

**THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR AN EXTENDED REPORTING PERIOD IF APPLICABLE. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY PAYMENT OF DEFENSE EXPENSES.**

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**ONEBEACON INSURANCE COMPANY**

**LAWYERS' PROFESSIONAL LIABILITY EXCESS POLICY**

This policy provides excess professional liability insurance for **your** law firm. The terms **we**, **us**, and **our** refer to OneBeacon Insurance Company, the company issuing this policy. The terms **you** and **your** refer to those persons or legal entities insured by this policy. The **named insured**, an entity incorporated within the terms **you** and **your**, has special duties and responsibilities, which are described in the policy.

**I. INSURING AGREEMENT**

In consideration of the premium paid, **your** obligation to pay the deductible, and in reliance upon the statements made by the **named insured** in the **application** and supplementary information provided by the **named insured**, and subject to the limits of liability as stated in the Declarations, and the exclusions and all other terms and conditions of this policy, **we** and

the **named insured** agree as follows:

- A. **We** agree to pay on **your** behalf all sums in excess of the limits of the **underlying policy(ies)** identified in Schedule A attached to the Declarations, for **claims** first made against **you** during the **policy period**, provided that the full limits of liability shown in Item 6 of the Declarations also apply and have been exhausted by actual payment

thereunder, or would apply but for the exhaustion of the limit(s) of liability thereunder.

- B. This policy provides insurance coverage for **claims** in conformance with and subject to the terms, conditions and exclusions of the **primary policy**, and further subject to and limited by any additional coverage terms, conditions and exclusions of the other **underlying policy(ies)** and this policy, including the application, the Declarations, Schedule A attached to the Declarations, and any attached endorsements. This policy does not provide broader coverage than that provided by any of the **underlying policy(ies)**.
- C. This policy applies in conformance with, and follows the form of, the terms, conditions, agreements, exclusions, definitions and endorsements of the **underlying policy(ies)**, except:
  - 1. **we** have no obligation under this policy with respect to any **claim** that is settled within the limits of the **underlying policy(ies)** without **our** written consent; and
  - 2. **we** have no obligation with respect to any provisions inconsistent with this policy.
- D. the limits of liability of the **underlying policy(ies)** are deemed to be reduced or exhausted solely as a result of payments for loss or damages (including costs, charges and expenses) that would be covered under this policy.
- E. **We** do not have any obligation to make any payment hereunder unless and until the full amount of the limits of liability of the **underlying policy(ies)** has been paid by the issuer(s) of the underlying insurance.

## II. DEFINITIONS

- A. **Application** means the application attached to and forming part of the **primary policy** or any **underlying policy(ies)**, including any materials submitted in connection with such application. These are a part of this policy as if physically attached.
- B. **Claim** has the meaning ascribed to it in the **underlying policy(ies)**.
- C. **Defense expenses** (or similar term) has the meaning ascribed to it in the **underlying policy(ies)**; however **defense expenses** does not include salary charges of regular employees or the officials of any company issuing an **underlying policy(ies)** or any of **your** fees, costs or expenses.
- D. **Named insured** means the organization(s) or person(s) identified in the Declarations.
- E. **Notice of circumstance** means written notice of specific facts or circumstances, including the injury or damage which has or may result from such circumstance that may subsequently give rise to a **claim**, of which **you** become aware during the **policy period**.
- F. **Policy period** means the period from the inception date to the expiration date identified in the Declarations, or to any earlier cancellation date.
- G. **Primary policy** means the insurance policy identified as such in Schedule A attached to the Declarations.
- H. **Underlying policy(ies)** means all insurance policies identified in Schedule A attached to the Declarations.
- I. **We, us, our** and **ours** refer to Homeland Insurance Company of New York, the company issuing this policy.
- J. **You** means the person(s) or organization(s) insured under the **underlying policy(ies)**.
- K. **Your** means belonging to **you**.

