.

(e) **Maintenance of Underlying Limits**

It is a condition of this **Policy** that the policies constituting the **Primary and Underlying Excess Insurance** shall be maintained in full effect during the POLICY PERIOD and, if applicable, any DISCOVERY PERIOD, except for any reduction of the aggregate limits contained therein by reason of payment of ULTIMATE NET LOSS in respect of CLAIMS thereunder (as provided for in Article II, section (a)). Failure of the NAMED INSURED to satisfy this condition shall not invalidate this **Policy**, but in the event of such failure, the **Company** shall only be liable to the same extent as it would have been had the NAMED INSURED complied with this condition.

IN WITNESS WHEREOF, the **Company** has caused this **Policy** to be signed by its duly appointed Authorized Representative.

SPECIMEN



POLICY NO. : _____

SCHEDULE A

SCHEDULE OF UNDERLYING POLICIES

<u>Carrier</u>	<u>Limit</u>	<u>Attachment</u>	<u>Premium</u>	<u>Term</u>
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