

EXCESS LIABILITY INSURANCE POLICY

OCCURRENCE FORM

Issued by

XL INSURANCE (CHINA) COMPANY LIMITED

1. PREAMBLE

This **Policy** consists of:

- a) this **Policy** wording; and
- b) each endorsement issued by the **Company** and attached or intended to be attached to the policy wording or intended by the **Company** to form part of this **Policy**; and
- c) the **Current Schedule**

The policy wording, the **Current Schedule** and each endorsement are to be read together.

Any word or expression given a specific meaning in the Clause headed Definitions will mean the same wherever else it appears unless specially stated otherwise.

Marginal notes and headings are used only for the purpose of identification and should not be construed as forming part of the wording for the purpose of interpreting this **Policy**.

2. THE AGREEMENT

In consideration of the payment of the Premium set out in the **Current Schedule**, the **Company** provides indemnity to the **Insured** in accordance with this **Policy**, subject to the limitations, terms and conditions of this **Policy** for the **Period of Insurance** set out in the **Current Schedule**.

This **Policy** is limited to the term specified in the **Period of Insurance** in the **Current Schedule** and is subject to other clauses regarding **Period of Insurance** in this **Policy**.

3. THE COVER

I.

This **Policy** shall provide the **Insured** with excess insurance coverage for **Loss** in accordance with the same warranties, terms, conditions, exclusions and limitations as are contained in the insurance policy or policies (including endorsements) described in Item 7 of the **Current Schedule** ("**Followed Policy**", which refers to any and all policies listed in Item 7) as of the inception date of this **Policy**, except as to the premium, limits of liability, attachment points, **Period of Insurance**, the treatment of disputes provision, the choice of law provision, warranties, exclusions, limitations and any other terms and conditions of this **Policy** inconsistent with the **Followed Policy**.

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 following form coverage afforded hereunder, and any similar conforming changes shall be made as required.

As respects each **Occurrence**, the Limits of Liability set forth in Item 4 of the **Current Schedule** apply only in excess of the lesser of (i) and (ii):

- (i) being an amount equal to the per **Occurrence** limit of liability set forth in Item 5 (a) of the **Current Schedule** and
- (ii) (ii) being an amount that is the greater of (x) the difference between the aggregate limit of liability set forth in Item 5 (b) of the **Current Schedule** and the amount of **Loss** actually paid pursuant to **Underlying Insurance** for the applicable coverage and (y) the Minimum Per Occurrence Retention Amount set forth in Item 4 of the **Current Schedule** ("Minimum Retention Amount").

Subject to the Minimum Retention Amount as respects each **Occurrence**, this **Policy** shall pay **Loss** only in excess of the limits of liability of **Underlying Insurance** as set forth in Item 5 of the **Current Schedule** and shall not drop down or make any payment (notwithstanding anything to the contrary in the **Followed Policy**) for any reason other than exhaustion by actual payment of **Loss** under the **Underlying Insurance**, including, but not limited to, uncollectibility (in whole or in part, by reason of insolvency of the insurer or for any other reason) of any limit of liability included in Item 5 of the **Current Schedule**, cancellation or lapse of any **Underlying Insurance**, or any **Underlying Insurance** containing terms and conditions different from the **Followed Policy**. The risk in respect of the foregoing is retained by the **Insured**.

Notwithstanding the foregoing, but subject to the Minimum Retention Amount as respects each **Occurrence**, if any **Underlying Insurance** shown in the **Schedule of Underlying Policies** 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**.

II.

Notwithstanding anything to the contrary set forth in Item 5: Total Underlying Limits of Insurance of the **Current Schedule**, if any **Underlying Policy** excludes or otherwise does not cover an **Occurrence** or **Loss** (for reasons other than exhaustion of the applicable limit of liability), then the **Company** will not cover such **Occurrence** or **Loss**, as the case may be (i.e., this **Policy** is no broader than any of the **Underlying Insurance**).

