



<Product Name>

**DECLARATIONS**

**NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY SUBJECT TO ITS TERMS. IT APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE UNDERWRITERS AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN THE END OF THE POLICY PERIOD, IN ACCORDANCE WITH AN APPLICABLE EXTENSION PERIOD, OR 60 DAYS AFTER THE POLICY PERIOD EXPIRATION DATE IN THE CASE OF A CLAIM FIRST MADE DURING THE LAST 60 DAYS OF THE POLICY PERIOD. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTIONS. THE UNDERWRITERS HAVE NO OBLIGATION TO PAY DEFENSE COSTS OR ANY SETTLEMENTS OR JUDGMENTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.**

These Declarations along with the completed and signed **Application** and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

**Underwriters:** Beazley Insurance Company, Inc. **Policy Number:** <Policy Number>

Item 1. **Named Insured:** <Named Insured>

Principal Address:

<Applicant Address>

<Applicant City>,

<Applicant State> <Applicant\_Zip>

Item 2. **Policy Period:** From: <Effective Date> To: <Expiration Date>

Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.

Item 3. **Clauses Forming This Policy**

Policy Terms and Conditions (F00041 042008 ed.)

Employment Practices Liability Clause for Healthcare Organizations (F00134 072010 ed.)

Private Organization Directors, Officers and Entity Liability Clause for Healthcare Organizations (F00133 082010 ed.)

Fiduciary Liability Clause (F00040 042008 ed.)

Employment Event Clause (F00037 042008 ed.)

Privacy Violation Clause (F00042 122008 ed.)

Item 4. **Aggregate Limit(s) of Liability**

Clause	Aggregate Limit of Liability for the <b>Policy Period</b>
All Coverages Under This Policy	<Limit>
Employment Practices Liability Clause for Healthcare Organizations	<Limit> <u>&lt;shared/separate&gt;</u>
Third Party Wrongful Acts Sublimit	<Limit>
Private Organization Directors, Officers and Entity Liability Clause for Healthcare Organizations	<Limit> <u>&lt;shared/separate&gt;</u>
Derivative Demand Sublimit	<Limit>
Additional Side A D&O Limit of Liability	<Limit>
Additional Defense Limit of Liability	<Limit>
Antitrust Claim Sublimit	<Limit>
Government Funding Claim Defense Costs Sublimit	<Limit>
EMTALA Sublimit	<Limit>
IRS Sublimit	<Limit>

Item 5. **Retention(s)**

Clause	Retention each <b>Claim</b>
Employment Practices Liability for Healthcare Organizations Retention	<Retention>
Third Party Wrongful Acts Retention	<Retention>
Private Organization Directors, Officers and Entity Liability for Healthcare Organizations Retention	<Retention>
Fiduciary Liability Retention	<Retention>
Antitrust Retention	<Retention>
Government Funding Claim Retention	<Retention>

Item 6. **Premium:** <Premium>

Item 7. **Optional Extension Period**

- a. Premium for **Optional Extension Period**: <Extension Premium> of the total annual premium for the Policy
- b. Length of **Optional Extension Period**: <Extension Period> Months

Item 8. **Notification Under This Policy**

- (a) Notification pursuant to Clause IX. shall be given to:  
Beazley Insurance Company, Inc.  
30 Batterson Park Road  
Farmington, CT 06032  
Attn: Claims  
Or by email: [claims@beazley.com](mailto:claims@beazley.com)
- (b) All other notices under this Policy shall be given to:  
Beazley Insurance Company, Inc.  
30 Batterson Park Road  
Farmington, CT 06032

Item 9. **Pending or Prior Litigation Date(s)**

Clause	Date:
Employment Practices Liability for Healthcare Organizations Clause	<Date>
Third Party Wrongful Acts	<Date>
Private Organization Directors, Officers and Entity Liability for Healthcare Organizations Clause	<Date>
Fiduciary Liability Clause	<Date>

Item 10. **Terrorism Coverage:**

Coverage Purchased:  Yes  No

If "Yes", Terrorism Coverage Premium: <Terrorism Premium>

Item 11. **Coinsurance**

<enter> % applicable to any **Antitrust Claim**

<enter> % applicable to any **Government Funding Claim**

Item 12. **Endorsements Effective at Inception**  
**<Endorsements>**

The Underwriters have caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Underwriters.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

<Product Name>  
**POLICY TERMS AND CONDITIONS**

In consideration of the payment of the premium, in reliance on all statements made in the **Application**, and subject to all of the provisions of this Policy, Underwriters and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. DEFINITIONS**

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the applicable Clause.

- A. **“Change of Control”** means:
1. the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **Named Insured** representing the present right to vote for the election of directors or **Managers**; or
  2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.
- B. **“Financial Impairment”** means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**.
- C. **“Insured Organization”** means the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- D. **“Interrelated Wrongful Acts”** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- E. **“Managers”** means all persons who were, now are, or shall be managers, managing members, members of the board of managers, managing partners, general partners of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executives of any **Insured Organization**.
- F. **“Named Insured”** means the entity designated in Item 1. of the Declarations.
- G. **“Optional Extension Period”** means the period described in Clause XI. of the Policy Terms and Conditions.
- H. **“Policy Period”** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination, if any.

- I. **“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.
- J. **“Subsidiary”** means:
1. any entity, while more than 50% of the outstanding voting securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** directly or indirectly;
  2. any limited liability corporation while the right to elect or otherwise appoint or designate more than 50% of such limited liability corporation's **Managers** is owned or controlled by the **Named Insured** directly or indirectly; or
  3. any joint venture, which is a corporate entity, while the **Named Insured** has managerial control, or while the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled by the **Named Insured** directly or indirectly

if such entity or corporation was so owned or controlled as of or prior to the inception date of this Policy.

