
XL INSURANCE (CHINA) COMPANY LIMITED
EXCESS FOLLOW FORM POLICY

NOTE

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENCE EXPENSES OR LEGAL REPRESENTATION EXPENSES. THE TERMS IN BOLD PRINT HAVE THEIR SPECIAL MEANINGS, PLEASE SEE "DEFINITIONS" IN THIS POLICY. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY, IN PARTICULAR, THE EXCLUSION PROVISIONS OR PROVISIONS THAT LIGHTEN THE INSURER'S LIABILITY. **SHOULD YOU HAVE ANY QUERIES, PLEASE CONTACT US IN TIME; OTHERWISE YOU ARE DEEMED TO FULLY UNDERSTAND AND ACCEPT THE TERMS AND CONDITIONS OF THIS POLICY.**

THIS POLICY IS ISSUED IN BOTH CHINESE AND ENGLISH. IN THE EVENT OF ANY CONFLICTS OR DISCREPANCIES BETWEEN THE CHINESE VERSION AND THE ENGLISH VERSION, THE CHINESE VERSION SHALL PREVAIL.

CONTEXT

I.	INSURING AGREEMENT	3
II.	DEFINITIONS	3
III.	DEPLETION OF UNDERLYING LIMITS OF LIABILITY	3
IV.	MAINTENANCE OF UNDERLYING INSURANCE	4
V.	PRIOR OR PENDING LITIGATION EXCLUSION	5
VI.	CLAIM PARTICIPATION	5
VII.	LIMIT OF LIABILITY	5
VIII.	NOTICE	5
IX.	CHANGES IN EXPOSURE	6
X.	SUBROGATION	6
XI.	CLAIM SETTLEMENT	7
XII.	POLICY TERMINATION	8
XIII.	ALTERATION	8
XIV.	POLICY CONSTRUCTION	8
XV.	DISPUTE RESOLUTION AND GOVERNING LAW	8
XVI.	LIMITATION OF ACTION	9
XVII.	CURRENCY	9
XVIII.	EFFECTIVENESS	9

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to XL Insurance Company Ltd (hereinafter the "**Insurer**") and subject to all of the terms, conditions and endorsements of this Policy, the **Insurer** and the **Applicant**, on its own behalf and on behalf of all persons and entity(s) entitled to coverage hereunder, agree as follows:

I. **INSURING AGREEMENT**

The **Insurer** will provide the **Insured** with insurance coverage for claims first made against the **Insured** during the **Policy Period** in excess of any Uninsured Retention and in excess of the **Underlying Insurance** stated in Item 6 of the Schedule. Coverage hereunder will apply in conformance with the terms, conditions, endorsements and warranties of the **Followed Policy** except as otherwise stated herein. The coverage hereunder will attach only after the **Underlying Insurance** is exhausted solely as the result either of **Shaved Limit Exhaustion** or the issuers of the **Underlying Insurance** having paid loss covered under the **Underlying Insurance**. In no event will the coverage under this Policy be broader than the coverage under any policy of the **Underlying Insurance**.

II. **DEFINITIONS**

- A. "**Applicant**" means the institution set forth in Item 2 of the Schedule.
- B. "**Followed Policy**" means the policy designated in Item 6 (a) of the Schedule.
- C. "**Insured**" means, either in the singular or plural, those persons or organisations designated as insureds in the **Followed Policy**.
- D. "**Insurer**" means XL Insurance (China) Company Limited, a limited liability company incorporated in the People's Republic of China.
- E. "**Named Insured**" means the entity listed in Item 2 of the Schedule.
- F. "**Policy Period**" means the period designated in Item 4 of the Schedule, or to any earlier cancellation date.
- G. "**Shaved Limit Exhaustion**" means the **Insured** paying loss covered under the **Underlying Insurance**.
- H. "**Underlying Insurance**" means all policy(ies) designated in Item 6 of the Schedule.