### III. UNDERLYING INSURANCE

- A. During the **policy period**, you will maintain in full effect with solvent insurers all of the **underlying policy(ies)** identified in Schedule A attached to the Declarations, except for any reduction of the limits of liability available under the **underlying policy(ies)** solely because of actual payment of **claims** or losses thereunder. Subject at all times to sub-section D of this Section III, this policy is not invalidated solely by reason of **your** failure to comply with the foregoing, but under no circumstances are **we** liable under this policy earlier, or to any greater extent, than **we** would have been if **you** had complied with this provision.

In the event that the underlying insurers cannot pay any portion of loss under an **underlying policy** due to insolvency or financial impairment, **we** are not liable to a greater extent than **we** would have been in the absence of such insolvency or financial impairment. **You** bear sole responsibility for any portion of the underlying limits that are not paid due to the insolvency or financial impairment of an underlying insurer.

- B. Without prejudice to any of **our** rights in the event of any actual or alleged:
1. failure by **you** to give any notice or to exercise any extensions under any **underlying policy(ies)**; or
  2. misrepresentation or breach of warranty by **you** with respect to any **underlying policy(ies)**, **we** are not liable under this policy earlier or to any greater extent than **we** 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 policy(ies)** is binding upon **us** or effective in extending the coverage or limits of liability afforded by this policy without **our** express written agreement.
- D. Notwithstanding anything inconsistent with this provision, this policy terminates immediately upon the rescission of any **underlying policy(ies)**.

### IV. LIMITS OF LIABILITY

- A. The amount stated in the Declarations as the Each **Claim** Limit is **our** limit of liability under this policy for each **claim**, and is the maximum amount, including **defense expenses**, payable by **us** under this policy for each **claim**. The Each **Claim** limit of liability is subject to the Aggregate limit of liability. Notwithstanding anything inconsistent with this provision, **we** are not responsible for **defense expenses** until the underlying limits are exhausted. **Defense expenses** are part of and not in addition to the limits of liability under this policy.
- B. The amount stated in the Declarations as the Aggregate Limit is the limit of **our** liability under this policy for all **claims**, and is the maximum amount, including **defense expenses**, payable by **us** under this policy for all such **claims**.
- C. The limit of liability available to pay damages or settlements is reduced, and may be exhausted, by the payment of **defense expenses**.

### V. EXTENDED REPORTING PERIOD

- A. Any extended reporting or discovery period for reporting **claims** under the **primary policy** is similarly available under this policy subject to the conditions and requirements as identified in the **primary policy**;

provided however, no such extended reporting period is available under this policy unless it is properly elected and purchased under each and every one of the **underlying policies**, including the **primary policy**.

- B. The fact that the period during which **claims** must first be made against **you** and reported under this policy is extended by virtue of an extended reporting period does not in any way increase the limits of liability of this policy as stated in the Declarations.

#### VI. **ASSIGNMENT**

No change in, modification of, or assignment of interest under this policy will be effective except when made by written endorsement to this policy by **us**.

#### VII. **AUTHORIZATION AND NOTICES**

The **named insured** is the sole agent, and will act on **your** behalf 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. **We** will also send a copy of any such notices or communications to the broker identified in the Declarations; however, providing the broker with a copy is not required for the notice or communication to be effective.

#### VIII. **CLAIM PARTICIPATION**

**We** may, at **our** sole discretion, elect to associate in the investigation, settlement or defense of any **claim** against **you**, even if the **underlying policy(ies)** has not been exhausted. If **we** so elect, **you** will cooperate with **us** and will make available all such

information and records as **we** may reasonably require.

#### IX. **DEFENSE EXPENSES AND SETTLEMENTS**

**You** will not, without **our** prior written consent, admit liability for, settle or offer to settle, or incur **defense expenses** where the liability, settlement and/or **defense expenses** are reasonably likely to exceed the limits of liability of the **underlying policy(ies)**. **Our** consent will not be unreasonably withheld.