## II. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the applicable Pending or Prior Litigation Date set forth in Item 9. of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
  2. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of a potential **Claim** given prior to the **Policy Period** under any other policy;
  3. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**; or

- B. against any of the **Insured Persons** of any **Subsidiary** or against any **Subsidiary** subsequent to the date such entity ceased to be a **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**; or
  2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.

### III. LIMITS OF LIABILITY

A. Aggregate Limit(s) of Liability

The amount(s) shown in Item 4. of the Declarations shall be the Underwriters' maximum aggregate limit(s) of liability under the Policy.

B. Additional Defense Limit of Liability

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Defense Limit of Underwriters applicable only to **Defense Costs** which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. Payment of **Defense Costs** shall erode the Additional Defense Limit first and will not erode any other limit shown in Item 4. until the Additional Defense Limit is exhausted.

C. If any **Claim** against the **Insureds** gives rise to an obligation both under this Policy and any other coverage, line slip or policy of insurance issued by Underwriters or any of its affiliates to any **Outside Entity**, Underwriters' maximum aggregate limit of liability under all such coverage, line slips or policies for all **Loss** from such **Claim** shall not exceed the greater of:

1. the applicable maximum aggregate limit(s) of liability of this Policy; or
2. the maximum aggregate limit of liability under any such other coverage, line slip or policy.

D. The payment of **Defense Costs** by Underwriters reduces and may totally exhaust the applicable Limit(s) of Liability.

E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:

1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause IX.B.

- F. If all aggregate limit(s) of liability are exhausted, Underwriters' obligations under this Policy shall be completely fulfilled and extinguished.

#### IV. RETENTIONS

- A. Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 5. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, under this Policy. The Retention shall not apply, however, if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.
- B. In the event more than one of the Insuring Clauses are applicable to a **Claim**, the Retentions set forth in Item 5. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim**.

#### V. PRESUMPTIVE INDEMNIFICATION

For all purposes under this Policy, the **Insured Organization** is presumed to indemnify the **Insured Persons** to the fullest extent permitted by law or pursuant to the by-laws or other organizational documents of the **Insured Organization** for any **Loss**, or to advance any **Defense Costs** on their behalf, except to the extent that the **Insured Organization** cannot in fact do so for reasons of **Financial Impairment**.

#### VI. SETTLEMENT AND DEFENSE

- A. Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; provided, however, that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.
- B. The **Insureds** shall cooperate with Underwriters and, upon Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without Underwriters' prior written consent, which shall not be unreasonably withheld. Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with



prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then Underwriters' consent shall not be required for such disposition.

- D. Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
  2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

## VII. ALLOCATION

If both **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:

- a. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- b. Settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-Insureds' exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

## VIII. SPOUSAL AND DOMESTIC PARTNER EXTENSION

Coverage under this Policy will apply to an **Insured Person's** lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, but solely by reason of such spousal status or such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**.

## IX. NOTIFICATION

- A. In the event any **Executive Officer** becomes aware that a **Claim** has been made against any of the **Insureds**, the **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of such **Claim** as soon as practicable provided all **Claims** must be reported no later than the end of the **Policy Period**, in accordance the requirements of the **Optional Extension Period** (if applicable), or sixty (60) days after the

expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last sixty (60) days of the **Policy Period**.

B. If during the **Policy Period**, except for the **Optional Extension Period**, the **Insureds** first become aware of a specific **Wrongful Act** and if the **Insureds** during the **Policy Period**, except for the **Optional Extension Period**, give written notice to Underwriters as soon as practicable of:

1. the specific **Wrongful Act**;
2. the consequences which have resulted or may result therefrom; and
3. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

Underwriters shall have no obligation to cover any amounts, including any legal fees or expenses, incurred prior to the time such circumstances result in a **Claim**.

C. Notice to Underwriters provided for in Clause IX.A. and B. shall be given to the firm shown in Item 8.(a) of the Declarations. All other notices to Underwriters under this Policy shall be given to the firm shown in Item 8.(b) of the Declarations. All notices under any provision of this Policy must be made in writing. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

## X. GENERAL CONDITIONS

A. Representations.

By acceptance of this Policy, the **Insureds** agree:

1. that the statements in the **Application** are their representations, and that this Policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall not afford any coverage with respect to those **Insureds** who made or had knowledge of such misrepresentations; and
3. that this Policy shall not afford any coverage for amounts paid by the **Insured Organization** as indemnification of any of the **Insureds** who made or had knowledge of the misrepresentations set forth in Clause X.A.2.;

None of the foregoing provisions in Clause X.A. shall in any other way limit or void Underwriters' rights to rescind this Policy; provided, that the Underwriters shall not rescind this Policy where coverage is being provided to an **Insured Person** where indemnification by the

**Insured Organization** is not permitted by law or the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

B. Run-Off

1. In the event any entity ceases to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms including without limitation Exclusion B. above, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity and to such **Subsidiary**.
2. In the event of a **Change of Control** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the **Change of Control**.

C. Cancellation/Nonrenewal

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy only for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to 2. hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
4. Underwriters may nonrenew this Policy by mailing to the **Named Insured** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**. The mailing of such notice shall be sufficient notice. Delivery of such written notice by Underwriters shall be equivalent to mailing.

D. Other Insurance

This Policy shall apply in excess of any other existing valid policy including any self Insured retention or deductible portion thereof, whether such other insurance is stated to be primary,

contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other policy is written only as specific excess insurance over the Limits of Liability of this Policy.

#### **XI. OPTIONAL EXTENSION PERIOD**

- A. If this Policy is cancelled by the **Named Insured** or if Underwriters nonrenew this Policy, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.a. of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item 7.b. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit(s) of Liability of Underwriters.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XI.