If any **Underlying Insurance** contains a stated sublimit of liability or a separate stated limit of liability in respect of any coverage which in either case is less than the limit of liability applicable to other coverages thereunder, this **Policy** shall not apply to any **Occurrence** or **Loss** encompassed thereby, except as otherwise provided by written endorsement to this **Policy**.

4. **EXCLUSIONS**

In addition to all of the exclusions of the **Followed Policy**, the following exclusions also shall apply to the coverage provided by this **Policy**:

- I. This **Policy** does not apply to any loss demand, claim or suit arising out of or related in any way to asbestos or asbestos-containing materials.

The **Company** shall have no duty of any kind with respect to any **Loss**, demand, claim or suit, related thereto.

It is further understood and agreed that this **Policy** will not become excess of any reduced or exhausted underlying aggregate limit of liability or aggregate self-insured retention to the extent such reduction or exhaustion is the result of any **Loss**, demand, claim or suit arising out of or related in any way to asbestos or asbestos-containing material.

- II. This **Policy** shall not apply to any liability arising out of any act, error or omission in the rendering of professional services, including, but not limited to, the rendering of legal, accounting, data processing, consulting, investment advisory, architectural or engineering services.

- III. This **Policy** shall not apply to any liability that arises out of, or constitutes, **Employment Practice Liability**.

For purposes of this Exclusion C:

“**Employee**” means any individual who is employed by and who is paid through the payroll of any **Insured**, including past, present, part time, seasonal and temporary **Employees**, as well as applicants for employment with any **Insured**. Independent contractors, and employees of independent contractors, are not **Employees**, except for temporary or leased personnel or persons determined to be joint **Employees** retained by an **Insured**.

“Employment Practice Liability” means, as respects an **Employee**, any actual or alleged:

- (a) failure to provide equal opportunity of employment or promotion;
- (b) discrimination;
- (c) harassment (sexual or otherwise);
- (d) wrongful termination;
- (e) retaliation (including retaliation against whistleblowers);
- (f) invasion of privacy; or
- (g) defamation, infliction or emotional distress or other tort arising from the facts and circumstances of or related to any of the foregoing.

IV.

Notwithstanding any provision to the contrary within this **Policy** or any endorsement or memorandum thereto it is agreed that this **Policy** excludes **Loss**, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any “**Act of Terrorism**” regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**;

For purpose of this exclusion an “**Act of Terrorism**” means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This **Policy** also excludes **Loss**, damage, cost of expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any “**Act of Terrorism**”.

If the insurers allege that by reason of this exclusion, any **Loss**, damage, cost or expense is not covered by this **Policy** the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

5. STANDARD CONDITIONS

I. The **Company** has no duty to assume control of the investigation, defense or settlement of any claim, suit or proceeding, except, however, the **Company** will assume the defense of a suit brought against the **Insured** seeking damages to which this **Policy** applies:

(1) if all insurers providing the **Underlying Insurance** are obligated by the terms and condition of their policies to assume the defense of such suit; and

(2) after all applicable limits of liability of **Underlying Insurance** have been exhausted by actual payment of **Loss**;

provided, however, that such assumption of the defense shall terminate upon exhaustion of the applicable limit of liability hereunder.

In relation to claims made and/or actions instituted against the **Insured** within the United States of America or Canada, or claims and actions to which the laws of the United States of America or Canada apply, where payments are always included within the applicable limits of this **Policy**; otherwise the provisions of the **Followed Policy** as respects whether **Defense Costs** are included within the applicable limits of liability or are in addition to such limits of liability shall apply to this **Policy**, but, subject to all the limitations, terms, conditions and exclusions applicable to this **Policy**, the **Company** shall be liable only for **Defense Costs** incurred after all applicable limits of liability of **Underlying Insurance** have been exhausted by actual payment of **Loss** or, if applicable, **Defense Costs** and prior to exhaustion of the applicable limit of liability hereunder.

The **Company** in any event has the right to investigate any **Occurrence** or claim and to participate in the investigation, settlement or defense of any claim, suit or proceeding that the **Company** feels may create liability on its part.

