

THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY PAYMENT OF DEFENSE EXPENSES.

FOLLOW FORM EXCESS POLICY

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to OneBeacon Insurance Company (hereinafter called the "Underwriter") and to the Insurer(s) of the Underlying Insurance, and subject to all of the terms, conditions and endorsements of this Policy, the Underwriter and the Insured agree as follows:

I. INSURING AGREEMENT

- (A) The Underwriter shall provide the **Insured** with insurance excess of the **Underlying Insurance** set forth in ITEM 4 of the Declarations, provided that the **Underlying Insurance** also applies and has been exhausted by actual payment thereunder, or would apply but for the exhaustion of the applicable limit(s) of liability thereunder.
- (B) With respect to any coverage provided by the **Underlying Insurance** on a claims-made basis, this Policy applies only to **Claims** first made against the **Insured** during the **Policy Period**. In all events, Professional Liability coverage shall be deemed to apply on a claims-made basis.
- (C) With respect to any coverage (other than Professional Liability coverage) provided by the **Underlying Insurance** on an occurrence basis, this Policy applies only to **Claims** arising out of an occurrence during the **Policy Period**.
- (D) This Policy will apply in conformance with, and will follow the form of, the terms, conditions, agreements, exclusions, definitions and endorsements of the **Underlying Insurance**, except:
 - (1) the Underwriter will have no obligation under this Policy with respect to any **Claim** that is settled without the Underwriter's written consent;
 - (2) with respect to any provisions to the contrary contained in this Policy;
 - (3) the applicable limit of liability of the **Underlying Insurance** shall be deemed to be reduced or exhausted solely as a result of payments for loss or damages (including costs, charges and expenses) that are covered under this

Policy; and

- (4) the coverage provided by this Policy shall not be broader than any **Underlying Insurance** unless expressly provided herein, including any endorsement hereto.
- (E) The Underwriter will not have any obligation to make any payment hereunder unless and until the full amount of the applicable limit of liability of the **Underlying Insurance** has been paid by the issuer(s) of the **Underlying Insurance**, the **Insured** or by another party on behalf, or for the benefit, of the **Insured** or the issuer(s) of the **Underlying Insurance**.

II. DEFINITIONS

- (A) “**Application**” means the application attached to and forming part of this Policy, including any materials submitted in connection with such application, all of which are on file with the Underwriter and are a part of the Policy, as if physically attached.
- (B) “**Claim**” has the meaning ascribed to it (or similar term) in the **Underlying Insurance**.
- (C) “**Defense Expenses**” has the meaning ascribed to it (or similar term) in the **Underlying Insurance**.
- (D) “**Insured**” means the persons or organizations insured under the **Underlying Insurance**.
- (E) “**Policy Period**” means the period from the inception date to the expiration date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (F) “**Primary Policy**” means the policy scheduled as such in ITEM 4 of the Declarations.
- (G) “**Underlying Insurance**” means all insurance policies or risk transfer instruments (including, but not limited to, self-insured retentions or other alternative arrangements) scheduled in ITEM 4 of the Declarations and any policies or risk transfer arrangements renewing or replacing them.

III. UNDERLYING INSURANCE

- (A) All of the **Underlying Insurance** scheduled in ITEM 4 of the Declarations shall be maintained during the **Policy Period** in full force and effect, except for any reduction of the limits of liability available under the **Underlying Insurance** solely by reason of actual payment of **Claims** or losses thereunder. Subject at all times to clause (D) of this SECTION III, this Policy shall not be invalidated solely by reason of any failure of the **Insured** to comply with the foregoing, but under no circumstances shall the Underwriter be liable under this Policy earlier, or to any greater extent, than it would have been if the **Insured** had complied with this provision.
- (B) Without prejudice to any rights of the Underwriter, in the event of any actual or alleged (1) failure by the **Insured** to give any notice or to exercise any extensions under any **Underlying Insurance**, or (2) misrepresentation or breach of warranty by the **Insured** with respect to any **Underlying Insurance**, the Underwriter will not be liable under this Policy earlier or to any greater extent than it would have been in the absence of such actual or alleged failure, misrepresentation or breach of warranty.
- (C) No amendment or modification to any **Underlying Insurance** shall be binding upon the Underwriter or effective in extending the coverage or limits of liability afforded by this Policy without the express written agreement of the Underwriter.
- (D) Notwithstanding anything to the contrary contained in this Policy, this Policy shall terminate immediately upon the rescission of any **Underlying Insurance**.