#### **XII. ASSISTANCE, COOPERATION AND SUBROGATION**

The **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Policy.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

#### **XIII. ACTION AGAINST UNDERWRITERS**

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to

determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

#### **XIV. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Policy.

#### **XV. TERRITORY**

This Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

#### **XVI. VALUATION AND CURRENCY**

All premiums, limits, Retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

#### **XVII. BANKRUPTCY**

Bankruptcy or insolvency of the **Insureds** shall not relieve Underwriters of their obligations nor deprive Underwriters of their rights or defenses under this Policy.

#### **XVIII. AUTHORIZATION**

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Named Insured** shall act on their behalf.

#### **XIX. HEADINGS**

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.



## PRIVATE ORGANIZATION DIRECTORS, OFFICERS AND ENTITY LIABILITY CLAUSE FOR HEALTHCARE ORGANIZATIONS

### I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** which is not indemnified by the **Insured Organization** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- C. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** resulting from any **Claim** first made against the **Insured Organization** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- D. The Underwriters shall pay on behalf of the **Insured Organization** all **Costs of Investigation** resulting from any **Derivative Demand** first made and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- E. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity**.

### II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. “**Antitrust Claim**” means any **Claim** alleging charges of price fixing, restraint of trade, monopolization or unfair trade, or any actual or alleged violations of:
  - 1. the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, including without limitation any such allegation in connection with setting of wages, hours or terms of employment of any person;
  - 2. any rules or regulations promulgated under or in connection with such statutes described in 1. above; or

3. any similar provision of any federal, state, or local or foreign statutory law or common law.
- B. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof, or any other directors, officers or corporate liability policies issued by the Underwriter of which this Policy is a renewal, replacement or which it succeeds in time.
- C. **“Claim”** means:
1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
  2. a civil, criminal (other than for actual or alleged violations of **HIPAA**), administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
    - a. the service of a complaint or similar pleading;
    - b. the filing of a notice of charges, investigative order or similar document; or
    - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
  3. solely for the purpose of coverage afforded under Insuring Clause I.D., a **Derivative Demand** against an **Insured**;
  4. an arbitration or mediation or other alternative dispute resolution proceeding against an **Insured** if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with the Underwriter’s prior written consent, such consent not to be unreasonably withheld;
  5. an **EMTALA Claim**.
- D. **“Costs of Investigation”** means reasonable and necessary legal fees (including but not limited to attorneys’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons** or the **Insured Organization’s** overhead expenses) incurred by the **Insured Organization** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Derivative Demand**.
- E. **“Defense Costs”** means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or

any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses. **Defense Costs** means only "**Costs of Investigation**" for the purpose of coverage afforded under Insuring Clause I.D.

- F. "**Derivative Demand**" means a written demand by one or more owners of voting securities of the **Insured Organization** upon the board of directors of the **Insured Organization** to bring a civil proceeding in a court of law against any of the **Insured Persons** for a **Wrongful Act**.
- G. "**Employee**" means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**. This includes members or managers, applicants for employment, employees, volunteers, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position and **Independent Contractors** but does not include employees who are leased to another employer.
- H. "**EMTALA Claim**" means a civil lawsuit alleging violation of the Emergency Medical Treatment and Active Labor Act 42 U.S.C. 1396dd *et seq.*
- I. "**Excess Benefit**" means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.
- J. "**Executive Officer**" means the chairperson, chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, human resources staff or an individual acting in a similar capacity with the **Insured Organization**.
- K. "**Government Funding Claim**" means a **Claim** against an **Insured** seeking the return of funds received by the **Insured Organization** or any other entity from any federal, state or local governmental agency.
- L. "**HIPAA**" means the Health Insurance Portability and Accountability Act, as amended.
- M. "**Independent Contractor**" means any natural person independent contractor who performs labor or service for the **Insured Organization** pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.
- N. "**Insureds**" means the **Insured Persons** and the **Insured Organization**.
- O. "**Insured Persons**" means all persons who were, now are, or shall be duly elected or appointed:
  - 1. directors, officers, trustees, **Employees** or **Managers** of the **Insured Organization**;
  - 2. members of any duly constituted committee, any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician, any individual in



charge of any operational department or any medical director, staff physician or faculty member of the **Insured Organization**, regardless of whether or not such person is directly employed by the **Insured Organization** or is considered to be an independent contractors

including all persons outside the United States serving in a functionally equivalent role for the **Insured Organization** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

P. “**IRS Claim**” means a **Claim** against an **Insured** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Service code of 1986 (as amended):

1. Section 4911 (tax on excess expenditures to influence legislation);
2. Section 4940 (a);
3. Section 4941 (taxes on self dealing);
4. Section 4942 (taxes on failure to distribute income);
5. Section 4943 (taxes on excess business holding);
6. Section 4944 (taxes on investments which jeopardize charitable purpose);
7. Section 4945 (taxes on taxable expenditures);
8. Section 5652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registrations statements);
9. Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
10. Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).

Q. “**Loss**” means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:

1. the cost of providing non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought);
2. civil or criminal fines, penalties, sanctions, liquidated damages; payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this Policy is construed; provided, that this paragraph 2 shall not apply to:

