

# MARSH NORDIC FINPRO EXCESS LAYER CONDITIONS

**2015**



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In consideration of the **Policyholder** or the **Insured** having paid or having promised to pay the premium, and subject to all of the terms, conditions and limitations of this excess policy, the insurers described in the Schedule of this policy (**Insurer**) and the **Policyholder** and **Insured** agree as follows:

## 1. Insuring agreement

- 1.1 The **Insurer** will provide the **Insured** with insurance coverage upon the terms, conditions and limitations of the **Primary Policy** except insofar as express provision for any matter is set out in this excess policy, and only insofar as necessary, the terms conditions and limitations set out in this excess policy will prevail over the corresponding terms, conditions and limitations of the **Primary Policy**.
- 1.2 Subject to the **Limit of Liability** the **Insurer** will pay to or on behalf of the **Insured** that proportion of the loss which exceeds the **Underlying Insurance**.
- 1.3 Subject to the provisions of sub-clause 1.4, unless and to the extent that clause 4 of this excess policy applies, the **Insurer** will have no liability under this excess policy unless and until all of the **Underlying Insurance** has been exhausted by the payment of losses under the **Underlying Insurance**.
- 1.4 For the purposes of this excess policy, losses shall be deemed to have been paid under an **Underlying Insurance** if all or any of the insurers subscribing thereto have paid, or have agreed to pay such losses, or have had their liability to pay such losses established by judgment, arbitration award or other final binding adjudication. Such payment will, for the purposes of this excess policy, be deemed to have been made on the date of payment, agreement or adjudication, whichever occurs first.

Furthermore:

- (a) If a payment in respect of a loss is made under an **Underlying Insurance** of an amount which is less than the applicable limit of liability under that **Underlying Insurance** (but the relevant covered loss of the **Insured** exceeds the applicable limit of liability under that **Underlying Insurance**), then such payment will, for the purposes of determining the application of this excess policy to such covered loss, be deemed to exhaust the applicable limit of liability of that **Underlying Insurance** provided the **Insurer** will be liable to pay only that part of the covered loss which exceeds the **Underlying Insurance**.
- (b) If any insurer participating on an **Underlying Insurance** is or becomes **Insolvent** then, for the purposes of this excess policy, such **Insolvent** insurer will be deemed to have paid in full the amount of its liability for losses under such **Underlying Insurance**, but only in the event that either:
  - (i) any other insurer participating on the relevant **Underlying Insurance** pays, or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication, whichever occurs first; or

- (ii) an **Insured** establishes that the **Insurer** would be liable hereunder but for the **Insolvency**.
- (c) The **Insurer** will recognise the erosion of **Underlying Insurance** whether or not cover provided in such **Underlying Insurance** is also provided by this excess policy.
- (d) The **insurer** will recognise the erosion of **Underlying Insurance** as a result of a provision in the **Underlying Insurance** which reduces the limit of liability in **Underlying Insurance** by reason of any amount paid or payable or limited of liability provided under another policy issued by a subsidiary, associate or affiliate of an underlying insurer or its parent company.

## 2. Definitions

- 2.1 **Insolvent** or **Insolvency** means that any step, application, order, proceeding or appointment has been taken or made in respect of an entity for composition or arrangement with creditors, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or that the entity is unable to pay its debts.
- 2.2 **Insured** means the **Policyholder** and all other persons, organisations and entities as are insured under the **Primary Policy** for their own separate insurable interests.
- 2.3 **Insurer** means those entities and/or syndicates who are identified as underwriters or insurers by affixing of their name, seal or stamp in the Schedule of this contract.
- 2.4 **Limit of Liability** means the amount set forth in the Schedule of this policy, which will be the maximum sum the **Insurer** is liable to pay under this excess policy.
- 2.5 **Primary Policy** means the primary contract identified in the Schedule of this policy, and as attached hereto.
- 2.6 **Policy Period** means the period specified in the Schedule of this policy.
- 2.7 **Policyholder** means the entity named in the Schedule of this policy.
- 2.8 **Underlying Insurance** means the **Primary Policy** together with any and all excess policies providing together the amount of cover specified in the Schedule of this policy, and any policies replacing any of them.

### 3. Maintenance of Underlying Insurance

- 3.1 Subject to sub-clauses 3.3 below, all of the **Underlying Insurance** will be maintained during the **Policy Period** in full effect, except for any depletion of underlying limits.
- 3.2 The **Insured's** failure to maintain **Underlying Insurance** will not invalidate this excess policy but, and subject to the application of clause 4, the **Insurer** will not be liable to a greater extent or at an earlier point in time than if sub-clause 3.1 had been complied with. Nothing in this clause will negate clause 6 of this excess policy.
- 3.3 In the event of a failure by the **Policyholder** to give notice or to exercise any extension under any **Underlying Insurance** the **Insurer** will not be liable under this excess policy to a greater extent or at an earlier point in time than they would have been in the absence of such failure.
- 3.4 In the event of the **Insolvency** of any insurer participating on any **Underlying Insurance** the **Insured** shall not be in breach of the obligations under sub-clause 3.1 above if the **Underlying Insurance** is no longer in full force and effect as a result of that **Insolvency**.