III. **DEPLETION OF UNDERLYING LIMITS OF LIABILITY**

- A. This **Policy**, subject to the terms, conditions, limitations and endorsements of this **Policy** and the **Followed Policy**, will continue to apply for subsequent claims or loss excess of insurance remaining under the **Underlying Insurance**, in the event of the reduction or exhaustion of the limits of liability of the **Underlying Insurance** as the result of the actual payment of covered loss by the applicable insurers(s) thereunder, and/or **Shaved Limit Exhaustion**.

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- B. This **Policy**, subject to the terms, conditions, limitations and endorsements of this Policy and the **Followed Policy**, will continue for subsequent claims or loss as primary insurance in the event of the exhaustion of all of the limits of liability of the **Underlying Insurance** as the result of the actual payment of covered loss by the applicable insurer(s) thereunder, and/or **Shaved Limit Exhaustion**.
- C. Any risk of uncollectibility with respect to the **Underlying Insurance**, including but not limited to financial impairment or insolvency of the **Underlying Insurance**, will be expressly retained by the **Insured** and will not be assumed by the **Insurer**.
- D. This **Policy** is issued in reliance upon all applications, statements and warranties made and information furnished both for this **Policy** to the **Insurer** and to the issuers of the **Underlying Insurance**, which shall be deemed attached hereto and made a part hereof.
- E. In no event will the coverage under this **Policy** be broader than the coverage under any policy of the **Underlying Insurance** and no coverage applies under this **Policy** to any sub-limited coverage in any policy of the **Underlying Insurance**, however, this **Policy** will recognize erosion of the **Underlying Insurance** due to such sub-limit, as outlined in Clause III F, below.
- F. This **Policy** will not drop down for any reason except for:
- (a) the actual payment of loss by the **Underlying Insurance**; or
 - (b) the erosion of the **Underlying Insurance** due to **Shaved Limit Exhaustion**, provided that the **Insurer** shall not be liable under this **Policy** earlier or to any greater extent than it would have otherwise been; or
 - (c) the erosion of the **Underlying Insurance** due to the existence of a sub-limit of liability in the **Underlying Insurance**.

IV. MAINTENANCE OF UNDERLYING INSURANCE

- A. The limit(s) of liability of the **Underlying Insurance** designated in Item 5 of the Schedule shall be maintained during the **Policy Period** in full effect except for any reduction or exhaustion of the aggregate limits of liability available under the **Underlying Insurance** solely by reason of actual payment of loss thereunder. Failure to comply with the foregoing will not invalidate this **Policy** but the **Insurer** will not be liable to a greater extent than if this condition had been complied with. If for any reason the **Underlying Insurance** is not maintained, then the **Insured** will be deemed to be self-insured for that amount of the limit(s) of liability of such **Underlying Insurance**.

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- B. In the event of a change of any kind to the **Underlying Insurance** by endorsement, rewrite or otherwise, the coverage under this **Policy** will become subject to such change only if and to the extent that the **Insurer** consents to such change by written endorsement to this **Policy**.
- C. The **Insurer** will not be liable under this **Policy** earlier or to any greater extent than it would have been as a result of the actual or alleged failure by the **Insured** to give notice or to exercise any extensions under the **Underlying Insurance**, or misrepresentation or breach of warranty with respect to the **Underlying Insurance** than if such actual or alleged failure, misrepresentation or breach had not occurred.

V. PRIOR OR PENDING LITIGATION EXCLUSION

This **Policy** shall follow any exclusion in the **Followed Policy** regarding prior or pending litigation, administrative, regulatory or other proceedings, investigations, demands, suits, orders, decrees or judgments. The applicable date for determining whether any matter is "prior or pending" for the purpose of such exclusion in this **Policy** shall be the Prior & Pending Litigation Date set forth in Item 8 of the Schedule.

VI. CLAIM PARTICIPATION

The **Insurer** may, at its sole discretion, elect to participate in the investigation, settlement and/or defence of any claim against the **Insured** even if the **Underlying Insurance** has not been exhausted and the **Insured** will provide the **Insurer** such information and cooperation as is reasonably requested.