- a. fines or penalties resulting from violations of **HIPAA**;
  - b. **Defense Costs** incurred by any of the **Insureds** in connection with an **IRS Claim**;
  - c. civil fines and penalties resulting from an **EMTALA Claim**;
  - d. any **Excess Benefit** penalty assessed in the amount of 10% by the Internal Revenue Service against any **Insureds** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto up to an aggregate amount of \$100,000 which shall be part of and not in addition to the aggregate limit of liability, provided, that there shall no coverage for:
    - i. any 25% penalty assessed against an **Insured** deemed to have received an **Excess Benefit**;
    - ii. **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; or
    - iii. any 200% penalty against any **Insured** for failure to correct the award of an **Excess Benefit**. This paragraph d. shall not apply and there shall be no coverage for any **Excess Benefit** penalty if the **Insured** fails to correct the award of an **Excess Benefit**;
  - 3. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree;
  - 4. any investigative costs other than **Costs of Investigation** or **Defense Costs** in connection with a **Claim**; or
  - 5. the return of funds received by the **Insured Organization** or any other entity from any federal, state or local governmental agency; provided that this provision does not apply to **Defense Costs** incurred in connection with a **Government Funding Claim**.
- R. **"Outside Entity"** means:
- 1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax;
  - 2. any entity in which the **Insured Organization** has an equity or ownership interest; or
  - 2. any other entity, if specified in an endorsement to this Policy.
- S. **"Outside Executive Position"** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Persons** in an **Outside Entity** if service in such position is with the knowledge and consent of the **Insured Organization**.
- T. **"Provider Selection"** means evaluation, selection, credentialing, privileging, performing peer review of or contracting with an individual provider of medical services.

U. **“Wrongful Act”** means:

1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission by:
  - a. any of the **Insured Persons** solely in their capacity as such;
  - b. any of the **Insured Persons** while in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E;
  - c. the **Insured Organization** solely with respect to the coverage afforded under Insuring Clause I.C.;
  - d. an **Insured** in **Provider Selection** but solely with respect to a **Claim** brought by a provider of medical services,
2. any matter claimed against any of the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E.

**III. EXCLUSIONS**

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof); provided, that this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** in **Provider Selection** seeking **Loss** for mental anguish, emotional distress or humiliation;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
  2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so (such costs hereinafter “Clean Up Costs”) including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or its securities holders, purchasers or sellers;

provided, however, this exclusion shall not apply to the extent such **Claim** is otherwise covered under Insuring Clause I.A., other than Clean Up Costs; or **Loss** resulting from any **Claim** covered under Insuring Clauses I.B., I.C., I.D. or I.E., other than Clean Up Costs, to the extent such **Claim** is brought by any security holders of the **Insured Organization** solely in their

capacity as such whether directly in their own name or right or derivatively on behalf of the **Insured Organization** and such **Claim** is instigated and continuously pursued totally independent of and totally without the solicitation, assistance, active participation or intervention of the **Insureds**;

- C. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, the Fair Labor Standards Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations;
- D. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA;
- E. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
  - 1. is a derivative action brought or maintained by or on behalf of a securities holder of the **Insured Organization** who, when such **Claim** is first made, is acting independently of and without the solicitation, assistance, participation or intervention of any **Insured**;
  - 2. is brought by any of the **Insureds** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy;
  - 3. is a **Derivative Demand**;
  - 4. is brought by a receiver, liquidator, trustee or similar official of the **Insured Organization**;
  - 5. is brought by any former **Insured Person** who has not served in such capacity or as a consultant to the **Insured Organization** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Insured Organization** or any other **Insured Persons** or consultants to the **Insured Organization** who are serving or have served in such capacity within such four (4) year period; provided, that this exclusion shall not apply to any **Claim** brought by an **Insured Person** for a **Wrongful Act** as a "whistleblower"; or
  - 6. is brought by a provider of medical services alleging a **Wrongful Act** in **Provider Selection**.

- F. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Persons** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy; or
  2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives;

- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. the public offer, sale, solicitation or distribution of securities of the **Insured Organization** or an **Outside Entity**; or
  2. the actual or alleged violation of any federal, state, local or provincial statute relating to securities, including but not limited to the Securities Act of 1933 and the Securities and Exchange Act of 1934, or any rules or regulations promulgated thereunder;

provided, however, this exclusion will not apply to any offer, purchase or sale of securities of the **Insured Organization**, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933 (an "Exempt Transaction").

If at least thirty (30) days prior to an offering of securities of the **Insured Organization**, other than pursuant to an Exempt Transaction, the Underwriters receive notice of the proposed transaction and any additional information requested by the Underwriters, the **Insured Organization** may request a proposal for coverage subject to any additional terms and conditions and payment of any additional premium the Underwriters may specify in such proposal. However, the Underwriters will not be obligated to provide such coverage;

- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, the purchase by the **Insured Organization** of securities of any entity whose securities are traded on any public stock exchange which purchase results in the **Insured Organization** having the right to vote for the election of such entity's directors, either directly or indirectly;
- I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any deliberately dishonest, fraudulent or criminal act or omission by any of the **Insureds**; or
  2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made;

- J. for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization** provided that this exclusion shall not apply to **Defense Costs** incurred in connection with any such **Claim** until such time as it is determined by a judgment, settlement or a final adjudication that such payment was unlawful;
- K. with respect to Insuring Clause C. only:
1. for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade secret, trade dress, or any other intellectual property rights;
  2. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;
  3. for actual or alleged breach of written contract, agreement, warranty, or guarantee where such **Claim** is brought by or on behalf of a party to or beneficiary of such contract, agreement, warranty, or guarantee except to the extent that the **Insured** would have been liable in the absence of such contract, agreement warranty, or guarantee;
  4. for the liability of others assumed by the **Insured Organization** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
  5. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission in connection with the rendering of, or actual or alleged failure to render, professional services by or on behalf of the **Insured Organization** for the benefit of any other entity or person; provided, that this exclusion shall not apply to any **Claim** alleging any **Wrongful Act** in the performance of or failure to perform **Provider Selection**;
  6. by, on behalf of, or at the direction of any employee of or applicant for employment with the **Insured Organization** including without limitation any leased employee, seasonal employee or volunteer; provided that this exclusion shall not apply to a **Claim** brought by any such person in his or her capacity as a shareholder of the **Insured Organization**;
  7. for costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to comply with **HIPAA**; or
  8. for actual or alleged: (i) sexual abuse or injury; sexual molestation; sexual assault; sexual exploitation; child abuse or child neglect; or (ii) wrongful hiring or retention;

wrongful supervision; wrongful investigation; wrongful reporting or failure to report to the proper authorities in connection with or in any way involving any incident or pattern of incidents of alleged sexual abuse or injury, sexual molestation, sexual assault, sexual exploitation, child abuse or child neglect.