#### X. **NOTICE**

As a condition precedent to **your** right to payment under this policy, **you** must give **us** written notice of:

- A. any **claim** under the **underlying policy(ies)** as soon as possible, but in no event later than thirty (30) days after the expiration date identified in the Declarations; and
- B. any **notice of circumstance** with respect to which notice has been provided under any **underlying policy(ies)**.

**You** must give notice in writing in accordance with the terms and conditions of this policy to:

**Chief Claim Officer**  
**Claim Department**  
**OneBeacon Insurance**  
**30 Tower Lane**  
**Avon, CT 06001**  
**Facsimile: 888.777.3719**

or such other address that **we** provide to **you** in writing.

- C. If **you** exercise the right under the **underlying policy(ies)** to provide **notice of circumstance**, then **you** must also provide such **notice of circumstance** to **us** prior to the expiration of the **policy period**, and in such event, any **claim** that subsequently may arise out of such circumstance will be deemed to have been made during the **policy period** in which such **notice of**

circumstance first was provided.

## XI. POLICY TERMINATION

- A. The **named insured** may cancel this policy at any time by providing written notice to **us** stating when thereafter such cancellation is to be effective. Providing notice by U.S. mail or facsimile to **us** is sufficient notice and the effective date of cancellation stated in the notice will be the end of the **policy period**. **You** must give cancellation notice to:
- Professional Liability  
Underwriting Department  
OneBeacon Insurance  
601 Carlson Parkway  
Suite 700  
Minnetonka, MN 55305  
Facsimile: 888.612.6587**
- or such other address that **we** provide to **you** in writing.
- B. **We** may cancel this policy for nonpayment of premium by providing written notice stating when, not less than ten (10) days thereafter, such cancellation is effective. Providing notice by U.S. mail or facsimile to the **named insured** identified in the Declarations with a copy of the notice sent to the broker also identified in the Declarations is sufficient notice and the effective date of cancellation stated in the notice will become the end of the **policy period**.
- C. This policy terminates immediately upon the cancellation or termination of any one or more of the **underlying policy(ies)** whether cancelled or terminated by the **named insured** or the respective insurer. Notice of cancellation or nonrenewal provided by one or more of the insurers of the **underlying policy(ies)** serves as notice of cancellation or nonrenewal of this policy by **us**. **We** may also elect to not renew this policy upon thirty (30) days written notice, or

such longer period as required under any applicable state regulation(s) regarding notice of nonrenewal. **We** will provide notice by U.S. mail or facsimile to the **named insured** identified in the Declarations with a copy sent to the broker also identified in the Declarations.

- D. If the **named insured** cancels this policy, **we** will refund the unearned premium computed at customary short rates or the minimum return premium allowed under the applicable law, whichever is greater. Under all other circumstances, the refund will be computed *pro rata*. **We** will send the return of any unearned premium to the **named insured** as soon as possible. Cancellation of this policy is not contingent upon a return of premium.
- E. **We** have no obligation to renew this policy upon its expiration.

## XII. REPRESENTATIONS AND SEVERABILITY

**You** represent that the particulars and statements contained in any **application** made for this excess insurance policy and any **underlying policy(ies)** are true, accurate and complete, and agree that this policy is issued in reliance on the truth of those representations, 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.

## XIII. SUBROGATION AND RECOVERIES

- A. If any payment is made hereunder, **we** will act in concert with all other interests concerned (including **yours**) in the exercise of rights of recovery against any person or other entity. If any amounts are recovered, they will be apportioned as follows:
1. first, to the expenses **we** incur in all such recovery proceedings;

2. then, to any **damages** and/or **claim expenses you** paid in excess of the limits of liability of this policy;
  3. then, to **damages** and/or **claim expenses we** paid;
  4. then, to **damages** and/or **claim expenses** paid by the underlying insurer(s).
- B. **You** will execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. **You** will do nothing that may prejudice **our** position or **our** potential or actual rights of recovery.
- C. **Your** obligations under this provision survive the expiration or termination of this policy.

SPECIMEN