



## FOLLOWING FORM EXCESS GENERAL LIABILITY INDEMNITY POLICY

**Policy No:** Sample-06GL

**THIS IS A FOLLOWING FORM EXCESS GENERAL LIABILITY "CLAIMS-FIRST-MADE" POLICY. PLEASE READ THE ENTIRE POLICY AND THE UNDERLYING POLICY DESIGNATED IN ITEM 7 OF THE DECLARATIONS CAREFULLY.**

This Insurance Agreement (the "Policy") is made by and between the Member Insured and Energy Insurance Mutual Limited, a Barbadian mutual company with limited liability (the "Company").

The coverage afforded under this Policy is governed by the provisions in the Underlying Policies attached hereto except where the terms, covenants, exclusions, conditions and definitions contained herein are more specific. If any provision in the Underlying Policies conflicts with or contradicts the provisions, the terms, covenants, exclusions, conditions and definitions contained herein, the Underlying Policies should read without reference to such provision and terms, covenants, exclusions, conditions and definitions this policy shall control. In consideration of the mutual terms, covenants and conditions contained herein and in the Underlying Policies set forth in Item 7 of the Declarations and in reliance on the representations and warranties set forth herein, in the the Underlying Policies and in the Application for Membership and Applications for Insurance, the parties hereto do hereby agree as follows:

### **I. Indemnity Agreement**

The Company agrees, subject to the provisions hereof, to provide the Insureds with coverage during the Policy Period set forth in Item 2 of the Declarations in excess of the Attachment Point set forth in Item 4 of the Declarations and subject to the Limit of Liability set forth in Item 3 of the Declarations resulting from an Occurrence, taking place after the Retroactive Date stated in Item 6 of the Declarations and prior to the expiration of the Policy Period for which a Claim is first made against the Insured or a Notice of Circumstances is first given to the Company during the Policy Period or any Discovery Period, provided, however, that the Attachment Point, the Limit of Liability and the terms, conditions and exclusions of coverage shall be determined under the policy as in effect at the earlier of the date such Claim is first made or the date Notice of Circumstances which gives rise to such Claim is first given. Such coverage shall apply in conformance with the warranties, terms, conditions, definitions and exclusions (except as regards those matters expressly set forth herein) contained in the Underlying Policy specified in Item 7 of the Declarations submitted to the Company and attached hereto. Unless otherwise agreed to in writing by the Company, coverage hereunder shall not be affected by (a) any difference between the form of the Underlying Policy attached hereto and the Underlying Policy actually in effect, or (b) any modification of the Underlying Policy, by endorsement or otherwise, subsequent to its submission to the Company.

The term "Insured" as used herein, shall mean any person or organization insured under the Underlying Policy.

## II. Limit of Liability

- (A) Subject to all the provisions hereof, the Company shall be liable only for that amount of damages resulting from an Occurrence which exceeds the Attachment Point stated in Item 4 of the Declarations and then only up to the Limit of Liability stated in Item 3 of the Declarations, subject to the Annual Aggregate for all Occurrences stated in Item 3 of the Declarations.
- (B) In the event that there are multiple Claims which arise out of the same Occurrence, even if such multiple Claims are made against different insureds, all such multiple Claims shall be deemed to be a single Claim arising out of a single Occurrence and shall be deemed to have been reported at the time that the first of such multiple Claims is made or the time Notice of Circumstances which give rise to such multiple Claims is first given, whichever is earlier.

Notwithstanding anything contained in the foregoing to the contrary and provided that this Policy shall not constitute a renewal of a policy previously issued to the Insured by the Company, with respect to a Common Occurrence (as defined in (C) below) for which a Claim is first made or a Notice of Circumstances is first given prior to the inception date of this Policy by another insured under another policy issued by the Company, and such claim is not excluded hereunder, the claim shall be deemed to have been made or Notice of Circumstances given during the period of this Policy.