No **Wrongful Acts** committed or alleged to have been committed by any **Insured** shall be imputed to any **Insured Person** for the purpose of determining the applicability of the Exclusions I and J..

#### IV. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- a. merges with another entity such that the **Named Insured** is the surviving entity, or
- b. acquires assets of another entity or creates or acquires a **Subsidiary** whose assets exceed 25% of the total assets of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of ninety (90) days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

#### V. ORDER OF PAYMENTS

The Underwriters shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** payable under Insuring Clause I.A. and one or more of the other Insuring Clauses is incurred contemporaneously, the Underwriters shall pay **Loss** payable under Insuring Clause I.A. The **Named Insured** may elect through its chief executive officer to decline or defer such payment under the other Insuring Clauses. The Underwriters shall have no obligation to pay **Loss** after exhaustion of the applicable Limits of Liability, regardless of whether the **Named Insured** has declined or deferred payment.

#### VI. ADDITIONAL SIDE A D&O LIMIT

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Side A D&O Limit of Underwriters applicable only to **Claims** under Insuring Clause I.A. above, which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. The Additional Side A D&O Limit shall apply excess of the aggregate limit of liability applicable to the Private Organization Directors, Officers and Entity Liability Clause and all policies of insurance providing excess coverage.

## VII. SUBLIMITS AND CO-INSURANCE

- A. Any amount described as a “sublimit” in Item 4. of the Declarations shall be the Underwriter’s maximum aggregate limit of liability for all such **Claims** which amount shall be part of and not in addition to the applicable aggregate limit of liability in Item 4. of the Declarations.
- B. The **Insureds** shall bear uninsured and at their own risk the applicable percentage set forth in Item 11. of the Declarations of **Loss** resulting from an **Antitrust Claim** or **Defense Costs** resulting from a **Government Funding Claim** and the Underwriters’ liability shall apply only to the remaining percentage of such **Loss** or **Defense Costs**.



## EMPLOYMENT PRACTICES LIABILITY CLAUSE FOR HEALTHCARE ORGANIZATIONS

### I. INSURING CLAUSES

- A. Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity**.

- C. If indicated in Item 3. of the Declarations, Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any of the **Insureds** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Third Party Wrongful Act**.

If a sublimit applicable to **Third Party Wrongful Acts** is indicated in Item 4. of the Declarations, then such amount shall be part of and not in addition to the aggregate limit of liability applicable to the Employment Practices Liability Clause.

### II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. “**Application**” means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof, or any other employment practices liability policies issued by the Underwriter of which this Policy is a renewal, replacement or which it succeeds in time.
- B. “**Claim**” means:
  - 1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
  - 2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds**, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by:
    - a. the service of a complaint or similar pleading;

- b. the filing of a notice of charges, investigative order or similar document;
  - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
- 3. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause against any **Insured**; or
  - 4. an arbitration or mediation or other alternative dispute resolution against any **Insured** proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with Underwriters' prior written consent, such consent not to be unreasonably withheld.

However, **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

- C. **"Defense Costs"** means reasonable and necessary legal fees and expenses to which Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.
- D. **"Discrimination"** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, military status in violation of the Uniformed Services Employment Reemployment Rights Act (USERRA) or any other basis which is or is alleged to be prohibited by federal, state or local law.
- E. **"Employee"** means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**. This includes members or managers, applicants for employment, employees, volunteers, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position and **Independent Contractors** but does not include employees who are leased to another employer.
- F. **"Executive Officer"** means any member of the management committee, chairperson, chief executive officer, chief operating officer, president, **Manager**, chief financial officer, risk manager, human resources staff or an individual acting in a similar capacity with the **Insured Organization**.
- G. **"Harassment"** means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature, where such harassment is based on an employee's race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis protected by federal, state or local law and is explicitly or implicitly made a condition of employment, used as a basis for employment

decisions or performance, or creates a hostile, intimidating or offensive work environment or that interferes with performance.

H. **“Inappropriate Employment Conduct”** means any of the following:

1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful;
2. actual or alleged wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
3. actual or alleged negligent hiring, retention or supervision;
4. actual or alleged breach of an express written employment agreement;
5. actual or alleged violation of the Family and Medical Leave Act;
6. actual or alleged misrepresentation, false imprisonment, detention or malicious prosecution in connection with an employment decision;
7. actual or alleged libel, slander, defamation of character or any invasion of right of privacy in connection with an employment decision; or
8. actual or alleged failure to employ or promote, train, create or enforce adequate workplace or employment policies and procedures, or grant tenure or seniority.

I. **“Independent Contractor”** means any natural person independent contractor who performs labor or service for the **Insured Organization** on a pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.

J. **“Insureds”** means the **Insured Persons** and the **Insured Organization**.

K. **“Insured Persons”** means all persons who were, now are, or shall be duly elected or appointed:

1. directors, officers, trustees, **Employees** or **Managers** of the **Insured Organization**;
2. members of any duly constituted committee, any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician, any individual in charge of any operational department or any medical director, staff physician or faculty member of the **Insured Organization**, regardless of whether or not such person is directly employed by the **Insured Organization** or is considered to be an independent contractors

including all persons outside the United States serving in a functionally equivalent role for the **Insured Organization** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- L. “**Loss**” means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by Underwriters), back pay, front pay, settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:
1. the cost of providing non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought);
  2. civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), penalties, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act); payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this policy is construed;
  3. amounts owed under **Wage and Hour Laws**;
  4. severance pay, commissions, bonuses, profit sharing or benefits including but not limited to medical, stock options, vacation, holiday, and/or sick pay;
  5. future salary, wages, bonus, commissions and/or benefits resulting from a settlement of a **Claim**, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Insured Person**;
  6. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree; or
  7. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- M. “**Outside Entity**” means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax; or
  2. any other entity, if specified in an endorsement to this Policy.
- N. “**Outside Executive Position**” means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Person** in an **Outside Entity** if service in such position is at the specific request of the **Insured Organization**.
- O. “**Retaliation**” means any actual or alleged **Discrimination, Harassment, and/or Inappropriate Employment Conduct** against an **Employee** on account of such **Employee’s** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.

