

PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD. THE COVERAGE AFFORDED BY THIS POLICY DIFFERS IN SOME RESPECTS FROM THAT AFFORDED BY OTHER POLICIES. PLEASE READ THIS POLICY CAREFULLY.

ONEBEACON INSURANCE COMPANY

HEALTH CARE EXCESS INDEMNITY POLICY

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

I. INSURING AGREEMENT

- (A) The Underwriter will pay on behalf of the **Insured**, up to the limit of liability stated in ITEM 3 of the Declarations, that portion of **Ultimate Net Loss** that exceeds the total limits of liability for all **Underlying Insurance**, that the **Insured** becomes legally obligated to pay because of a **Claim** to which this Policy applies, 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 of liability thereunder.
- (B) In the event a **Claim** is made which involves the coverage afforded by this Policy, the Underwriter will pay **Defense Expenses** relating to such **Claim** that are incurred with the Underwriter’s prior written consent, which shall not be unreasonably withheld. **Defense Expenses** shall be part of, and not in addition to, the limit of liability set forth in ITEM 3 of the Declarations. The Underwriter’s payment of the applicable Limit of Liability ends its duty to pay any **Defense Expenses**.
- (C) With respect to any coverage provided by the **Underlying Insurance** that applies on a claims-made basis, this Policy applies only to **Claims** first made against the **Insured** and reported to the Underwriter during the **Policy Period** or applicable **Extended Reporting Period**. This Policy does not apply to any **Claim** arising out of a wrongful act or occurrence before the retroactive date stated in ITEM 4 of the Declarations or after termination of this Policy.
- (D) With respect to any coverage provided by the **Underlying Insurance** that applies on an occurrence basis, this Policy applies only to **Claims** arising out of an

occurrence during the **Policy Period**.

- (E) 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) in the event of any inconsistency between a provision contained in any **Underlying Insurance** and a provision contained in this Policy, the provision of this Policy shall govern, subject in all events to clause I(E)(5) below;
 - (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 injury or damage that is covered under this Policy;
 - (4) no coverage will be afforded under this Policy for any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any fact, circumstance, event or transaction, or any series of facts, circumstances, events or transactions, about which the Insured had knowledge prior to the Inception Date of this Policy as stated in ITEM 2 of the Declarations; and
 - (5) the coverage provided by this Policy shall not be broader than any **Underlying Insurance** unless expressly provided herein, including any endorsement hereto.
- (F) The Underwriter will not have any obligation to make any payment hereunder unless and until the full amount of the applicable per-occurrence, per-claim or aggregate 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) "**Claim**" means written demand received by an **Insured** for monetary damages for which coverage is afforded by the **Underlying Insurance**.
- (B) "**Defense Expenses**" means the reasonable and necessary fees, costs and expenses incurred in the investigation, adjustment, defense or appeal of **Claims**; but, **Defense Expenses** shall not include remuneration, salaries, overhead, fees, loss-of-earnings reimbursement, or benefit expenses of the **Insured**.

- (C) “**Extended Reporting Period**” has the meaning provided for in SECTION XII of this Policy.
- (D) “**Insured**” has the meaning provided for in the **Underlying Insurance**.
- (E) “**Policy Period**” means the period from the Inception Date of this Policy to the Expiration Date of this Policy as stated in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (F) “**Related Claims**” means all **Claims** based upon, arising out of, relating in any way to, directly or indirectly resulting from, in consequence of, involving, or in any way having a common nexus of, the same or related facts, circumstances, situations, transactions, or events, or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way, in any combination, and whether or not involving more than one policy, practice, procedure or product, including any course of treatment, whether or not deemed a continuous tort.
- (G) “**Ultimate Net Loss**” means the total amount that the **Insured** becomes legally obligated to pay as damages and **Defense Expenses** as a result of a **Claim**. **Ultimate Net Loss** shall not include amounts for:
- (1) punitive or exemplary damages;
 - (2) the multiplied portion of any multiplied damage award;
 - (3) fines, penalties or taxes;
 - (4) amounts owed or payable to any provider of medical services;
 - (5) restitution, return or disgorgement of fees, profits, charges for products or services rendered, capitation payments, premium or any other funds allegedly wrongfully held or obtained;
 - (6) benefits under an employee benefit plan;
 - (7) non-monetary relief, or redress in any form other than monetary damages, including without limitation the cost of complying with any injunctive, declaratory, equitable or administrative relief;
 - (8) matters which are uninsurable under applicable law; or

- (9) any costs, charges or expenses that are excluded under any **Underlying Insurance**.
- (H) “**Underlying Change**” has the meaning provided in SECTION III(B) of this Policy.
- (I) “**Underlying Insurance**” means all policies, self-insurance programs, trust agreements, or other risk transfer arrangements scheduled in ITEM 5 of the Declarations and, subject to SECTION III(B) below, all renewals or replacements thereof.