II.

The **Named Insured** shall furnish to the **Company** upon request complete and accurate copies of any and all **Underlying Insurance** policies.

A. As a condition precedent to the obligations of the **Company** under this **Policy**, the **Insured** must see to it that the **Company**, is notified in written form as soon as practicable of any **Loss** that may result in a claim or suit under this **Policy**. If the **Insured** deliberately or through its gross negligence fails to notify the **Company** of a **Loss** that the **Company's** ability to determine the nature, cause and degree of damage and any other relevant circumstances is compromised, the **Company** shall not be liable for that proportion of the loss that could not thus be determined, unless the **Company** has known or should have known of the **Loss** or claim in a timely manner through other channels.

B. The **Insured** shall also provide other claim information or reports as reasonably requested by the **Company**.

C. No amendment, addition or modification to the **Followed Policy** which causes a material change in risk shall operate to alter the terms, conditions, exclusions or limitations of the coverage provided by this **Policy**, except as set forth by written endorsement hereto.

The **Company** shall not be required to issue such an endorsement, and may charge additional premium for issuing such endorsement.

III.

While this **Policy** is in effect, the **Insured** agrees to maintain the **Underlying Insurance** 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 the same extent as if there had been compliance.

IV.

The **Insured** may not, without the **Company's** written consent (which shall not be unreasonably withheld), incur any expense or make any payment which may involve this **Policy**. In the absence of such consent, the **Company** shall not be bound by and is entitled to review any such expense or payment made by the **Insured**. In no case shall the **Company** be liable for any loss not falling within the cover provided under this Policy or exceeding the Limit of Liability set forth in Item 4 of the **Current Schedule**.

The **Company** shall:

- (a) perform claim assessment and determine whether the claim falls within the cover provided under this **Policy** within 30 days after receiving a claim and the complete evidences and materials for claim from the **Insured**.
- (b) give a timely and one-off notice to the **Insured**, requesting to provide supplementary claim information if the claim information provided by the **Insured** is incomplete.
- (c) notify the **Insured** of the assessment result. For a claim which falls within the cover provided under this **Policy**, the **Company** shall make the payment within 10 days after reaching an agreement on claim payment with the **Insured** according to this **Policy**. For a claim which does not fall within the cover provided under this **Policy**, the **Company** shall, within 3 days after completing the assessment, send a notice denying the claim to the **Insured** and give reasons.

If the **Company** cannot determine the amount of indemnity to be paid within 60 days after receiving a claim and the relevant evidences and materials, it shall first pay the amount which can be determined according to the evidences or materials received, and then pay the difference after it finally determines the amount of indemnity.

The indemnity liability of the **Company** is based on the **Insured's** liability determined by one of the following ways:

- (1) agreed upon by the **Insured** and the claimant/injured third party who claims against the **Insured** for damages, and confirmed by the **Company**;
- (2) awarded by any arbitration authority;
- (3) adjudged by any court;
- (4) otherwise determined upon approval by the **Company**.

VI.

The **Company** may directly indemnify an injured third party for **Loss** caused by the **Insured** according to law or this Policy.

Where the indemnity liability of the **Insured** to the injured third party has been determined, at the request of the **Insured**, the **Company** shall directly indemnify the injured third party. If the **Insured** has failed to request the **Company** to directly indemnify the injured third party, the injured third party shall have the right to directly request the **Company** to make the claim payment to the extent that the injured third party shall be indemnified for.

Where the **Insured** causes any **Loss** to an injured third party and the **Insured** has not indemnified the injured third party for the damage, the **Company** shall not make claim payment to the **Insured**.

VII.

The limitation of action for an **Insured** to make a claim against the **Company** shall be two years, which shall begin from the date when the **Insured** knows or should have known the occurrence of the insured event.

VIII.

It is agreed that should any dispute arise concerning this **Policy**, the dispute will be determined in accordance with the laws of the People's Republic of China.