- P. **“Third Party Wrongful Act”** means any actual or alleged discrimination, including discriminatory or sexual harassment, by any of the **Insureds** against any natural person who is not an **Insured Person** or an applicant for employment of the **Insured Organization**.
- Q. **“Wage and Hour Law”** means any federal, state or local law governing or relating to the payment of wages including the payment of overtime, on-call time, rest periods, minimum wages or the classification of employees for the purpose of determining employees’ eligibility for compensation or other benefits under such law(s) including any statutory or common law premised on such law.
- R. **“Wrongful Act”** means **Inappropriate Employment Conduct, Discrimination, Harassment, and/or Retaliation** by any of the **Insureds** against an **Insured Person** or an applicant for employment of the **Insured Organization**. If indicated in Item 3. of the Declarations, **Wrongful Act** shall also include a **Third Party Wrongful Act**.

### III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving libel, slander, defamation, bodily injury, sickness disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, or damage to or destruction of tangible property (including loss of use thereof); provided, however, this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** seeking **Loss** for mental anguish, emotional distress or humiliation;
- B. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers’ compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, the Fair Labor Standards Act (except the Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;
- C. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 (“ERISA”), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured’s** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**; provided, that this exclusion shall not apply to any **Claim** alleging violation of Section 510 of the Employee Retirement Income Security Act of 1974;
- D. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Person**

began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy; or

2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives;
- E. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving lockout, strike, picket line, hiring of replacement workers or other similar action in connection with any labor dispute or labor negotiation or for or arising out of any alleged violation or responsibilities, duties or obligations imposed on an **Insured** under the National Labor Relations Act or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation;
  - F. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving the liability of others assumed by an **Insured** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
  - G. for breach of an express written employment agreement, or under any policy or procedure providing for payment in the event of separation from employment unless such liability would have attached in the absence of such contract or agreement; provided, that this Exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim**;
  - H. for an alleged violation of the responsibilities, duties or obligations imposed on an **Insured** under any **Wage and Hour Law**; provided, however, that in the event such **Claim** also alleges a **Wrongful Act** otherwise covered by this Policy and notwithstanding the provisions of Clause VI. **Settlement and Defense** of the Policy Terms and Conditions and subject to all other terms, conditions and exclusions contained in this Policy, this exclusion does not apply to **Loss** solely applicable to that portion of the **Claim** alleging such **Wrongful Act**; or
  - I. for actual or alleged: (i) sexual abuse or injury; sexual molestation; sexual assault; sexual exploitation; child abuse or child neglect; or (ii) wrongful hiring or retention; wrongful supervision; wrongful investigation; wrongful reporting or failure to report to the proper authorities in connection with or in any way involving any incident or pattern of incidents of alleged sexual abuse or injury, sexual molestation, sexual assault, sexual exploitation, child abuse or child neglect.

#### IV. ALLOCATION

Notwithstanding Clause VII. **Allocation** of the Policy Terms and Conditions Clause, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation of all covered **Defense Costs** and non-covered defense costs associated with the defense of **Claims** alleging a violation of the responsibilities, duties, or obligations imposed under any **Wage and Hour Law**. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Defense Costs** that the parties agree is not in dispute until a final amount is agreed upon or determined by applicable law.

## V. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- a. merges with another entity such that the **Named Insured** is the surviving entity, or
- b. acquires assets of another entity or creates or acquires a **Subsidiary** whose employees exceed 25% of the total number of employees of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of ninety (90) days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

## VI. OTHER INSURANCE

Notwithstanding Clause X.D. **Other Insurance** of the Policy Terms and Conditions, solely in respect of **Claims** for **Wrongful Acts** other than a **Third Party Wrongful Acts**, this Policy shall apply as primary insurance, except with respect to:

- a. **Claims** which include allegations covered under both a fiduciary liability policy and this Policy;
- b. **Claims** brought by or on behalf of an **Independent Contractor** or leased or temporary **Employee**; or
- c. **Claims** under Insuring Clause B.

in which case the provisions of Clause X.D. **Other Insurance** of the Policy Terms and Conditions shall apply.

<Product Name>  
**EMPLOYMENT EVENT CLAUSE**

**I. INSURING CLAUSE**

The Underwriters shall pay **Employment Event Loss** incurred by the **Insured Organization** solely with respect to an **Employment Event** first occurring during the **Policy Period** or **Optional Extension Period**, if purchased, and reported in writing to the Underwriters as soon as practicable but in no event later than sixty (60) days after the expiration of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased, from first dollar, provided, that the payment of **Employment Event Loss** shall not waive the Underwriters' rights under this Policy or at law. Coverage under this Clause I. shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Employment Event** and, in the case where a **Claim** is made, regardless of whether the **Employment Event Loss** is incurred prior to or subsequent to the making of the **Claim**.

An **Employment Event** commences when the **Insured Organization** or any **Executive Officer** shall first become aware of such **Employment Event**. An **Employment Event** shall conclude ninety (90) days after it first commences or when the **Employment Event** Sublimit has been exhausted.

**II. DEFINITIONS**

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the applicable Clause.

