

BEAZLEY HEALTHCARE REGULATORY LIABILITY

HEALTHCARE REGULATORY LIABILITY CLAIMS MADE AND REPORTED INSURANCE

NOTICE: This is a Claims Made and Reported Policy. Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance policy is limited to those **Claims** which are first made against the **Insured** and reported to the Underwriters during the **Policy Period**. **Damages** and **Claims Expenses** shall be applied against the Retention. Certain words and phrases which appear in bold type have the special meaning agreed by the parties in Section IV., Definitions or in the attached Schedule and Declarations forming part of this Policy. This Policy does not provide coverage for any overpayments that an **Insured** is required to return or refund to a **Government Entity** or **Commercial Payor**. Please review the coverage afforded under this insurance policy carefully and discuss it with your insurance agent or broker.

In consideration of the payment of premium, the undertaking of the **Insured** to pay the applicable Retention and Co-insurance herein, and in reliance upon the statements, representations and warranties made in the application which is made a part of this insurance policy (hereinafter referred to as the "Policy" or "insurance") and subject to the Limit of Liability, exclusions, limitations, conditions and other terms of this insurance, the Underwriters agree with the **Named Insured** (specified in Item 1 of the Declarations, made a part hereof) as follows:

I. INSURING AGREEMENTS

A. Coverage

1. Regulatory Liability

The Underwriters will pay on behalf of the **Insured Damages** and **Claims Expenses** which the **Insured** shall become legally obligated to pay in respect of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** and reported to the Underwriters during the **Policy Period**, arising out of any **Wrongful Act** (as specified in Item 12 of the Declarations), except as excluded or limited by the terms, conditions and exclusions of this Policy.

Provided always that:

- (a) the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date specified in Item 3(a) of the Declarations;
- (b) such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 3(b) of the Declarations; and
- (c) the **Insured** has not notified any **Government Entity** or **Commercial Payor** of the **Wrongful Act** giving rise to the **Claim**.

2. Voluntary Notification to any **Government Entity** or **Commercial Payor**

If, during the **Policy Period**, the **Insured** notifies any **Government Entity** or **Commercial Payor** of a **Wrongful Act** the **Insured** reasonably believes could give rise to a **Claim** and notifies the Underwriters consistent with Section IX.B., the Underwriters shall indemnify the **Insured** for **Claims Expenses** in excess of the

Retention stated in Item 6 of the Declarations which the **Insured** incurs as a result of any **Claim** subsequently made against the **Insured** arising out of the **Wrongful Act**; provided always that the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date of this Policy specified in Item 3(a) of the Declarations and such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 3(b) of the Declarations.

B. Defense and Settlement

1. It shall be the duty of the **Insured** and not the duty of the Underwriters to defend **Claims**. The Underwriters shall have the right and shall be given the opportunity to effectively associate with the **Insured** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.
2. The **Insured** shall not settle any **Claim**, select any defense counsel, incur any **Claims Expenses**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Claims Expenses**, assumed obligation, admission or stipulated judgment to which they have not consented or for which the **Insured** is 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 **Claims Expenses**, then the Underwriters consent shall not be required for such disposition.
3. The Underwriters shall advance on behalf of the **Insured**, **Claims Expenses** which the **Insured** have incurred in connection with a **Claim** made against them, prior to the final disposition of such **Claim**, provided that to the extent it is finally established that any such **Claims Expenses** are not covered under this Policy, the **Insured** shall repay such **Claims Expenses** to the Underwriters. The Underwriters shall pay **Claims Expenses** no more than once every ninety (90) days, unless otherwise agreed.
4. If the **Insured** refuses to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Retention, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from association in the defense of the **Claim** by tendering control of said defense to the **Insured** without further liability.
5. It is agreed that the Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied in excess of the Retention specified in Item 6 of the Declarations.

6. The Underwriters shall have the right to conduct any investigation they deem necessary, including, without limitation, any investigation with respect to coverage and statements made in any application for this insurance.
7. Subject to the Limit of Liability, the Underwriters shall reimburse the **Insured** for all reasonable expenses, other than loss of earnings, incurred at the Underwriters' request.
8. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to associate in the defense of any **Claim**, after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses**, or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment the Underwriters shall have the right to withdraw from the association in any further defense of the **Claim** without further liability by tendering full control of said defense to the **Insured** without further liability.