III. UNDERLYING INSURANCE

- (A) If any **Underlying Insurance** in effect as of the Inception Date of this Policy, as stated in ITEM 2(a) of the Declarations, is not maintained in full force and effect throughout the **Policy Period**, or if the **Insured** fails or neglects to comply with any of the terms, conditions and limitations thereunder, there may be a gap in coverage, such that before coverage under this Policy would attach, some or all of any risk or liability for which **Underlying Insurance** should have provided coverage may be uninsured. Without prejudice to any other rights of the Underwriter, the Underwriter will not be liable under this Policy (1) for more than the limit of liability set forth in ITEM 3 of the Declarations, and (2) for any amount unless and until the full amount of the **Underlying Insurance** has been paid by the issuer(s) of the **Underlying Insurance**, the **Insured** or by another party on behalf of or for the benefit of the **Insured** or the issuer(s) of the **Underlying Insurance**.
- (B) If, during the **Policy Period**, any **Underlying Insurance** is amended, or if any **Underlying Insurance** expires, lapses, is terminated, canceled or not renewed or replaced, is extended, or is renewed or replaced on different terms (any of which events is referred to as an “**Underlying Change**”), the Underwriter shall have the option, in its sole discretion, to provide coverage in respect of the new **Underlying Insurance**, but no coverage shall be afforded under this Policy for any **Claim** in any way involving such new **Underlying Insurance**, unless:
 - (1) the **Insured** gives the Underwriter written notice of such **Underlying Change** in accordance with SECTION IX(A) of this Policy;
 - (2) the **Insured** gives the Underwriter such information regarding the **Underlying Change** as the Underwriter requests, including but not limited to the terms, conditions and policy language of any new **Underlying Insurance**;
 - (3) the **Insured** accepts any terms, conditions, exclusions and limitations, and

pays any additional premium, as the Underwriter, at its sole discretion, requires. If the Underwriter, at its sole discretion, elects to provide coverage in respect of such new **Underlying Insurance**, this Policy shall not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving , any occurrence or wrongful act happening before the effective date of the **Underlying Change**.

No **Underlying Change** after the Inception Date of this Policy, as stated in ITEM 2(a) of the Declarations, shall be effective in expanding or extending the coverage or limit of liability afforded by this Policy unless the Underwriter expressly agrees in writing.

- (C) Notwithstanding anything to the contrary contained in this Policy, in the event that any **Underlying Insurance** is terminated or rescinded, this Policy shall automatically terminate at the same time. Notwithstanding any other provision of this Policy, in the event of any such termination or rescission, the **Insured** shall not have the right to purchase an **Extended Reporting Period**.

IV. LIMITS OF LIABILITY

- (A) All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:
- (1) the number or identity of claimants;
 - (2) the number or identity of **Insureds** involved or against whom **Related Claims** have been or could be made;
 - (3) whether the **Related Claims** are asserted in a class action or otherwise; and
 - (4) the number and timing of **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period** or involve injury or damage that happened in more than one **Policy Period**.

All **Related Claims** shall be deemed made: (a) with respect to claims-made coverage, during the policy period of the Policy in effect when the earliest of such **Related Claims** was first made against the **Insured**; and (b) with respect to occurrence coverage, during the policy period of the Policy in effect at the time of the earliest occurrence giving rise to a **Related Claim**.

- (B) The amount listed in ITEM 3(a) of the Declarations is the maximum Limit of Liability for **Ultimate Net Loss** for each **Claim** to which this Policy applies, which amount shall be part of, and not in addition to, the amount stated in ITEM 3(b) of the Declarations.
- (C) The amount listed in ITEM 3(b) of the Declarations is the maximum Policy Aggregate Limit of Liability for all **Ultimate Net Loss** for all **Claims** to which this Policy applies.

V. **CONVERSION OF COVERAGE UNDER CERTAIN CIRCUMSTANCES**

If, during the **Policy Period**, any of the following events occur:

- (1) the **Insured** is dissolved, sold to, acquired by, merged into, or consolidated with another entity such that the **Insured** is not the surviving entity; or
- (2) any person, entity or affiliated group of persons or entities obtains:
 - (a) ownership or possession of fifty percent (50%) of the issued and outstanding capital stock of the **Insured**; or
 - (b) the right to elect, appoint or designate at least fifty percent (50%) of the directors or trustees of the **Insured**; or
- (3) the **Insured** ceases to do business for any reason; or
- (4) a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, is appointed for or with respect to the **Insured**,

(any of which events is referred to as a “Transaction”), this Policy will apply solely to **Claims** arising out of occurrences or wrongful acts committed before the effective date of such Transaction. No coverage will be available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any wrongful act or occurrence happening on or after the effective date of such Transaction. After any such Transaction, the Policy may not be canceled by the **Insured**, regardless of SECTION XI(A), and the entire premium for the Policy will be deemed fully earned.