- A. **"Employment Advisor"** means any public relations firm, security firm or mental health professional selected by the **Insured** with the Underwriters' consent, such consent not to be unreasonably withheld.
- B. **"Employment Event"** means any of the following events, which shall be deemed to commence (i) when an **Executive Officer** first believes in good faith that it is more likely than not that such event will occur within the next sixty (60) days, or (ii) with respect to 5. below, when the event occurs, whichever is earlier:
1. layoff/termination of 20% or greater of the **Insured Organization's** workforce;
  2. acquisition of an organization which necessitates a material change in employment status or terms of employment of 20% or greater of the **Insured Organization** workforce;
  3. the public announcement of allegations of discrimination or harassment implicating an **Executive Officer**; or a **Claim** alleging a **Third Party Wrongful Act**;
  4. receipt by the **Insured Organization** of notice that a civil rights organization, public interest group or similar organization is investigating the **Insured Organization** for violations of state or federal employment laws or is distributing literature which accuses the **Insured Organization** of violations of state or federal employment laws;



5. a workplace disaster resulting in loss of life or the imminent threat of or actual use of a lethal weapon which occurs on the **Insured Organization's** premises, including without limitation, flood, fire, or workplace violence.

C. **"Employment Event Loss"** means reasonable fees and expenses charged by an **Employment Advisor** in connection with:

1. advising the **Insured Organization** with respect to minimizing potential loss or liability on account of an **Employment Event**;
2. retaining an independent security consultant or for independent security guard services with respect to an **Employment Event** described in Definition B.1., 2. or 5.;
3. managing or administering disclosures to clients, customers, suppliers, investors or the public regarding an **Employment Event**; or
4. providing counseling to any **Employee** on account of an **Employment Event**

provided, that **Employment Event Loss** shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.

### III. **EMPLOYMENT EVENT SUBLIMIT**

The Employment Event Sublimit shown in Item 4. of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriters for all **Employment Event Loss** resulting from all **Employment Events** which amount shall be part of, and not in addition to, the Employment Practices Liability Clause Limit of Liability shown in Item 4. of the Declarations.

<INSURANCE POLICY>  
PRIVACY VIOLATION CLAUSE

- I. Clause II. Definitions H. “**Inappropriate Employment Conduct**” of the Employment Practices Liability Clause is amended to include any **Privacy Violation**.

II. **DEFINITIONS**

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the applicable Clause.

- A. “**Breach Notice Law**” means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or may reasonably have been accessed by an unauthorized person.
- B. “**Personally Identifiable Non-Public Information**” means information about an **Employee** obtained by the **Insured** solely in its capacity as the employer of such individual. **Personally Identifiable Non-Public Information** does not include any information obtained by the **Insured** in any other capacity including without limitation information obtained as the result of the **Employee** being a customer of the **Insured**.
- C. “**Privacy Policy**” means the internal or publicly accessible written documents that set forth the **Insured Organization’s** policies, standards and procedures for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Non-Public Information**.
- D. “**Privacy Violation**” means:
1. theft of **Personally Identifiable Non-Public Information** that is in the care, custody or control of the **Insured Organization**, or an independent contractor that is holding or processing such information on behalf of the **Insured Organization**;
  2. the **Insured Organization’s** failure to timely disclose a incident or event triggering a violation of any **Breach Notice Law**;
  3. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
    - a. prohibits or restricts the **Insured Organization’s** disclosure, sharing or selling of an **Employee’s Personally Identifiable Non-Public Information**;
    - b. requires the **Insured Organization** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by an **Employee**; or
    - c. mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**.

<Product Name>  
**FIDUCIARY LIABILITY CLAUSE**

**I. INSURING CLAUSES**

- A. The Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insureds** in an amount not to exceed \$100,000 any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice**. Such amount shall be subject to the Retention set forth in Item 5. of the Declarations and shall be part of and not in addition to the Limit of Liability set forth in Item 4. of the Declarations. This Insuring Clause shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the Inception Date of this Policy.

**II. DEFINITIONS**

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. **“Administration”** means one or more of the following administrative duties or activities with respect to a **Plan**:
  - 1. counseling or advising participants or beneficiaries;
  - 2. providing interpretations;
  - 3. handling of records; or
  - 4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B. **“Administrator”** means a natural person with responsibility for **Administration** and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other fiduciary liability policy issued by the Underwriters, of which this Policy is a renewal, replacement or which succeed it in time; and any publicly available documents that are filed by the **Named Insured** or **Plan** prior to the inception date of this Policy with the Internal Revenue Service (“IRS”), Department of Labor or Pension Benefit Guaranty Corporation (or for any similar federal, state, local or foreign regulatory agency).
- D. **“Benefits”** means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.

- E. **“Claim”** means:
1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
  2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
    - a. the service of a complaint or similar pleading;
    - b. the filing of a notice of charge, investigative order or similar document; or
    - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
  3. any fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States;
  4. solely for the purpose of coverage afforded under Insuring Clause I.B., a **Voluntary Compliance Notice**; or
  5. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with Underwriters’ prior written consent, such consent not to be unreasonably withheld.
- F. **“Defense Costs”** means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization’s** overhead expenses.
- G. **“ERISA”** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), and any amendment or revision thereto, or any similar common or statutory law of the United States, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject. **ERISA** shall not include any law concerning worker’s compensation, unemployment insurance, social security, government mandated disability benefits or similar law.
- H. **“ESOP”** means any employee stock ownership plan as defined in **ERISA** or any **Plan** under which investments are made primarily in securities of the **Insured Organization**.
- I. **“ESOP Administration”** means one of more of the following administrative duties or activities with respect to an **ESOP**:

1. giving notice to employees, participants or beneficiaries;
2. interpreting benefits;
3. handling records; or
4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries

Provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Insured Organization**.