VII. LIMIT OF LIABILITY

The amount stated in Item 5 of the Schedule is the limit of liability of the **Insurer** and shall be the maximum amount payable, including defence Expenses and advanced defence expenses, by the **Insurer** under this **Policy**. Defence Expenses and advanced defence expenses are part of and not in addition to the limit of liability and the payment of such will reduce the limit of liability at the time of payment.

VIII. NOTICE

The **Applicant** and the **Named Insured** will, as a condition precedent to the coverage available under this **Policy**, give written notice as soon as practicable to the **Insurer** of:

- A. any claim under the **Underlying Insurance**, or any situation that is required to be reported under the **Underlying Insurance**;

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- B. the cancellation of any policy of the **Underlying Insurance**;
 - C. any change to the **Underlying Insurance** by rewrite, endorsement or otherwise; or
 - D. any additional or return premiums charged or allowed in connection with any policy of the **Underlying Insurance**.

The **Applicant** will be the sole agent for and will act on behalf, of the **Insured** with respect to all matters under this **Policy**, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or notice of cancellation of this **Policy**, paying premium and receipt of any return premiums.

Notice given to any underlying insurer of any claim or circumstance that could give rise to a claim under the **Underlying Insurance** scheduled in Item 6 of the Schedule will not be deemed notice to the **Insurer**. Notice of any claim or circumstance must include full particulars, including but not limited to: (i) the **Insureds** involved; (ii) the details of the claim or circumstance; (iii) the exposure presented by the claim or circumstance; and (iv) all **Underlying Insurance** notified. Notice of any claim or circumstance must be sent by certified mail or the equivalent to the address set forth in Item 9 of the Schedule; Attention: Claims Manager.

If the **Applicant** or the **Named Insured** deliberately or through its gross negligence fails to give written notice of a claim to the **Insurer**, which makes it difficult for the **Insurer** to determine the nature, cause or degree of the loss, the **Insurer** shall not be liable for the proportion of the loss that cannot be determined, unless the **Insurer** is aware of or should have been aware of the occurrence of the claim from other sources.

IX. **CHANGES IN EXPOSURE**

Where the **Insurer's** exposure under this **Policy** materially increases during the **Policy Period**, the **Insured** shall notify the **Insurer** in timely manner; and then the **Insurer** shall have the right to increase the insurance premium accordingly. If the **Insured** fails to provide immediate written notice to the **Insurer**, the **Insurer** is not liable for any loss caused by the material increase in exposure.

X. **SUBROGATION**

- A. In the event of any payment under this **Policy**, the **Insurer shall be** subrogated to the rights of recovery of the **Insured** to the extent of the payment which the **Insurer** made under this Policy and from the date it makes payment to the **Insured**.

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- B. The **Insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the **Insurer** to effectively bring suit in their name, and will provide all other assistance and cooperation which the **Insurer** may reasonably require.
 - C. Where the **Insureds** have already been indemnified by any liable third party after the occurrence of a claim under the **Underlying Insurance**, the **Insurer** may, when making the claim payment, appropriately deduct the corresponding amount which the **Insureds** have been indemnified by the liable third party.
 - D. Where after the claim under the **Underlying Insurance** occurs and before the **Insurer** makes claim payment, the **Insureds** waive their right of recovery against any liable third party, the **Insurer** shall not be liable for any loss. Where, after the **Insurer** has made claim payment to the **Insureds**, the **Insureds** waive their right of recovery against any liable third party without the written consent of the **Insurer**, such waiver shall be deemed invalid. Where the **Insureds** deliberately or through their gross negligence cause the **Insurer** to be unable to exercise its right of recovery, the **Insurer** may deduct, or require the **Insureds** to refund what the **Insurer** has paid out.