VI. SETTLEMENTS

No **Insured** shall, without the Underwriter's prior written consent, admit liability, settle, or make a settlement offer with regard to any **Claim** for which coverage may be sought under this Policy.

VII. 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.

VIII. 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.

IX. NOTICE

As a condition precedent to any right to payment of the **Insured** under this Policy, the **Insured** shall give the Underwriter written notice of:

- (A) any **Underlying Change** as soon as possible, but in no event later than ten (10) days after the effective date of such **Underlying Change**; and
- (B) any **Claim** under the **Underlying Insurance** as soon as possible, but in no event later than the expiration date set forth in ITEM 2(b) of the Declarations; provided, that with respect to any **Claim** made fewer than ten (10) days prior to the expiration date of the Policy set forth in ITEM 2(b) of the Declarations, notice given to the Underwriter within thirty (30) days of such **Claim** shall be deemed to have been given during the **Policy Period**; and
- (C) any occurrence (as that term may be defined or used in any **Underlying Insurance** that applies on an occurrence basis) as soon as possible, but in no event

later than thirty (30) days after the **Insured** first becomes aware of such occurrence; and

- (D) any matter with respect to which notice has been provided under any **Underlying Insurance**.

If the **Insured** exercises a right under the **Underlying Insurance** to provide Notice of Circumstance (as defined below), then the **Insured** must also provide such Notice of Circumstance to the Underwriter prior to the expiration date set forth in ITEM 2(b) of the Declarations, 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 provided.

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**.

X. ALTERATION

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

XI. POLICY CANCELLATION

- (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 by delivering by hand delivery or overnight mail service or by or mailing to the **Insured** by first-class mail written notice stating when such cancellation shall become effective; provided that cancellation shall not be less than (1) twenty (20) days thereafter, if such cancellation is for non-payment of premium, or (2) thirty (30) days thereafter if such cancellation is for any other reason. Mailing of notice shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.
- (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.

XII. EXTENDED REPORTING PERIOD

If, and only if: (1) this Policy is canceled or not renewed, and (2) the **Insured** exercises its right to purchase an extended reporting period under the **Underlying Insurance**, and (3) the extended reporting period so purchased provides a new, unimpaired limit of liability equal to the amount of the **Underlying Insurance**, then the **Insured** shall have the right to purchase an **Extended Reporting Period** hereunder by providing written notice by certified mail to the Underwriter within thirty (30) days of the cancellation or non-renewal requesting an **Extended Reporting Period** and paying any additional premium required by the Underwriter in its sole discretion promptly when due, together with any earned but unpaid premium which may be due under the terminated Policy. The **Extended Reporting Period** shall apply only to those **Claims** that are covered by an extended reporting period in the **Underlying Insurance**, and the new Limit of Liability for the **Extended Reporting Period** will be the Limit of Liability stated in ITEM 3 of the Declarations, notwithstanding any prior payments by the Underwriter. The **Extended Reporting Period** does not:

- (1) extend the **Policy Period**;
- (2) change the scope of coverage provided by this Policy; or
- (3) apply to any insurance not written on a claims-made basis.

In no event will the **Insured** have the right to purchase an **Extended Reporting Period** under this Policy unless the extended reporting period purchased under the **Underlying Insurance** has a limit of liability equal to the original limit of liability under such **Underlying Insurance**, notwithstanding any prior payments by the issuer(s) thereof. Any **Extended Reporting Period** will immediately terminate if the extended reporting period of any **Underlying Insurance** terminates. The premium for the **Extended Reporting Period** will be earned immediately at inception of the **Extended Reporting Period**.

XIII. ACTION AGAINST UNDERWRITER

- (A) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Underwriter.

- (B) No person(s) or entity(ies) shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

XIV. OTHER INSURANCE AND RISK TRANSFER ARRANGEMENTS

This Policy is excess over any other insurance or self-insurance mechanism whether primary, umbrella, excess, contingent, fronting or on any other basis, and whether or not collectible. It is the intent of this Policy to apply only to that portion of **Ultimate Net Loss** that exceeds the total of all deductibles, limits of liability, self-insured amounts or other insurance or risk transfer arrangements, whether primary, contributory, excess,

contingent, fronting or otherwise, and whether or not collectible. These provisions do not apply to other insurance policies or risk transfer arrangements written as specific excess insurance over the Limit of Liability of this Policy.

XV. AUTHORIZATION AND NOTICE

It is understood and agreed that the **Insured** first named in ITEM 1 of the Declarations is deemed the agent of all insureds under this Policy and is authorized to act on behalf of all such insureds with respect to all matters involving this Policy, including the giving or receiving of any notices, and the making or receiving of any payments, provided for by this Policy.

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