C. Allocation

If **Damages** and/or **Claims Expenses** covered by this Policy and damages and/or claims expenses uninsured by this Policy are incurred, either because the **Claim** includes both covered and uninsured claims or because it includes both insured and uninsured parties, then the **Insureds** and the Underwriters agree to fairly and reasonably allocate such amount between covered **Damages** and/or **Claims Expenses**, and uninsured damages and/or claims expenses. The right to allocate **Damages** includes but is not limited to **Claims** arising out of any **Wrongful Act** which occurs prior to and after the Retroactive Date.

In the event that a method of allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. The Underwriters shall advance the amount of **Claims Expenses** which they deem fair and proper until a different amount is negotiated by the parties, determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially;
3. The Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration. The rules of the American Arbitration Association shall apply solely with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Claims Expenses** on account of a **Claim** shall be applied retroactively to all **Claims Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Claims Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Damages** on account of such **Claim**.

II. TERRITORY

This insurance applies to **Wrongful Acts** which take place in the United States of America, its possessions or territories, or Puerto Rico, provided the **Claim** is first made against the **Insured** within the United States of America, its possessions and territories, or Puerto Rico, during the **Policy Period**.

III. EXCLUSIONS

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect:

A. to any **Claim** based upon or arising out of:

1. any dishonest, fraudulent, criminal, intentional, or malicious act by any **Insured**;
2. any willful violation of any law, statute, ordinance, rule or regulation by any **Insured**; or
3. any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;

provided, however, that this Exclusion shall not apply to any **Claim** brought under the United States False Claims Act (31 U.S.C. § 3729(b)) or any similar federal or state statute, regulation or rule based on "knowing" conduct as that term is defined in the False Claims Act (31 U.S.C. § 3729(b)). For the purposes of determining the applicability of this Exclusion, no **Wrongful Act** of any **Insured** shall be imputed to any other **Insured**;

- B. to any **Claim** arising out of any actual or alleged act, error, or omission in the rendering of or failure to render **Medical Services** by any **Insured**, except with respect to any allegations of billing for **Medical Services** which were not rendered or were not medically necessary;
- C. to any **Claim** 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 tangible property (including loss of use thereof);
- D. to any **Claim** arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress and copyright;
- E. to any **Claim** based upon an express or implied warranty or guarantee, or breach of contract in respect of any agreement to perform work for a fee;
- F. to any **Claim** arising out of employment discrimination, retaliation, termination or other wrongful employment acts in violation of any municipal, state or federal Civil Rights law, regulation or ordinance;
- G. to any **Claim** arising out of any actual or alleged ownership, operation, use, maintenance, loading, or unloading of any motor vehicle, trailer, watercraft, aircraft or helipad;
- H. to any **Claim** arising out of any actual or alleged bodily injury, sickness, disease or death to any employee of any **Insured** arising out of and in the course of employment by the **Insured**; or any

obligation for which the **Insured** in its capacity as an employer and/or its insurer may be held liable under any Workers' Compensation, Unemployment Compensation, Disability Benefits law, or any similar law;

- I. to any **Claim** arising out of the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto;
- J. to any **Claim** arising out of or relating to any liability under any contract or agreement, whether written or oral, unless such liability would have attached to the **Insured** in the absence of such contract or agreement;
- K. to any **Claim** arising out of any actual or alleged:
 - 1. insolvency, bankruptcy, conservatorship, rehabilitation, receivership, liquidation, or financial inability to pay of:
 - (a) any **Insured** acting as an insurer or reinsurer; or
 - (b) any other insurer, reinsurer, self-insurer, third party payor, managed care organization, health care plan, or other person or entity;
 - 2. failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond;
 - 3. commingling or mishandling of funds; or
 - 4. failure to collect or pay premiums, commissions, brokerage charges, fees or taxes;
- L. to any **Claim** or circumstance which might lead to a **Claim**:
 - 1. in respect of which any **Insured** has given notice to any **Government Entity**, insurer of any other policy or self-insurance in force prior to the Continuity Date of this Policy;
 - 2. known to any **Insured** prior to the inception of this Policy and not disclosed to the Underwriters before inception; or
 - 3. arising out of any **Wrongful Act** which first took place, or is alleged to have taken place, prior to the Retroactive Date as specified in Item 3(b) of the Declarations;
- M. to any **Claim** or circumstance which might lead to a **Claim** in respect of which any **Insured** has given notice to a **Government Entity** during the **Policy Period** and has not provided notice to the Underwriters in accordance with **Section IX**. Notice of Claim, or circumstance that might lead to a Claim;
- N. to any **Claim** against any subsidiary designated in the Declarations or its past, present, or future employees, directors, officers, trustees, review board or committee members, or volunteers acting in their capacity as such, which are based upon, arise out of, directly or indirectly result from, are in consequence of, or in any way involve any fact, circumstance, situation, transaction, event, or **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts** happening before the date such entity became a subsidiary;