In relation to any such dispute, the **Company** and the **Insured** shall use their best efforts to reach amicable settlement through negotiation. In case of failure to reach a settlement through negotiation, the dispute shall be submitted to the arbitration authority stated in the **Current Schedule** for arbitration. If there is no arbitration authority agreed in the **Current Schedule** and no arbitration agreement is reached after the dispute arises, the dispute shall be submitted to the people's court of the PRC for litigation.

Nothing in this Clause affects the assessment of an **Insured's** liability towards claimants/injured third parties.

IX. The **Policy Holder**, listed in Item 1 of the **Current Schedule**, shall be responsible for the payment of any premiums under this **Policy**.

The **Named Insured**, listed in Item 1 of the **Current Schedule**, shall be responsible for and act on behalf of all **Insureds** with respect to determination and receipt of payments of **Loss** due under this **Policy**.

X. The **Insured** warrants that the underlying aggregate limits, where applicable, as shown in Item 5(b) of the **Current Schedule** shall be unimpaired as of the inception date of this **Policy**.

In the event of non-concurrent policy periods between this **Policy** and any **Underlying Insurance**, only covered events taking place during the **Period of Insurance** 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.

XI.. Cancellation provisions of this **Policy** shall follow the cancellation provisions of the **Followed Policy** except as provided by endorsement hereto.

XII. Where marginal notes and headings are used in this **Policy** they are purely descriptive in nature and are not intended to be used for interpretive purposes.

XIII.

The **Insured** shall give immediate notice in writing of any change in facts or circumstances that comes to the **Insured's** knowledge which materially varies the risk, the subject of this Insurance, at any time during the existence of this **Policy**.

If any such change materially increases the risk, the **Company** may increase the insurance premium or cancel this **Policy**. If the **Company** cancels this **Policy**, it shall refund the insurance premium to the **Policy Holder** after deducting the part of premium for the period from the inception date of the insurance coverage to the date of policy cancellation as agreed upon in this **Policy**.

Where the **insured** fails to perform the notification obligation prescribed in the preceding paragraph, the **Company** shall not be liable to pay for the loss resulting from such materially increased risk.

XIV.

The **Insured** shall:

- (a) comply and ensure the workers, employees and agents of the **Insured** comply with with all statutory obligations, bye-laws or regulations in respect of fire prevention, safety, production operation, and labour protection;
- (b) strengthen supervision, take reasonable precautions and make every effort to avoid or reduce the occurrence of any liability accident, and maintain safety of the subject matter insured.

The **Company** may examine the **Insured's** performance of the condition stipulated in the preceding paragraph and propose written suggestions to the **Insured** to eliminate risks and latent problems undermining the safety, which shall be conscientiously implemented by the **Insured**. If the **Insured** fails to fulfil its obligation of reasonable care stipulated in this clause, the **Company** shall have the right to increase insurance premium or cancel this **Policy**.

XV.

In the event of a payment under this **Policy** to or on behalf of the **Insured**, the **Company** shall be subrogated to all the **Insured's** rights of recovery against all persons and organisations to the extent of the indemnity paid by the **Company** and the **Insured** shall execute and deliver instruments and papers and do all that is necessary to assist the **Company** in the exercise of such rights.

Where the **Insured** has been indemnified by any liable persons or organisations after an **Occurrence**, the **Company** may, when making claim payment, deduct the corresponding amount which the **Insured** has been indemnified by such liable persons or organisations.

If the **Insured** waives the right of indemnity against the liable persons or organisations after an **Occurrence** and before the **Company** makes claim payment, the **Company** shall not be liable for the loss.

Where the **Insured** waives the right to claim indemnity against the liable persons or organisations without the written consent of the **Company** after the **Company** makes claim payment to the **Insured**, the waiver shall be null and void.

Where the **Insured**, deliberately or for gross negligence, causes the **Company** to be unable to exercise the subrogation right, the **Company** may deduct or require the **Insured** to refund what the **Company** has paid out.

XVI.

