



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

In consideration of the payment of premium and in reliance upon the statements in the Declarations of this Policy, the Company agrees as follows:

I. COVERAGE

- A.** This Policy shall provide the Insured with Excess Liability Insurance coverage in accordance with the same warranties, terms, conditions, exclusions and limitations as are contained, on the Inception Date of this Policy, in the **Followed Policy** set forth in Item 7 of the Declarations of this Policy, subject to the premium, limits of liability, retention, policy period, warranties, exclusions, limitations and any other terms and conditions of this Policy including any and all endorsements attached hereto, inconsistent with or supplementary to the **Followed Policy**.
- B.** Notwithstanding **A.** above, in no event shall this Policy follow the terms, conditions, exclusions or limitations in the **Followed Policy** or provide coverage under this Policy with respect to or as a result of any of the following clauses or similar clauses in the **Followed Policy**:
1. Liberalization Clause;
 2. Cancellation, non-renewal or change in terms provisions;
 3. State-specific "No fault", Uninsured Motorist or Underinsured Motorist law, or any similar law;
 4. Crisis Management or Crisis Response endorsement; or
 5. Sublimit of liability, unless coverage for such sublimit is specifically endorsed to this Policy.

II. LIMITS OF LIABILITY

- A.** Where an amount is shown for the aggregate limit of liability in Item 5 of the Declarations of this Policy, the amount stated is the most the Company will pay for all

damages covered under this Policy with respect to coverage subject to an aggregate limit of liability in the **Followed Policy**.

- B.** Subject to **A.** above, the per occurrence, per claim or per loss limit of liability stated in Item 5 of the Declarations of this Policy is the most the Company will pay for all damages arising out of any one occurrence, claim or loss as stated in the **Followed Policy**.
- C.** Defense costs to which this Policy applies shall not reduce the limits of liability stated in **A.** and **B.** above, except to the extent defense costs covered under the **Followed Policy** reduce the limits of liability of the **Followed Policy**.

III. RETENTION

- A.** The Limits of Liability stated in Item 5 of the Declarations of this Policy apply in excess of:
 - 1.** The total of the limits of liability of the **Underlying Policies** applicable on a per occurrence, per claim or per loss basis, but in no event in an amount less than the total of the per occurrence, per claim or per loss limits of liability of the Underlying Excess Policies stated in Item 6 of the Declarations of this Policy.
 - 2.** The total of the limits of liability of the **Underlying Policies** applicable on an aggregate basis, where an amount is shown in the aggregate limit of liability of the **Underlying Policies** stated in Item 6 of the Declarations of this Policy, but in no event in any amount less than the aggregate limits of liability of the Underlying Excess Policies stated in Item 6 of the Declarations of this Policy.
 - 3.** The self-insured retention under the **Followed Policy**, if any, where the aggregate limits of liability determined in **2.** above, has been exhausted.
- B.** This Policy will not apply in excess of any reduced or exhausted limits of liability of the **Underlying Policies** to the extent that such reduction exhaustion is caused by:
 - 1.** Payment of amounts on account of occurrences, claims or losses that are not covered under this Policy;
 - 2.** Uncollectability in whole or in part of the limits of liability of an **Underlying Policy**.
- C.** Notwithstanding **B.1.** above, defense costs incurred by the **Underlying Policies** shall not reduce the limits of liability of such **Underlying Policies**, except to the extent defense costs incurred by underlying insurance, including self-insured retentions, reduce the Insured's retained limit of liability under the **Followed Policy**.

IV. EXCLUSIONS

This Policy shall not apply to:

A. ASBESTOS

Any liability arising directly or indirectly out of asbestos or asbestos containing materials.

B. EMPLOYMENT-RELATED PRACTICES LIABILITY

Any liability arising out of any refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity, and to any obligation to share damages with or to repay someone else who must pay damages because of injury or damage arising out of the employment-related practices, policies, acts or omissions described in the paragraph above.

C. RADIOACTIVE MATTER

Any liability arising out of any radioactive matter, whether or not naturally occurring.

D. KNOWN LOSS

Any liability arising out of a claim or a loss likely to give rise to a claim, of which a **Responsible Insured** was aware prior to the Inception Date set forth in Item 2 of the Declarations of this Policy, regardless of whether such **Responsible Insured** believed such claim or loss might involve this Policy.

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

Responsible Insured means an **Executive Officer** of the Insured, or any manager or equivalent level employee in the Insured's Risk Management, Insurance or Law Department.

Executive Officer means the Chairman of the Board, President, Chief Executive, Operating, Financial and Administrative Officers, Managing Directors, or any Executive or Senior Vice President of the Insured. Where such title is inapplicable, the equivalent level of personnel shall be substituted.

V. DEFINITIONS

The following Definitions apply to this Policy:

A. Followed Policy means the policy listed in Item 7 of the Declarations of this Policy.

B. Underlying Policies means those policies that are scheduled in the Schedule of Underlying Excess Policies in Item 6 of the Declarations of this Policy and any other applicable underlying insurance, including any self-insured retentions.