- O. to any **Claim** arising out of any actual or alleged service of any **Insured Person** as an employee, director, officer, trustee, member, member manager, governor, medical director, member of any duly constituted review board or committee, or volunteer of any entity other than the **Insured Entity**, even if directed or requested by the **Insured Entity** to serve in such capacity for such other entity;
- P. to any **Claim** arising out of a violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any state Blue Sky or securities law or similar state or federal statute, and any regulation or order issued pursuant to any of the foregoing or similar statutes;
- Q. to any **Claim** for any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
- R. to any **Claim** brought against any **Insured** by any other **Insured** hereunder; provided, however, that this provision shall not apply to any **Claim** brought by a *qui tam* plaintiff or brought under the False Claims Act (31 U.S.C. §3729 et seq.) or any similar state or local statute, ordinance or regulation;
- S. to any **Claim** directly or indirectly arising out of:
 - 1. the actual, alleged or threatened discharge, dispersal, release or escape or failure to detect the presence of **Pollutants**,
 - 2. the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to or testing for **Pollutants** contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever; or
 - 3. any governmental or regulatory directive or request that the **Insured** or anyone acting under its direction or control to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize said **Pollutants**;

“Pollutants” means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. “Waste” includes medical waste and material to be recycled, reconditioned or reclaimed;

- T. to any **Claim** caused directly or indirectly, in whole or in part, by:
 - 1. any fungus(es) or spore(s);
 - 2. any substance, vapour or gas produced by or arising out of any fungus(es) or spore(s); or
 - 3. any materials, product, building component, building or structure that contains, harbours, nurtures or acts as a medium for any fungus(es) or spore(s);

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that injury or **Damages**.

For the purposes of this Exclusion, the following Definitions are added:

“Fungus(es)” includes, but is not limited to, any form of mold, mushroom or mildew.

“Spore(es)” mean any reproductive body produced by or arising out of any fungus(es).

- U. to any **Claim** relating to or arising out of asbestos, silica or lead;
- V. to any **Claim** based upon or arising out of any **Insured’s** data processing services, including but not limited to:
 - 1. conversion of data from source material into media for processing on the **Insured’s** electronic data processing system;
 - 2. processing of data by the **Insured** on the **Insured’s** electronic data processing system; or
 - 3. design or formulation of an electronic data processing program or system;
- W. to any **Claim** based upon or arising out of any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- X. to any **Claim** arising out of or resulting from the distribution of unsolicited email, direct mail or facsimiles, or telemarketing;
- Y. to any **Claim** arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person, or the environment, or that affects the value, marketability, condition or size of any property;
- Z. to any **Claim** arising from costs of complying with physical modifications to any premises or any changes to the **Insured’s** usual business operations mandated by the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law;
- AA. to any **Claim** associated with implementation of any compliance program or any policies, procedures or practices relating to participation as a provider of medical services to a managed care organization or under a healthcare benefit program, whether initiated voluntarily or pursuant to direction by, order of, or in settlement with a government body, hospital, healthcare facility or managed care organization;
- AB. to any **Claim** based upon or arising out of any actual or alleged unfair or deceptive trade practices or violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, consumer protection or price fixing law, or any rules or regulations promulgated thereunder.

IV. DEFINITIONS

Whenever used in this Policy:

- A. “**Claim**” means any written demand brought by or on behalf of any **Government Entity** or brought by a **Commercial Payor** against an **Insured**:
 - 1. seeking **Damages** for a **Wrongful Act**;

2. commencing an audit or investigation of a **Wrongful Act**, including but not limited to a RAC or ZPIC audit; or
3. seeking injunctive relief on account of a **Wrongful Act**.