IV. LIMIT OF LIABILITY

The amount stated in ITEM 3 of the Declarations is the limit of the Underwriter's liability under this Policy, and shall be the maximum amount, including **Defense Expenses**, payable by the Underwriter under this Policy. The limit of liability available to pay damages or settlements shall be reduced, and may be exhausted, by the payment of **Defense Expenses**.

V. DEFENSE EXPENSES AND SETTLEMENTS

In the event a **Claim** is made which involves the coverage afforded by this Policy, no **Defense Expenses** shall be incurred without the Underwriter's prior written consent, which consent shall not be unreasonably withheld.

The **Insured** shall not admit liability for, or settle or offer to settle any **Claim** for, any amount that would involve the coverage afforded by this Policy without the Underwriter's prior written consent.

VI. CLAIM PARTICIPATION

The Underwriter may, at its sole discretion, elect to associate in the investigation, settlement or defense of any **Claim** against the **Insured**, even if the **Underlying Insurance** has not been exhausted. If the Underwriter so elects, the **Insured** will cooperate with the Underwriter and will make available all such information and records as the Underwriter may reasonably require.

VII. SUBROGATION AND RECOVERIES

In the event of any payment under this Policy, the Underwriter will be subrogated to all the **Insured's** rights of recovery against any person or entity, and the **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing that may prejudice the Underwriter's position or potential or actual right of recovery. The obligations of the **Insured** under this provision shall survive the expiration or termination of this Policy. The expenses of all such recovery proceedings shall be first subtracted from the amount of any recovery and the remaining amount so recovered shall be apportioned in the inverse order of payment to the extent of actual payment.

VIII. NOTICE

As a condition precedent to any right to payment of the **Insured** under this Policy, and in accordance with ITEM 6 of the Declarations, the **Insured** shall give the Underwriter's Claims Department written notice of:

- (A) any **Claim** under the **Underlying Insurance** as soon as possible, and in any event within the time period set forth by the **Underlying Insurance** with respect to notice of **Claims**; and
- (B) any matter with respect to which notice has been provided under any **Underlying Insurance**.

With respect to Underlying Insurance written on a claims-made basis, if the **Insured** exercises the right under the **Underlying Insurance** to report a Notice of Circumstance (as defined below), then the **Insured** must also report such Notice of Circumstance to the Underwriter prior to the expiration of the **Policy Period**, and in such event any **Claim** that subsequently may arise out of such circumstance

shall be deemed to have been made during the **Policy Period** in which such Notice of Circumstance first was reported.

As used herein, the term “Notice of Circumstance” means written notice of specific facts or circumstances of which the **Insured** becomes aware during the **Policy Period** that may subsequently give rise to a **Claim**.

IX. ALTERATION

No change in or modification of this Policy shall be effective unless made by endorsement signed by an authorized employee or agent of the Underwriter.

X. POLICY TERMINATION

- (A) The **Insured** may cancel this Policy at any time by delivering by hand delivery or overnight mail service or by mailing registered, certified or other first-class mail, written notice stating when thereafter such cancellation is to be effective.
- (B) The Underwriter may cancel this Policy only in accordance with the terms and conditions of the **Underlying Insurance**.
- (C) The Underwriter will refund any unearned premium computed at its customary short rate if the Policy is canceled by the **Insured**. Under all other circumstances, any unearned premium shall be computed pro rata.
- (D) The Underwriter will have no obligation to renew this Policy upon its expiration.

XI. REPRESENTATIONS; SEVERABILITY

The **Insured** represents that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured** except for material facts or information known to the person or persons who signed the **Application**. In the event that any of the particulars or statements in the **Application** is untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

XII. AUTHORIZATION AND NOTICES

The person or entity first named in ITEM 1 of the Declarations shall be the sole agent, and shall 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, the payment of premium and the receipt of any return premiums.

In Witness Whereof, the Underwriter has caused this Policy to be executed by its authorized officers.

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