- (C) Any Occurrence for which Claims are made against an Insured under this Policy and another insured or other insureds under any other policy or policies issued by the Company shall be deemed to be a Common Occurrence. In the event that the Company's total liability for damages with respect to a Common Occurrence under this Policy and under any other policy or policies issued by the Company exceeds \$100,000,000 then the Company's liability for damages shall be limited to the Insured's Proportionate Share of the Limit of Liability set forth in Item 3 of the Declarations (which Limit of Liability shall be subject to the Annual Aggregate for all Occurrences set forth in Item 3 of the Declarations). The Insured's Proportionate Share shall mean the ratio determined by dividing:
  - (1) the Company's liability for the Common Occurrence to the Insured, which shall be determined by reference to the policy as in effect at the earlier of the date that the first Claim arising out of such Common Occurrence was made or the first Notice of Circumstances which gives rise to such Claim was given, whether by the Insured or an insured under another policy issued by the Company, and calculated as though the Occurrence was not a Common Occurrence, by
  - (2) the Company's total liability to all insureds, including the Insured, which shall be determined by reference to the policies issued by the Company, including this Policy, as in effect at the earlier of the date that the first Claim arising out of such Common Occurrence was made or the first Notice of Circumstances which gives rise to such Claim was given, whether by the Insured or an insured under another policy issued by the Company, and calculated with respect to each such insured, as though the Occurrence was not a Common Occurrence.

In the event that the Company's total liability for damages with respect to a Common Occurrence as calculated above is less than \$100,000,000, then an amount equal to the difference between -

- (1) \$100,000,000 or the Company's total liability for damages with respect to such Common Occurrence but for this subsection (C), whichever is lower, and
- (2) the Company's total liability for damages as calculated above

shall be allocated among the insureds against which such Claim is made in proportion to the amount by which each such insured's damages were reduced pursuant to the above calculation. (The term "insured," as used in this paragraph, means any insured under any policy or policies issued by the Company, including any Insured hereunder.)

The Member Insured agrees that any payment made under this Policy with respect to a Common Occurrence shall be deemed to be provisional until the earlier of:

- (1) the determination by the Company's auditor of the total damages of all insureds as a result of such Common Occurrence; or
- (2) the date five years after the Company's auditor has determined that the reserves established for such Common Occurrence exceed the Limit of Liability specified in Item 3 of the Declarations.

If the amount paid under this Policy with respect to such Common Occurrence exceeds the Insured's Proportionate Share of the amount stated in Item 3 of the Declarations, as determined above, the Member Insured shall refund such excess to the Company promptly.

- (D) The inclusion herein of more than one Insured shall not operate to increase the limit of the Company's Liability as stated in Item 3 of the Declarations.

### III. Definitions

- (A) The terms "Member Insured," "Underlying Policy," "Policy Period," "Attachment Point," "Limit of Liability," "Retroactive Date," shall have the meaning attributed to them on the Declarations Page.
- (B) The term "Occurrence" shall have the meaning attributed to it in the Underlying Policy.
- (C) The term "Claim" shall have the meaning attributed to it in the Underlying Policy.
- (D) The term "Notice of Circumstances" is defined in Article IV. Conditions (G) of this Policy.
- (E) The term "Common Occurrence" shall only apply to losses arising from an Occurrence -
- (1) involving any joint venture, co-venture, joint lease, joint operating agreement or partnership; or
  - (2) arising out of, directly or indirectly resulting from or in any way involving the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, program or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not; or
  - (3) arising out of, directly or indirectly resulting from or in any way involving any change, alteration or modification involving the date change to the year 2000 or any other date change, including leap year calculations, to any such computer system, hardware, program or software or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not.
- (F) The term "Discovery Period" shall mean the period of time set forth in Article IV. Conditions (E) of this Policy.
- (G) The term "Annual Aggregate" set forth in Item 3 of the Declaration Page shall mean the Limit of Liability within the period of one year immediately following the inception of this Policy, or, any anniversary, or, if the time between inception or any anniversary and/or the termination of the Policy is less than one year, the lesser period.
- (H) The term "Application(s) for Insurance" shall mean the EIM Applications for Excess General Liability Application along with any underlying carriers applications for General Liability, Employment Practices Liability, Worker's Compensation, Professional Liability and any other application or supplemental applications for which coverage is requested under this Policy. The term "Application(s)" shall mean Application for Membership, Application for Insurance or a combination of both terms.

#### IV. Conditions

##### (A) Premium

- (1) The Member Insured agrees to pay to the Company, under the terms and conditions set forth herein, the premium specified in Item 5 of the Declarations.
- (2) The liability of the Member Insured shall be limited to the premium due to the Company under the terms of this Policy.