Where the **Company** makes any inquiry about the insured subject matter or the **Insured** when concluding this **Policy**, the **Policy Holder** must truthfully disclose.

Where the **Policy Holder** deliberately or through its gross negligence fails to perform the duty of truthful disclosure so as to affect the **Company's** decision on whether or not to accept the risk of the insurance or to raise the insurance premium rate, the **Company** shall have the right to rescind this **Policy**.

The **Company's** right to rescind this **Policy** as prescribed above will lapse if not exercised within 30 days from the date when the Company knows the cause of rescission. After two years from the date when this Policy is issued, the **Company** shall not rescind this Policy; in event of an **Occurrence**, the **Company** shall be liable for the loss under this **Policy**.

Where the **Policy Holder** deliberately fails to perform the duty of truthful disclosure, the **Company** shall not be liable for the loss which occurs before this **Policy** is rescinded, and shall not refund the insurance premiums.

Where the **Policy Holder** fails to perform the duty of truthful disclosure due to gross negligence, which has a material impact on the occurrence of an insured event, the **Company** shall not be liable for the loss which occurs before this **Policy** is rescinded, but must refund the insurance premiums collected.

If the **Company** was already aware that the **Policy Holder** failed to perform the duty of truthful disclosure when this Policy was issued, the **Company** shall not rescind this Policy and shall be liable for the loss under this **Policy**.

6. DEFINITIONS

Terms appearing in boldface type in this **Policy** are expressly defined below or elsewhere in this **Policy** as follows:

“**Company**” means XL Insurance (China) Company Limited.”

“**Current Schedule**” means the Schedule or certificate signed by the authorized person of the **Company** and attached or intended to be attached to the Excess Liability Insurance Policy, or any schedule or certificate which replaces it.

“**Defense Costs**” shall have the same definition as such term or the equivalent term in the **Followed Policy** or, if not defined therein, shall mean reasonable and necessary expenses and costs incurred in investigating and/or defending against any claim, suit or other proceeding, and shall include, without limitation, attorneys’ fees.

“**Insured**” means each entity or person which is insured under all **Underlying Insurance** in the same capacity as which such insurance is afforded.

“**Loss**” shall have the same definition as such term, “ultimate net loss” or the 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, and/or but for the amount thereof would be, covered under the **Followed Policy** less any salvages or recoveries.

“**Occurrence**” shall have the same definition as in the **Followed Policy** or, to the extent that term is not used in the **Followed Policy** as the basis for determining the application of limits of liability and/or retentions thereunder, then “**Occurrence**” shall have the same meaning as the term used for that purpose in the **Followed Policy**.

“**Period of Insurance**” means the period commencing on the inception date and ending on the expiry date specified in the **Current Schedule**.

"Policy Holder" means Companies as listed in item **1(a)** of the **Current Schedule**. Unless otherwise provided in this Policy, the **"Policy Holder"** shall be the **Insured**.

"Underlying Insurance" means all of the insurance policies set forth on the **Schedule of Underlying Policies** attached hereto.

SAMPLE

IMPORTANT NOTICE TO POLICY HOLDER AND INSURED

Insurer's Duty of Explanation

Before you enter into this **Policy**, please carefully read this **Policy** especially the clauses highlighted in grey background and contact [86 21 6058 3988] for any queries regarding any terms and conditions; otherwise you are deemed to fully understand and accept the terms and conditions of this **Policy**.

Privacy

Privacy legislation regulates the way private sector organisations collect, use, keep, secure and disclose personal information. The **Company** has developed a privacy policy which explains what type of personal information we hold about you and what the **Company** does with that information. Please contact the **Company** or your broker to obtain more information about the **Company's** policy.

English Policy

This Policy is issued in both Chinese and English. In the event of any conflict or discrepancy between the Chinese version and the English version, the Chinese version shall prevail.

Policy Information Enquiry

You may verify policy and claim information through telephone enquiry, online enquiry and counter enquiry. Should you have any questions, please contact us. Our telephone number is 86 21 6058 3988.