However, **Claim** does not include:

4. any customary or routine billing inquiry, including any cost report, request for documentation to support a submission for payment or reimbursement, or other audit/reconciliation conducted by or at the behest of a **Government Entity** or a **Commercial Payor**;
5. notice of a **Wrongful Act** provided in accordance with Section IX.B.;
6. any criminal proceeding against an **Insured**; or
7. any written demand or civil proceeding brought by or on behalf of a citizen or any non-governmental entity against an **Insured**; provided, however, that this subsection shall not apply to a *qui tam* action commenced by a private citizen as the relator for a **Government Entity** (other than a **Commercial Payor**).

B. **"Claims Expenses"** means:

1. reasonable and customary fees charged by an attorney(s), external auditor or billing and coding consultant designated and agreed by the Underwriters in consultation with the **Insured**, but subject always to the Underwriters' final decision; and
2. other reasonable and necessary fees, costs or expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**, if incurred by the **Insured** with the written consent of the Underwriters.

However, **Claims Expenses** does not include:

3. remuneration, salaries, wages, overhead, fees, benefits or other charges of any **Insured**;
4. any fees, costs, or expenses incurred with respect to any criminal proceedings or actions against any **Insured**; or
5. any fees, costs or expenses associated with the adoption and implementation of any security measures, corporate integrity agreement, deferred prosecution agreement, compliance program or similar provision regarding the operations of the **Insured's** business.

C. **"Commercial Payor"** means any entity which arranges for payment or reimbursement of expenses on account of **Medical Services**, including the following types of entities:

1. any entity, including an investor-owned insurance company, which indemnifies subscribers against expenses incurred for **Medical Services**;

2. any self-funded plan or any type of health plan where the risk for the cost of **Medical Services** is assumed, in whole or in part, by an employer rather than by an insurance company or managed care organization; or
3. any managed care organization, such as a health maintenance organization (“HMO”), preferred provider organization (“PPO”), point of service plan (“POS”), integrated delivery network (“IDN”), or any other type of entity which has all or some of the following characteristics:
 - (a) negotiated discount arrangements with selected providers;
 - (b) explicit criteria for selection of providers;
 - (c) financial or program incentives or penalties to enrollees who do not use selected providers; and
 - (d) provider risk-sharing arrangements.

D. “**Damages**” means any monetary amount, otherwise covered by this Policy and subject to the Limit of Liability, which an **Insured** is legally obligated to pay as a result of a **Claim**, including sums paid as awards, judgments, settlements and civil fines and penalties imposed by or on behalf of a **Government Entity** or **Commercial Payor**, and any interest accrued or imposed on any covered amount.

However, **Damages** shall not include:

1. the **Insured’s** return, refund, disgorgement or restitution of fees, profits, charges, overpayments or benefit payments to any **Commercial Payor** or **Government Entity**, and any interest accrued or imposed thereon;
2. any fees, costs or expenses associated with the adoption and implementation of any security measures, corporate integrity agreement, deferred prosecution agreement, compliance program or similar provision regarding the operations of the **Insured’s** business;
3. matters deemed uninsurable by law;
4. punitive and exemplary damages, taxes, sanctions, criminal fines and penalties; however this provision does not apply to any multiplied portion of a civil fine or penalty; or
5. any costs associated, whether directly or indirectly, with the **Insured’s** temporary or permanent loss of provider number(s) or the **Insured’s** exclusion from participation in any **Commercial Payor** program or governmental health benefit program, including, but not limited to, Medicare and/or Medicaid.

E. “**Government Entity**” means:

1. any department, agency, task force or other organization created by any federal, state or local law, executive order, ordinance or rule;

2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county or local government;
 3. any organization operating as a Medicare Integrity Program Contractor in accordance with 63 F.R. 1590 (20 March 1998) and pursuant to section 1893 of the Social Security Act (42 U.S.C. § 1395ddd);
 4. any organization operating as a Recovery Audit Contractor (“RAC”) for the Centers for Medicare and Medicaid Services (“CMS”) in accordance with The Tax Relief and Health Care Act of 2006;
 5. any organization operating as a Zone Program Integrity Contractor (“ZPIC”) for CMS in accordance with the Medicare Prescription Drug Improvement and Modernization Act of 2003;
 6. any governmental health benefit program or payor.
- F. **“Insured”** means any of the following: the **Named Insured**; any **Insured Entity**; and any **Insured Person**.
- G. **“Insured Entity”** means any of the following: the **Named Insured**, and any other organization or entity designated in Schedule A with applicable provider numbers shown.
- H. **“Insured Person”** means any past, present, or future employee, director, officer, trustee, review board or committee member, or volunteer of an **Insured Entity**, but only while acting within the scope of that person’s duties or capacity as such; and, in the event of the death, incapacity, or bankruptcy of any such person, the estate, heirs, legal representatives, or assigns of such person.
- I. **“Medical Services”** means any health care, medical care, or treatment provided to any individual, including but not limited to: medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the furnishing or dispensing of medications, drugs, blood, blood products, or medical, surgical, dental or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- J. **“Named Insured”** means the entity designated in Item 1 of the Declarations.
- K. **“Policy Period”** means the period from the Inception Date stated in Item 2(a) of the Declarations to the earlier of the Termination Date stated in Item 2(b) of the Declarations or the cancellation date.
- L. **“Wrongful Act”** means:
1. presenting, or causing or allowing to be presented, by an **Insured** any actual or alleged erroneous submission to:
 - (a) a governmental health benefit program; or
 - (b) a **Commercial Payor**;