##### (B) Membership

As a prerequisite for becoming a Member of the Company, an Application for Membership and Application for Insurance must be submitted by the Member Insured and accepted by the Company. Such Applications are hereby incorporated into and made a part of this Policy.

The Member Insured becomes a Member of the Company as part of obtaining insurance from the Company and as such is entitled to the privileges and benefits and by entering into this Policy agrees to be subject to, and to be bound by, the obligations and duties of Membership. These are more fully set forth in the Company's Certificate of Incorporation and any amendments thereto and in the bylaws and any amendments thereto which are hereby incorporated into and made a part of this Policy. In no event shall any amendment to the Company's Certificate of Incorporation or the bylaws increase the amount of premium payable hereunder.

The Member Insured is required to complete and submit all renewal Applications prior to the issuance of any policy by the Company subsequent to the Member Insured's initial policy with the Company. All such renewal Applications are hereby incorporated into and made part of this Policy.

##### (C) Non-Duplication of Limit of Liability

In order to avoid the duplication of the Company's Limit of Liability applying to any one Occurrence/Aggregate:

- (1) in the event the Company provides indemnity or defense costs, charges and expenses under this Policy for a Claim, the Insured shall have no right to additional indemnity or defense costs, charges or expenses for such Claim under any other policy issued by the Company to the Insured, and only this Policy shall apply to such Claim regardless of the number of other policies that otherwise could apply to such Claim; and
- (2) in the event the Company shall provide indemnity or defense costs, charges and expenses for a claim under any other policy issued by the Company to the Insured, the Insured shall have no right to additional indemnity or defense costs, charges and expenses for such Claim under this Policy.

##### (D) Warranty

The Member Insured warrants and agrees as follows:

- (1) it has no knowledge at Policy Inception of any fact or circumstance not disclosed to the Company in the Application(s) for this Policy which is likely to give rise to a claim hereunder; and
- (2) that based upon reasonable inquiry and to the best of its knowledge and belief:
  - (a) all information provided to the Company in the Application is true and correct; and
  - (b) no material information has been withheld.

##### (E) Discovery Period

- (1) The Company will provide a Discovery Period at the written request of the Member Insured which shall commence upon the expiration of the Policy Period if this Policy is not renewed

pursuant to subsection (F)(1) of Article IV. hereof, or is cancelled pursuant to subsections (F)(2) or (F)(3) of Article IV. hereof.

The additional premium will vary according to the length of the Discovery Period selected. A 12-month Discovery Period is available for 100% of the annual premium. Any additional Discovery Period is available for an amount to be determined by the Company.

The right to this Discovery Period shall lapse unless written notice of such election, together with the payment of the additional premium due, is received by the Company within 30 days following the effective date of cancellation, termination, or nonrenewal

The Discovery Period, if applicable, shall extend coverage as is afforded by this Policy to apply to any Claim first made against the Insured during the Discovery Period selected, following immediately upon expiration of the Policy, but only with respect to an Occurrence which takes place subsequent to the Retroactive Date and prior to the expiration of the Policy Period. A Claim first made during the Discovery Period will be deemed to have been made on the last day of the Policy Period. The Discovery Period will not reinstate or increase the Limit of Liability or extend the Policy Period.

- (2) In the event renewal terms and conditions differ from those in effect during the Policy Period, the Member Insured shall have the right, upon payment of an additional premium to be determined by the Company but which shall not exceed 100% of the annual premium, to a Discovery Period which shall commence upon the expiration of the Policy Period and end exactly 12 months thereafter. The Discovery Period shall apply only with respect to a Claim resulting from, or a Notice of Circumstances relating to, an Occurrence for which coverage is so restricted or excluded. The right to this Discovery Period shall lapse unless written notice of such election, together with the payment of the additional premium due, is received by the Company within 30 days following the effective date of the renewal.

The Discovery Period, if applicable, shall extend coverage as is afforded by this Policy to apply to any Claim first made against the Insured during the 12 month period following immediately upon expiration of the Policy, but only with respect to an Occurrence which takes place subsequent to the Retroactive Date and prior to the expiration of the Policy Period. A claim first made during the Discovery Period will be deemed to have been made on the last day of the Policy Period. The Discovery Period will not reinstate or increase the Limit of Liability or extend the Policy Period.