- J. **“Executive Officer”** means any duly elected officer, director, natural person partner, principal, **Manager**, in-house general counsel or member of the **Insured Organization’s** legal department, trustee or **Administrator** or individual acting in a similar capacity with the **Insured Organization**.
- K. **“Fiduciary”** means a fiduciary of a **Plan** as defined in **ERISA**.
- L. **“Insured”** means any **Insured Person**, the **Insured Organization** and any **Plan**.
- M. **“Insured Person”** means all persons who were, now are, or shall be employees of the **Insured Organization** or a **Plan**; or duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** or a **Plan** in his or her capacity as a **Fiduciary** or **Administrator** of a **Plan** including all persons outside the United States of America serving in a functionally equivalent role including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- N. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim**, other than a **Voluntary Compliance Notice**, including damages, judgments (including prejudgment or postjudgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney’s fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include:
1. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
    - a. the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
    - b. the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
    - c. **Voluntary Compliance Fees**; or
    - d. penalties or other awards imposed by the Pension Ombudsman of England or Occupational Pensions Regulatory Authority of England pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the UK Pensions

Act 2004, as amended, and any rules and regulations promulgated thereunder, provided always that no part of the premium for this Policy attributable to this exception has been funded, paid or reimbursed from the funds or assets of any pension scheme insured under this Policy;

2. **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured's Wrongful Act**;
  3. any amounts for which the **Insureds** are legally or financially absolved from payment;
  4. matters deemed uninsurable under the law pursuant to which this Policy shall be construed; or
  5. any amounts incurred in defense of any **Claim** for which any other Underwriter has a duty to defend.
- O. **"Plan"** means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:
1. a welfare plan as defined in **ERISA** sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
  2. a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
  3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause IV.A.;
  4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for employees of the **Insured Organization**;
  5. any other plan, fund or program which is included in the definition of **Plan** by written endorsement attached hereto;
  6. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the

**Insured Organization** exclusively for the benefit of employees of the **Insured Organization**; or

7. an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.
- P. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Policy shall be construed.
- Q. **“Voluntary Compliance Notice”** means a written notice given to the Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.
- R. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.
- S. **“Wrongful Act”** means:
  1. as respects a **Fiduciary**, a **Plan** or the **Insured Organization**:
    - a. any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or
    - b. any matter claimed against an **Insured** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
  2. as respects an **Administrator**:
    - a. any actual or alleged act, error or omission in the performance of **Administration**; or
    - b. any matter claimed against an **Administrator** by reason of his or her status as such;
  3. as respects an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Insured Organization**; or

4. any actual or alleged act, error or omission by an **Insured Person** in the performance of **ESOP Administration**.

### III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of any tangible property (including loss of use thereof);
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or
  2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or the **Plan** or any of their security holders, purchasers or sellers

provided, however, that this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Insured Organization** which are owned by the **Plan**;

- C. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act;
- D. for liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan** as defined in this Policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Wrongful Act** as respects a **Plan** taking place at any time when the **Insured Organization** did not sponsor such **Plan**;
- G. for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any law concerning workers' compensation, unemployment insurance, Social Security, or disability insurance, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations



Act, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law other than COBRA;

- H. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**;
- I. for **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of an **Insured Person**; provided, however this exclusion shall not apply to **Defense Costs**; or
- J. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - 1. any deliberately dishonest, fraudulent or criminal act, or omission by any of the **Insureds**; or
  - 2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made.

No **Wrongful Act** shall be imputed to any of the other **Insureds** for the purpose of determining the applicability of any of the Exclusions.

#### IV. **ACQUISITIONS**

##### A. **Sponsorship of Another Plan**

In the event the **Insured Organization** becomes a sponsor of a plan, other than an **ESOP**, after the inception date of this Policy, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Insured Organization** is the surviving entity or by its own creation, and the total assets of such newly sponsored plan do not exceed twenty-five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements, coverage shall be afforded for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** for such **Plans** whose total assets do exceed twenty-five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements shall be afforded for a period of ninety (90) days, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage beyond such ninety (90) days shall only be available if:

- 1. written notice of such sponsorship is given to the Underwriters by the **Insured Organization**;

2. the **Insured Organization** provides the Underwriters with such information in connection therewith as the Underwriters may deem necessary;
3. the **Insureds** accept any special terms, conditions, exclusions or additional premium as may be required by the Underwriters; and
4. the Underwriters, at its sole discretion, agrees to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Clause only for **Claims** relating to **ESOP Administration** and no coverage shall be granted for **Claims** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this Policy and any related additional premium required by the Underwriters has been paid.

**B. Cessation of Plan Sponsorship and Termination, Sale or Spin-off of Plan**

In the event a **Plan** ceases to be sponsored by the **Insured Organization** or ceases to be sponsored jointly by the **Insured Organization** and a labor organization after the Inception Date of this Policy, or in the event the **Insured Organization** terminates, sells or spins off any **Plan** before or after the inception date of this Policy; or of any policy issued by the Underwriters of which this Policy is a renewal or replacement, coverage under this Policy with respect to such **Plan** and its **Insured Persons** shall continue until the end of the **Policy Period** for those who were **Insureds** at the time such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or who were **Insureds** at the time of such **Plan** termination, sale or spin-off or who would have been **Insureds** at the time of **Plan** termination, sale or spin-off if this Policy had been in effect, but only with respect to **Wrongful Acts** committed or allegedly committed prior to the date such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or such **Plan** termination, sale or spin-off. The **Insureds** shall give notice to the Underwriters of cessation of sponsorship as soon as practicable together with such information as the Underwriters may require.

**C. Merged Plans**

In the event a **Plan** is merged with another **Plan** during the **Policy Period**, this Policy shall continue to provide coverage for both **Plans** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy.

In the event a **Plan** is merged with another plan for which coverage is not provided under this Policy, this Policy shall continue to provide coverage only for the covered **Plan** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy for **Claims** with regard to **Wrongful Acts** which took place prior to the date the plans merged.