seeking payment or reimbursement for **Medical Services** provided or prescribed by an **Insured**;

2. any negligent or reckless act, error or omission by an **Insured** in violation of any federal, state or local anti-kickback or self-referral laws, or any rules or regulations promulgated thereunder;
3. any negligent or reckless act, error, or omission by an **Insured** in violation of Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule, 45 C.F.R. Parts 160 and 164, and any amendments thereto, or any rules or regulations promulgated thereunder; or
4. any negligent or reckless act, error or omission by an **Insured** in violation of the Emergency Medical Treatment and Labor Act ("EMTALA") and any amendments thereto, or any rules or regulations promulgated thereunder.

V. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 4(a) of the Declarations as "Each **Claim**" is the Underwriters' Limit of Liability for all **Damages** and **Claims Expenses** arising out of the same, related or continuing **Wrongful Acts** without regard to the number of **Insureds**, **Claims** or claimants. All **Claims** arising out of the same, related or continuing **Wrongful Acts** shall be deemed to be a single **Claim** and shall be deemed to have been first made at time the earliest **Claim** of such related **Claims** was received by the **Insured** if then properly notified.
- B. The Limit of Liability stated in Item 4(b) of the Declarations as "Term Aggregate" is the Underwriters' Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** which are covered under the terms and conditions of this Policy.
- C. To the extent that Items 5(a) and/or 5(b) of the Declarations indicate that the **Insured** shall retain a percentage of the Limit of Liability ("Co-insurance"), the **Insured** shall retain and remain liable for such percentages in addition to the applicable Retention(s). Such Co-insurance shall be fully borne by the **Insured** at its own risk and on an uninsured basis. Such Co-insurance applies to **Damages** and **Claims Expenses**, as may be applicable. Such Co-insurance is part of the Limit of Liability and not in addition thereto.
- D. The Limit of Liability for any **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**.

VI. RETENTION

The Retention amount stated in Item 6 of the Declarations shall be satisfied by payments by the **Insured** of **Damages** and/or **Claims Expenses** resulting from each **Claim** first made and reported to the Underwriters during the **Policy Period** and/or any applicable **Extended Reporting Period** as a condition precedent to the payment by the Underwriters of any amounts due hereunder. The Underwriters shall be liable only for the amounts in excess of such Retention when it has been paid by the Insured, subject to the Underwriters' Limit of Liability in Item 4 of the Declarations. The Retention is in addition to the Underwriters' Limit of Liability and not part thereof. The **Insured** shall make direct payments within the Retention to appropriate parties designated by the Underwriters. The Retention is to be

uninsured, unless otherwise agreed by the Underwriters. Under no circumstances shall the Underwriters be called upon to pay the Retention, but the Underwriters may do so at their sole discretion. Such payment shall in no way affect the Underwriters' ability to collect the Retention from the **Insured**. The existence of "other insurance" shall not affect or abrogate the obligation of the **Insured** to pay the Retention as required.