XI. CLAIM SETTLEMENT

- A. When submitting a written notice for a claim, the **Insured** shall provide the **Insurer** with all relevant proofs and materials. If the **Insurer** considers the proofs and materials provided incomplete, the **Insurer** shall give a timely and one-off notice to the **Insured**, requiring to provide supplementary supporting proofs and materials.
- B. If the **Insured** fails to fulfill its obligation of providing proofs and materials for claim, and as a result that the **Insurer** may not be able to assess the loss, the **Insurer** shall not be liable for the proportion of loss not assessable.
- C. Within thirty (30) days upon receipt of a claim notice and the complete proofs and materials for the claim, the **Insurer** shall conduct claim assessment and determine whether the claim falls within the coverage provided under this **Policy**.
- D. The **Insurer** shall notify the **Insured** of the claim assessment result in due course. For a claim which falls within the coverage provided under this **Policy**, the **Insurer** shall make the payment with ten (10) working days after reaching an agreement on claim payment with the **Insured**. For a claim which does not fall within the coverage provided under this **Policy**, the **Insurer** shall, within three (3) working days after completing the assessment, send a notice denying the claim to the **Insured**, and give reasons.
- E. If the amount of claim payment can not be determined within sixty (60) days after the **Insurer** receives a claim notice and relevant proofs and materials, the **Insurer** shall first pay the amount that can be determined based on the proofs

and materials received, and then pay the difference after it finally determines the claim payment.

- F. Notwithstanding the **Insurer** shall not make any claim payment to the **Insured** if the **Insured** causes any loss to a third party but has not indemnified the third party.

XII. POLICY TERMINATION

- a. The **Applicant** may cancel this **Policy** by mailing to the **Insurer** written notice when such cancellation shall be effective, provided the date of cancellation is not later than the expiration of the **Policy Period** set forth in Item 4 of the Schedule.
- b. The **Insurer** will refund the unearned premium computed at the customary short rate if the **Policy** is canceled by the **Applicant**. Under all other circumstances, any unearned premium will be computed pro rata.
- c. Unless otherwise agreed to by the **Insurer** this **Policy** will terminate immediately upon the termination of any policy of the **Underlying Insurance**, whether canceled by the **Applicant** or the insurer of the **Underlying Insurance**. Notice of cancellation or non-renewal of any such policies duly given by any of the applicable insurers shall serve as notice of the cancellation or non-renewal of this **Policy** by the **Insurer**.

XIII. ALTERATION

No change in, modification or assignment of this **Policy** shall be effective unless made by endorsement signed by an authorized employee of the **Insurer**.

XIV. POLICY CONSTRUCTION

The title and any headings or sub-headings in this **Policy** are solely for convenience and form no part of the terms and conditions of this **Policy**. The Schedule to this **Policy** is part of this **Policy**.

XV. DISPUTE RESOLUTION AND GOVERNING LAW

This **Policy** shall be governed and construed in accordance with the laws of the People's Republic of China.

Any dispute arising from or relating to the performance of this **Policy** shall first be settled through friendly negotiation between the **Insured** and the **Insurer**. In the event of failure to reach a settlement through negotiation, the dispute shall be submitted to and solved by arbitral authority set forth in the Schedule for arbitration. In case there is no arbitral authority being set forth in the Schedule, then such dispute shall be submitted to the People's court for litigation.

XVI. LIMITATION OF ACTION

The limitation of action that the **Insured** makes claim against the **Insurer** shall be two (2) years which commence from the date when the **Insured** is aware or shall have been aware of the occurrence of the claim under the **Underlying Insurance**.

XVII. CURRENCY

All amounts under this **Policy** are expressed and payable in the currency set forth in the Schedule. If any amounts given under the judicial judgments and settlement agreement, or the payment of any charges, defense costs or any part of the other expenses incurred under this Policy are stated in a currency other than the currency set forth in the Schedule, the payment of any above costs or expenses shall be made in such currency provided it is permitted by applicable law; otherwise payment under this Policy shall be made in the currency set forth in the Schedule at the rate of exchange for the purchase of the currency set forth in the Schedule issued by the Bank of China on the date [].

XVIII. EFFECTIVENESS

This **Policy** shall come into effect upon the signature by the authorized representative of XL Insurance (China) Company Limited of the Schedule.

SAMPLE