(F) Cancellation

- (1) Either party may elect not to renew this Policy, provided that the Member Insured shall have been a Member Insured of the Company for at least two years prior to such non-renewal. The Company, but not the Member Insured, shall be required to provide prior written notice of its election not to renew. Such notice shall be given to the Member Insured not less than sixty days prior to such non-renewal.
- (2) Notwithstanding subsection (1) above, the Member Insured may elect to cancel this Policy by mailing written notice to the Company stating when cancellation is to be effective.
- (3) This Policy may be canceled by the Company upon ninety (90) days prior written notice to the Insured in the event that the Insured breaches any provisions of this Policy, violates any provisions of the Company's Certificate of Incorporation or by-laws, or fails to meet the underwriting standards established by the Company. The insurance under this Policy shall end on the effective date and hour of cancellation stated in the notice.
- (4) In the event of cancellation for non-payment of premium, such cancellation shall become effective ten (10) days after notice was mailed.

(G) Notice of Circumstances

During the Policy Period and any Discovery Period, the Insured shall, as soon as possible, give to the Company Notice of Circumstances of any Occurrence or circumstances which appear likely to give rise to a Claim against the Insured for an amount in excess of one-half of the amount listed as the Attachment Point in Item 4 of the Declarations. The Insured shall supply any further information the Company requests in connection herewith.

If after the giving of such Notice of Circumstances, suit, or other proceeding is instituted against the Insured to enforce the Claim resulting from such circumstances, the Insured shall give Notice of Claim to the Company in accordance with Article IV. Conditions, Section (H) hereof.

(H) Notice of Claim

As a condition precedent to any rights under this Policy, the Insured shall give a written notice of Claim to the Company of any Claim against the Insured for an amount in excess of one-half of the amount listed as the Attachment Point in Item 4 of the Declarations. Such notice of Claim shall be given as soon as practicable.

(I) Governing Law and Interpretation

In view of the diverse locations of the parties purchasing insurance from the Company and the desirability of unified regulation, the parties agree that the Policy shall be construed and enforced in accordance with and governed by the internal law of the State of New York, except insofar as such law may prohibit payment in respect of punitive damages hereunder.

(J) Dispute Resolution

The Company and the Member Insured mutually acknowledge that the form, terms, and conditions of the Policy have been formulated by representatives of the participating members in order to provide insurance coverage which is vital to all participants.

It was desired to have the Company serve as a financially stable and reliable entity, responsive to the coverage needs of its participants, and providing coverage fairly and equitably as to each insured, but taking equally into account fairness and equity as to all insureds as a group.

While every effort has been made to define with clarity and precision the scope of coverage, the Company and the Member Insured mutually acknowledge that situations may arise where the availability of coverage for a Claim under the Policy is disputed.

In light of the foregoing, the Company and the Member Insured agree that:

- (1) the following principles shall govern the interpretation of the Policy:
  - (a) Even-handedness and fairness to both parties;
  - (b) The intentions of the parties, including any extrinsic evidence of intent;
  - (c) The practice of the parties in interpreting and applying the Policy;
  - (d) The cooperative rather than adversarial relationship between the parties;
  - (e) No recourse to rules of construction which apply specifically to the interpretation of policy language in contracts of insurance but not to contractual language in general; and
  - (f) The maintenance of the Company's solvency in light of its limited resources.
- (2) (a) In the event of any dispute between the Insured and the Company as to any matters arising out of or relating to any provision of this Policy, the parties shall attempt to resolve the dispute by use of a mini-trial. The disputing party shall give the other party written notice of its intent to proceed with a mini-trial. This notice shall include a summary of the dispute and may include the evidence and arguments underlying the dispute.