VII. EXTENDED REPORTING PERIOD

- A. In the event of cancellation or non-renewal of this insurance by the Underwriters or the **Named Insured**, the **Named Insured** designated in Item 1 of the Declarations shall have the right to an **Extended Reporting Period** identified in Item 11(a) of the Declarations for **Claims** first made against any **Insured** and reported to the Underwriters during the **Extended Reporting Period**, subject to the conditions specified in the definition of **Extended Reporting Period** herein. In order for the **Named Insured** to invoke the **Extended Reporting Period** option, the payment of the additional premium specified in Item 11(b) of the Declarations for the **Extended Reporting Period** must be paid to the Underwriters within 30 days of the non-renewal or cancellation.
- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**.
- C. The quotation by the Underwriters of a different premium or Retention or Limit of Liability or changes in Policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- D. The right to the **Extended Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of any premium, or failure of an **Insured** to pay any amounts in excess of the applicable Limit of Liability or within the applicable Retention.
- E. All notices and premium payments with respect to the **Extended Reporting Period** shall be directed to the Underwriters through the entity named in Item 9 of the Declarations.
- F. At the commencement of the **Extended Reporting Period**, the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

VIII. OTHER INSURANCE

This insurance shall apply in excess of any other valid and collectible insurance or self-insurance available to any **Insured**, unless such other insurance is written only and identified as specific excess insurance over the Limit of Liability of this Policy. If there is any other insurance in force covering the same liability at the time of any event giving rise to a **Claim** under this Policy the **Insured** shall promptly provide the Underwriters in writing with full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the Underwriters may reasonably require.

IX. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against the **Insured**, the **Insured** shall immediately notify the Underwriters in writing through the persons named in Item 10 of the Declarations and similarly forward every demand, notice, summons or other process received by the **Insured** or its representative. The **Insured's** duty to provide notice in accordance with this provision is a condition precedent to coverage and the Underwriters shall not be subject to any liability under this Policy if the **Insured** fails to comply with this Section **IX**.
- B. If during the **Policy Period** the **Insured** first becomes aware of a **Wrongful Act** that could lead to a **Claim**, it must give written notice to the Underwriters through persons named in Item 10 of the Declarations during the Policy Period of:
1. the specific **Wrongful Act**;
 2. the injury or damage which may result or has resulted from the **Wrongful Act**; and
 3. the circumstances by which the **Insured** first became aware of the **Wrongful Act**.

Any subsequent **Claim** made against the **Insured** which is the subject of the written notice shall be deemed to have been made at the time written notice was first received by the Underwriters.

- C. A **Claim** or a circumstance that might lead to a **Claim** shall be considered to be reported to the Underwriters when notice is received by the Underwriters through the persons named in Item 10 of the Declarations.
- D. All **Claims** arising out of the same, continuing or related **Wrongful Act** shall be considered a single **Claim** and deemed to have been made at the time the first of the related **Claims** is reported to the Underwriters. Such related **Claims** shall be subject to one Limit of Liability, identified in Item 4(a) of the Declarations.
- E. In the event of non-renewal of this insurance by the Underwriters, the **Insured** shall have thirty (30) days from the expiration date of the **Policy Period** to notify the Underwriters of **Claims** made against the **Insured** during the **Policy Period** which arise out of any **Wrongful Act** occurring prior to the termination date of the **Policy Period** and otherwise covered by this insurance.
- F. If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

X. ASSISTANCE AND CO-OPERATION OF THE INSURED

The **Insured** shall co-operate with the Underwriters in all investigations, including regarding the application and coverage under this Policy, and upon the Underwriters' request assist in negotiating and making settlements, in all aspects of the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization. The **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the assistance and attendance of witnesses. The **Insured** shall not, except at its own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any

settlement, stipulate to any judgment or award or otherwise dispose of any **Claim** without the consent of the Underwriters. However 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 **Claims Expenses**, then the Underwriters' consent shall not be required for such disposition.

XI. ACTION AGAINST THE UNDERWRITERS

It is a condition precedent to the Underwriters' liability under this Policy that the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the claimant and the Underwriters. No person or organization shall have any right under this insurance to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or its legal representative.

XII. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of their obligations hereunder, save that the Underwriters shall not be liable for any sum arising solely as a result of the bankruptcy or insolvency of the **Insured**, and under no circumstances, including such bankruptcy or insolvency, shall the Underwriters be responsible to pay or advance the **Insured's** Retention, unless the Underwriters choose to do so at their own discretion.

XIII. INSPECTION AND AUDIT

The Underwriters shall be permitted, but not obligated, to inspect the **Insured's** property and operations at any time. Neither the Underwriters' right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe. The Underwriters may examine and audit the **Insured's** books and records at any time as far as they relate to the subject matter of this insurance.

XIV. SUBROGATION

If the Underwriters may be liable under this insurance, the Underwriters shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing before or after the payment of **Damages** by the Underwriters to prejudice such rights and shall take all reasonable steps to maintain them including positive action where necessary. The obligations of the **Insured** under this Condition **XIV** shall survive this Policy.