VI. CONDITIONS

A. ARBITRATION

1. Any and all disputes arising under or relating to this Policy, including its formation and validity, and whether between the Company and the Insured or any person or entity deriving rights through or asserting rights on behalf of the Insured, shall be finally and fully determined in London, England under the provisions of the Arbitration Act 1996 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:
 - a. Any party to the dispute may, once a claim or demand on his part has been denied or remains unsatisfied for a period of twenty (20) calendar days by any other, notify the others in writing of its demand for arbitration of the matter in dispute, and at the time of such notification the party demanding arbitration (hereinafter, the "Petitioner") shall notify any other party or parties (hereinafter, "Respondents") of the name of the arbitrator selected by Petitioner. Within thirty (30) calendar days thereafter, the Respondents shall select an arbitrator and notify the Petitioner of the name of such second arbitrator. If the Respondents shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the Petitioner may, after an additional period of thirty (30) calendar days from the date notice is given to the Respondents, request a judge of the High Court of Justice of England and Wales to appoint a second arbitrator, and in such a case, the arbitrator appointed by such a judge shall be deemed to have been nominated by the Respondents. Within thirty (30) calendar days after the appointment of the second arbitrator, the two arbitrators shall 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, any of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, request a judge of the High Court of Justice of England and Wales to appoint 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.
 - b. The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable time and place for the arbitration hearing and may in such written notice or at the time of the commencement of the hearing, prescribe reasonable rules and regulations governing the course and conduct of the hearing including without limitation, document and deposition discovery by the parties.
 - c. The Board shall, within ninety (90) calendar days following the conclusion of the hearing, render its written decision on the matter or matters in controversy 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. Judgment upon the arbitration award may be entered in any court of competent jurisdiction.

- d. Any order as to costs 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.
2. 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 above, 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 provision; 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 jurisdiction defenses, as it would have been entitled to raise in the action or proceeding with such insurers.

B. LIMITED CONSENT TO JURISDICTION

Solely for the purpose of effectuating arbitration under Condition A. of this Section VI, including the enforcement of any award entered in such arbitration:

1. The Company, at the request of the Insured, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any Court of competent jurisdiction of the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the party named in Item 9(a) of the Declarations and that in any suit instituted against it to effectuate arbitration or to enforce any award entered in such arbitration, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal;
2. The party named in Item 9(a) of the Declarations is authorized and directed to accept service of process on behalf of the Company in any suit or action within the scope of this Condition B. or upon the request of the Insured to give a written undertaking to the Insured that such party will enter a general appearance on the Insured's behalf in the event such a suit shall be instituted;

3. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any suit or action by the Insured within the scope of this Condition B., and hereby designates the party named in Item 9(a) of the Declarations as the person to whom the said officer is authorized to mail such process or a true copy thereof.

C. CANCELLATION CLAUSE

1. This Policy may be canceled by the first Named Insured listed in Item 1 of the Declarations of this Policy by mailing or delivering to the Company at the address set forth in Item 9(b) of the Declarations advance written notice of cancellation. This Policy may be cancelled by or on behalf of the Company by delivering to the first Named Insured or by mailing to the first Named Insured, by registered, certified, or other first class mail, at the first Named Insured's address set forth in Item 1 of the Declarations, written notice stating when thereafter, not less than fifteen (15) days in the event any premium is not paid when due, and not less than sixty (60) days in all other cases, cancellation shall be effective. Proof of mailing of such notice as aforesaid shall be sufficient proof of notice. It is agreed that the first Named Insured shall act on behalf of all Insureds with respect to giving and receiving notice of cancellation. The Policy Period terminates at the date and hour specified in such notice, but in case of notice of cancellation by the first Named Insured, in no event prior to the date such notice is received by the Company.
2. If this Policy shall be canceled by the first Named Insured, the Company shall return ninety percent (90%) of the unearned portion of the premium calculated on a pro rata basis unless there is a Minimum Earned Premium set forth in Item 8 (b) of the Declarations, in which case the Company will retain the Minimum Earned Premium and return the difference, if any, between the Minimum Earned Premium and the unearned portion of the premium calculated on a pro rata basis.
3. If this Policy shall be cancelled by the Company, then the Company shall return to the first Named Insured the unearned portion of the premium calculated on a pro rata basis.
4. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

D. ASSISTANCE AND COOPERATION

1. The Company shall have the right but not the duty to assume charge of the defense or settlement of any claim or suit against the Insured to which this Policy may apply upon exhaustion of the applicable limits of liability of the **Underlying Policies**. If the Company has exercised such right, it may withdraw from the defense and tender the defense to the Insured upon exhaustion of the applicable limits of liability under this Policy. If the Company does not exercise the right to assume charge of such defense or settlement, or if the applicable limits of the **Underlying Policies** are not exhausted, the Company shall have the

right and shall be given the opportunity to associate effectively with the Insured or the Underlying Insurer or both, in the defense and control of any claim or suit likely to involve this Policy. In such events, the Insured, the Underlying Insurer and the Company shall cooperate in the defense of such claim or suit.