### 4. Depletion of Underlying Limits

- 4.1 In the event and to the extent of the depletion or exhaustion of any limit of liability of the **Underlying Insurance** other than as provided for in sub-clause 4.2 below, and as a result of payment of a loss or losses under the **Underlying Insurance**, this excess policy will (subject to the **Limit of Liability** and terms, conditions and limitations of this excess policy) continue and operate for subsequent losses as excess insurance over the amount of the relevant limit of liability remaining under such **Underlying Insurance**.
- 4.2 In the event of the exhaustion of any aggregate limit of liability applicable under the **Underlying Insurance** as a result of the payment of loss or losses under the **Underlying Insurance** this excess policy will (subject to the **Limit of Liability** and terms, conditions and limitations of this excess policy) continue for subsequent losses as primary insurance in respect of any subsequent loss or losses that would otherwise have been covered by such **Underlying Insurance** but for the exhaustion of that aggregate limit of liability.
- 4.3 In the event that this excess policy is required to operate as primary insurance by virtue of sub-clause 4.2 above:
- (a) any excess or retention specified in the **Primary Policy** shall apply to this excess policy, otherwise no excess or retention shall apply to this excess policy;
  - (b) in respect of any loss or losses for which the **Primary Policy** imposed a sub-limit of liability, this excess policy will provide cover for such loss or losses, including any unpaid portion of that sub-limit.

- 4.4 For the purposes of this clause 4, the determination of whether there has been any payment of losses under and/or exhaustion of any **Underlying Insurance** will be made in accordance with sub-clause 1.4. However, and for the purposes of this clause 4 only:
- (a) if and to the extent that paragraph 1.4(a) above applies, any and all amounts representing the difference between:
- (i) any applicable limit of liability of any **Underlying Insurance** and
  - (ii) the amount paid by that **Underlying Insurance**
- will be included in the calculation of the amount excess of which this excess policy shall then operate in accordance with sub-clause 4.1 or sub-clause 4.2 above
- and
- (b) if and to the extent that sub-paragraph 1.4(b)(i) above applies, any and all amounts representing the difference between:
- (i) any applicable limit of liability of any **Underlying Insurance** and
  - (ii) the amount that any insurer participating on the relevant **Underlying Insurance** pays, or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication
- will be included in the calculation of the amount excess of which this excess policy shall then operate in accordance with sub-clause 4.1 or sub-clause 4.2 above.
- 4.5 An **Underlying Insurance** will not be deemed exhausted solely by reason of the **Insolvency** of an insurer participating thereon.

## 5. Claims

- 5.1 Any first notice of a claim or circumstance (or equivalent term by which the **Primary Policy** identifies matters potentially giving rise to notifications thereunder in respect of a loss or losses) required to be given under the terms of the **Primary Policy**, will also be given to the **Insurer** under this excess policy.
- 5.2 In respect of any matter notified pursuant to sub-clause 5.1 above:
- (a) the **Insured** will inform the **Insurer** of any material developments in relation to such matter;
  - (b) without prejudice to paragraph 5.2(a) above the rights and obligations set out in any claims investigation, claims co-operation, claims handling, claims defence, claims assessment and/or claims settlement provisions of the **Primary Policy** will be incorporated into this excess policy, but will not be enforceable for the purpose of this

excess policy unless and until the loss or losses (including any defence costs or other fees incurred by the **Insured** for which indemnity is available under the **Primary Policy**) likely to arise from such matter have the potential to deplete the **Underlying Insurance** such that the policy immediately underlying this excess policy will be eroded to the extent of 50% or more of the limit of liability of such immediately underlying policy.

## 6. Alteration

No amendment to the **Primary Policy** during the **Policy Period** will be effective in extending the scope of this excess policy, until agreed in writing by the **Insurer**.

## 7. Governing Law and Jurisdiction

The constructions, interpretation and meaning of the terms, exclusions limitations and conditions of this excess policy shall be determined in accordance with the laws of the state or country specified in the Schedule of this policy, and any dispute arising hereunder will be subject to the exclusive jurisdiction of the courts of the state or country specified in the Schedule of this policy.

## 8. Dispute Resolution

- 8.1 In the event that a dispute arises between the **Insurer** and the **Insured** under this excess policy, the provisions of the **Primary Policy** are incorporated into this excess policy for the purposes of determining the dispute resolution procedures applicable to this excess policy.
- 8.2 In the event that a dispute arises between the **Insurer** and the **Insured** under this excess policy in relation to matters that are also the subject of a dispute between the **Insured** and the insurers of any **Underlying Insurance** then those disputes shall be heard together in the same court or arbitration proceedings.