Any subrogated recovery shall first be paid to the Underwriters to the extent of any **Claims Expenses** paid by them, with the balance then being paid to the Underwriters and the **Insured** in the proportions that they have paid **Damages** in excess of the Retention, then to the **Insured** for any uninsured loss in excess of the Limit of Liability and then in respect of the Retention.

The Underwriters may at any time request an assignment from the **Insured** of any cause of action that the **Insured** may have against any third party in respect of which it has been, or appears likely to be, indemnified by the Underwriters, which the **Insured** shall promptly effect.

XV. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or estop the Underwriters from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance, signed by the Underwriters.

XVI. MERGERS AND ACQUISITIONS

A. If, during the **Policy Period**, the **Named Insured** or any **Insured Entity** acquires or creates another entity or subsidiary; or the **Named Insured** or any **Insured Entity** becomes a member of a joint venture or partner in a partnership which is not designated in Schedule A (any of which events is referred to as a "Transaction" in this Condition **XVI**); then the Underwriters shall have the option of providing coverage in respect of such entity or subsidiary.

No coverage shall be afforded under this Policy for any **Claim** in any way involving the entity or subsidiary which is acquired or created unless:

1. the **Named Insured** gives the Underwriters notice of such Transaction:
 - (i) as soon as possible; and
 - (ii) in addition to its timeous obligation in **XVI. A. 1. (i)** not later than thirty (30) days after the effective date of the Transaction;
2. the **Named Insured** gives the Underwriters such information regarding the Transaction as the Underwriters request; and
3. The Underwriters have specifically agreed by written endorsement to this Policy to provide coverage in respect to such entity or subsidiary and the **Named Insured** accepts any terms, conditions, exclusions, limitations, and additional premium as the Underwriters, at their sole discretion, impose.

If the Underwriters, in their sole discretion, elect to provide coverage in respect of such entity or subsidiary, this Policy shall not apply to, and the Underwriters shall not pay any **Damages** or **Claims Expenses** for, any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** by such entity or subsidiary or any **Insured Person** thereof happening before:

- (a) the effective date of the Transaction; or
- (b) the effective date of coverage under this Policy for such entity or subsidiary as specified in an endorsement to be issued to extend coverage to such entity or subsidiary;

whichever is later.

- B. If during the **Policy Period** the **Named Insured** consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless the Underwriters have issued an endorsement extending coverage under this Policy, and the **Named Insured** has agreed to any additional premium and terms of coverage required by the Underwriters.
- C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 9 of the Declarations.

XVII. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable except as requested by the Underwriters. If the **Insured** shall die or be adjudged incompetent, such insurance shall cover the **Insured's** legal representative as the **Insured**, to the extent permitted by this Policy.

XVIII. CANCELLATION

- A. This Policy may be cancelled by the **Named Insured** or by the Underwriters by sending notice by registered or certified mail to the other party stating when, not less than sixty (60) days thereafter, cancellation shall be effective.
- B. Any failure of the **Named Insured** to pay the premium when due or any sum payable as its share of any **Damages** owed by it as a co-insured or the Retention shall be a repudiatory breach of this Policy and the Underwriters shall be entitled to accept such repudiation on notice with immediate effect by registered or certified mail to the **Named Insured**.
- C. The registration or certification of mailed notice as aforesaid shall be sufficient proof of notice, and the insurance under this Policy shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent to mailing.
- D. If this Policy is cancelled by the **Named Insured** pursuant to **XVIII. A** above,, the Underwriters shall retain the short rate proportion of the premium for the period this Policy has been in force, calculated in accordance with the Short Rate Cancellation Table then in force.
- E. If this Policy is cancelled by the Underwriters pursuant to **XVIII. A** above, the Underwriters shall retain the pro rata proportion of the premium for the period this Policy has been in force.
- F. If the Underwriters accept the Insured's repudiation of this Policy pursuant to **XVIII. B** above because the **Insured** has not paid any sum payable as its share of any **Damages** owed by it as a co-insured or the Retention, the Underwriters shall be entitled to set off any sum held by them in the discharge of the Insured's obligations to the Underwriters or otherwise.
- G. Notice of cancellation by the Underwriters shall be effective even though the Underwriters make no payment or tender of return premium with such notice.