2. The Insured shall not, except at its own expense, settle any claim or suit or incur any defense costs for an amount to which this Policy applies without the Company's written consent.

E. CHANGES IN FOLLOWED POLICIES

If during the Policy Period of this Policy, the terms, conditions, exclusions or limitations of the **Followed Policy** are changed in any manner from those in effect on the inception date of this Policy, the Insured shall as a condition precedent to its rights under this Policy give to the Company as soon as practicable written notice of the full particulars thereof. This Policy shall become subject to any such changes upon the effective date of the changes in the **Followed Policy**, but only upon the condition that the Company agrees to follow such changes in writing and the Insured agrees to any additional premium or amendment of the provisions of this Policy required by the Company relating to such changes. Further, such change in coverage is conditioned upon the Insured's payment when due of any such additional premium required by the Company relating to such changes.

F. GOVERNING LAW AND INTERPRETATION

This Policy shall be construed in accordance with the substantive laws of the State of New York, except:

1. If the **Followed Policy** is construed under applicable law to provide coverage for punitive damages, then, notwithstanding New York law, coverage for punitive damages under this Policy shall be construed in the same manner;
2. Insofar as such laws 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 of issuing or delivering policies of insurance within the State of New York; or
3. Insofar as such laws are inconsistent with any express provision of this Policy.

Provided, however, that the terms, conditions and exclusions 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 terms, conditions and exclusions of this Policy: without regard to authorship of the language; without any presumption, arbitrary interpretation, construction in favor of either the Insured or the Company or reference to the "reasonable expectations" of either party; and without reference to parol or other extrinsic evidence.

G. MAINTENANCE OF UNDERLYING INSURANCE

While this Policy is in effect, the Insured agrees to maintain the **Underlying Policies** in full force. The Insured's failure, or the failure of others, to comply with this Condition will not invalidate this Policy, but in the event of such failure, the Company will only be liable to the same extent as if there had been compliance.

H. PAYMENT OF PREMIUM

The first Named Insured listed in Item 1 of the Declarations of this Policy shall be responsible for and act on behalf of all Insureds with respect to the payment of any premiums due under this Policy.

I. REQUIRED NOTICES TO COMPANY BY INSURED

1. Notice of Offense, Claim or Loss

- a.** The Insured shall, as a condition precedent to the obligations of the Company under this Policy, give written notice as soon as practicable to the Company of any offense, claim or suit likely to involve this Policy.
- b.** Without limiting the requirements of paragraph a. above, the Named Insured shall separately, and as soon as practicable, give written notice to the Company when a payment is made or reserve established for any offense, claim or suit which has brought the total of all payments and reserves by the Insured, or Underlying Insurers to a level of twenty-five percent (25%) or more of the Underlying Aggregate Limit.

2. Notice Regarding Underlying Insurance

The Insured shall, as a condition precedent to the obligations of the Company under this Policy, give written notice to the Company of the following events as soon as practicable but in no event later than thirty (30) days after an Insured has become aware of the event:

- a.** Any **Underlying Policy** being cancelled or non-renewed or otherwise ceasing to be in effect or being uncollectible in part or in whole; or
- b.** Any Underlying Insurer being subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or being taken over by any regulatory authority.

3. Notice Regarding Material Change

The Insured shall, as a condition precedent to the obligations of the Company under this Policy, give written notice to the Company of the following events as soon as practicable but in no event later than thirty (30) days after an Insured has become aware of the event: that the Named Insured is consolidating with or merging with or into, or transferring all or substantially all of its assets to, or acquiring or being acquired by any natural person or entity or group of natural persons and/or entities acting in concert.

With respect to the Notice required in Paragraphs 1, 2 and 3 of this Condition I., notice to an Underlying Insurer shall not constitute notice to the Company. Notice under this Policy shall be given to the Company at the appropriate address set forth in Item 9 of the Declarations of this Policy.

J. RESTRICTIVE AS UNDERLYING

Notwithstanding any provision to the contrary in this Policy, including, without limitation, the Coverage provisions in Section I of this Policy, if any **Underlying Policy** with limits in excess of the **Followed Policy** but underlying to this Policy (the "Intervening Policy") contains warranties, terms, conditions, exclusions or limitations more restrictive than the **Followed Policy**, whether on the effective date of this Policy or at any time during the Policy Period of this Policy, then this Policy shall be deemed to follow those more restrictive warranties, terms, conditions, exclusions or limitations of the Intervening Policy.

K. UNIMPAIRED UNDERLYING LIMITS

The Insured warrants that the aggregate limits of the **Underlying Policies**, as shown in the Schedule of Underlying Insurance, shall be unimpaired as of the effective date of this Policy. In the event such underlying aggregate limits are impaired as of the effective date of this Policy, this Policy shall apply as if such aggregate limits were unimpaired. In the event of non-concurrent policy periods between this Policy and **Underlying Policies**, only claims or losses that would be covered 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 liability for any resulting gap in coverage.

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