- (b) The mini-trial shall be conducted not more than 120 days after the disputing party's transmission of notice of the dispute and shall last not more than three (3) business days. The mini-trial shall proceed before a panel composed of a senior executive officer from each party with authority to settle the dispute and one neutral advisor, unless both parties agree to proceed without a neutral advisor. In the event a neutral advisor is required, he shall be selected in accordance with paragraph (c) below. The parties may also have present at the mini-trial their counsel, technical experts (in-house or retained) and fact witnesses. The mini-trial shall be conducted in the City of New York.
- (c) In the event a neutral advisor is required, the parties shall exchange names of potential advisors and select from this pool a mutually acceptable candidate. If the parties cannot agree on the selection of a neutral advisor, the president of the Center for Public Resources or his designee shall select a neutral advisor from the Judicial Panel of the Center for Public Resources.
- (d) The neutral advisor is not to mediate or effect a compromise of the dispute. The neutral advisor is to issue a nonbinding opinion to the parties on any issue or issues requested by either party. Either party may also request a nonbinding opinion addressing the merits of any claim and assessing which party is likely to prevail on such claim, so that the parties can determine whether and on what basis the dispute may be resolved without resort to arbitration. The neutral advisor's opinion shall be issued thirty (30) days after the conclusion of the mini-trial if an opinion has been requested and the parties are unable to resolve the dispute after the conclusion of the mini-trial.
- (e) The parties shall promptly agree on the ground rules which will govern the conduct of the parties before, during and after the mini-trial. These ground rules shall include: (i) a schedule for the exchange of documents and short narrative statements summarizing each party's respective position on the dispute; (ii) if the parties mutually agree that discovery is necessary to prepare for the mini-trial, an expedited schedule for such discovery; and (iii) the format of the mini-trial. The parties shall seek the advice and assistance of the neutral advisor, if one has been appointed, in order to resolve any disagreement which may arise regarding the ground rules of the mini-trial.
- (f) If the parties are unable to agree on the ground rules of the mini-trial, either party may make a demand in writing for arbitration upon the other party.
- (g) The senior executive officers who are on the mini-trial panel shall meet immediately after the conclusion of the mini-trial to attempt to resolve the dispute. If they do not resolve the dispute within thirty (30) days of the conclusion of the mini-trial, the neutral advisor, if one has been appointed, will submit to the parties, if so requested, the nonbinding opinion referred to in paragraph (d) above. Within ten (10) days after the receipt of such opinion, the senior executive officers shall meet at least one more time to attempt to resolve the dispute.
- (h) If the parties, in good faith, are unable to resolve the dispute after the meeting(s) of the parties' senior executive officers required in paragraph (g) above, either party may make a demand in writing for arbitration upon the other party. The party submitting the demand for arbitration may not make the demand until ten (10) days after the last meeting of the senior executive officers.
- (i) The fees and expenses of the neutral advisor and the mini-trial shall be apportioned equally to each party. However, in the event the dispute is not settled and instead proceeds to arbitration, these costs shall be assessed against the party who loses in arbitration or, in the event neither party is deemed wholly responsible for the claim or controversy, the costs shall be apportioned between the parties in relation to their responsibility.

- (3) Any claim or controversy between the Insured and the Company not settled in accordance with Section (2) above, shall be submitted to arbitration in New York City by three arbitrators at the request of either the Insured or the Company. The Insured shall appoint one arbitrator and the Company another; the two so appointed shall select a third. If the two arbitrators fail to agree on a third arbitrator for a period of sixty calendar days from the date of their first attempt to select the third arbitrator, then on request of the Insured or the Company such third arbitrator shall be selected by the then President of the Association of the Bar of the City of New York. The Insured and the Company may by express agreement determine the arbitral procedures to be followed; in the event the parties do not agree, New York law, as provided above, shall govern all such matters of arbitral procedure.
- (4) To the extent that any claim or controversy between the Insured and the Company hereunder is not subject to arbitration for any reason whatsoever, the United States District Court for the Southern District of New York shall have exclusive jurisdiction thereof. For such purpose the Insured agrees to accept, without objection to form or manner, service of process by registered mail directed to:

Sample Member Name  
Sample Member Address

For such purpose the Company agrees to accept without objection to form or manner, service of process by registered mail directed to: Energy Insurance Mutual Limited, 3000 Bayport Drive, Suite 550, Tampa, FL 33607-8412. The foregoing consents to service of process are not intended to nor shall they be construed to extend to any claim, controversy, cause of action, or other matter other than as stated in this paragraph.

IN WITNESS WHEREOF, the Insured and the Company have caused this Policy to be executed and attested on their behalf.

Tampa, Florida	ENERGY INSURANCE MUTUAL LIMITED
Date: _____	
Attest: _____	By: _____

Tampa, Florida	MEMBER INSURED
Date: _____	
Attest: _____	By: _____ for Sample Member Name