XIX. SINGULAR FORM OF A WORD

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

XX. REPRESENTATION, INCORPORATION OF APPLICATION

The **Insured** warrants that the information presented to the Underwriters prior to inception or contained in the Schedule attached to this Policy or in any supplemental materials submitted in respect thereof shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Insured** or its agent in the application, any application for Insurance of which this Policy is a renewal, or any supplemental materials submitted therewith, will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

The application and any application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith, are deemed incorporated into and made a part of this Policy.

XXI. NAMED INSURED AS AGENT

The **Named Insured** specified in Item 1. of the Declarations shall be considered the agent of all **Insureds**, and shall act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy, the acceptance of any endorsements to this Policy, and the **Named Insured** shall be responsible for the payment of all premiums, Co-insurance and Retentions.

XXII. HEADINGS

The titles of paragraphs sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand or define the provisions to which they relate and are not part of the Policy.

XXIII. NUCLEAR INCIDENT EXCLUSION

The insurance provided by this Policy does not apply:

- A. To injury sickness, disease, death or destruction
 - (1) with respect to which an **Insured** under this Policy of insurance is also an **Insured** under a nuclear energy liability insurance issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or would be an **Insured** under any such insurance but for its termination upon exhaustion of its limits of liability; or
 - (2) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the **Insured** is, or had this insurance not been issued would be, entitled to indemnity from the United States of America, or any agency thereof under any

agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. To injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- (1) the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of, an **Insured** or (ii) has been discharged or dispersed there from;
 - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or
 - (3) the injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to injury to or destruction of property at such nuclear facility.
- D. As used in this Section: "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof, "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (i) containing by-product material and (ii) resulting from the operation by any person or organization of any nuclear facility under paragraph (1) or (2) thereof; "nuclear facility" means
- (1) any nuclear reactor;
 - (2) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
 - (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if any time the total amount of such material in the custody of the **Insured** at the premises were such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 of any combination thereof, or more than 250 grams of uranium 235; or
 - (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;

and includes the site on which any of the foregoing is located, all operations

conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms or radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Section is subject to the terms, exclusions, conditions and limitations of the insurance to which it is attached.

XXIV. SERVICE OF SUIT

- A. It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this insurance, the Underwriters, at the request of the **Named Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. This Condition does not constitute and should not be understood to constitute an agreement by the Underwriters that an action is properly maintained in a specific forum, nor may it be construed as a waiver of the Underwriters' rights to commence an action in a court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state of the United States, all of which rights the Underwriters expressly reserve. It is further agreed that service of process in such suit may be made upon the designated entity in Item 8 of the Declarations, and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court in the event of an appeal.
- B. The Entity designated in Item 8 of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of the **Named Insured** to give written undertaking to the **Named Insured** that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceedings instituted by or on behalf of the **Named Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the Entity, designated in Item 8 of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.
- C. Any disputes involving this Policy shall be resolved applying the law designated in Item 13. of the Declarations.

XXV. SEVERAL LIABILITY

The subscribing Underwriters' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

XXVI. NON - CUMULATION OF LIMITS

This Policy may be one of several policies issued by the Underwriters to the **Named Insured** and its subsidiary companies. It is agreed that any **Claim** or suit which could be covered under two or more of these policies will be covered under only the policy with the highest limit of insurance available or, if the limits are the same, under only one of the policies.

XXVII. LICENSURE

- A. It is a condition of the coverage afforded under the Policy that the facilities of the **Named Insured** and any **Insured** requiring a license to practice shall be licensed in accordance with all relevant federal, state and local requirements. The **Named Insured** warrants that as of the inception date of this Policy it has secured all relevant licenses.

- B. If, during the **Policy Period**, any **Insured's** licensure status is altered by withdrawal, revocation, denial, suspension or failure to renew, the **Named Insured** shall give written notice of such change to the Underwriters within thirty (30) days of the change becoming effective. Following receipt of such notice, the Underwriters may elect, at their sole option, to revise any Insuring Agreements, Definitions, Exclusions, Endorsements or other conditions of this Policy with respect to the **Insured**, with effect from such date of such withdrawal, revocation, denial, suspension or failure to renew. Such action does not waive the Underwriters' option to invoke the provisions of Section **XVIII** of this Policy. Furthermore, the Underwriters' will have no obligation to respond to any **Claim** arising out of a **Wrongful Act** which took place subsequent to the date of such withdrawal, revocation, denial, suspension or failure to renew.

SCHEDULE A

Scheduled Organization and Entities Name	Scheduled Organization and Entities Provider Numbers