

<Product Name>
DIRECTORS, OFFICERS AND ENTITY LIABILITY

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 Reporting 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 Reporting 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 Reporting 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 Reporting Period**, if applicable, for a **Wrongful Act**.
- E. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** in excess of any indemnification and insurance available to such **Insured Persons** from an **Outside Entity**, resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

II. DEFINITIONS

- 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, but not limited to, 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 A. 1. above; or any similar provision of any federal, state, or local or foreign statutory law or common law.
- 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 (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, subpoena or search warrant 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 Underwriters' prior written consent, such consent not to be unreasonably withheld;
 5. an **Antitrust Claim**, **EMTALA Claim**, **IRS Claim**, **HIPAA Claim** (of a non-criminal nature) or **Provider Selection Claim**, each subject to the appropriate sublimit in Item 4. of the Declarations; or
 6. a written request or other written statement seeking extradition or rendition of an **Insured Person** commenced by the receipt of such written request or statement by an **Insured** (or the foreign equivalent thereof).
- 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 any 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. **“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 (at rates which are actually paid by the Underwriters to attorneys retained in the ordinary course of business in the defense of similar actions in the community where the **Claim** arose or is being defended), to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** solely in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedes, injunction, attachment or similar bonds resulting from a covered judgment (provided, however, the Underwriters shall have no obligation to apply for, secure, collateralize, or furnish any bond for appeal, supersedes, 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; consent by Underwriters for **Defense Costs** shall not be unreasonably withheld. **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 or 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**, subject to the sublimit specified in Item 4. of the Declarations.
- G. **“Employee”** means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**, including 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 chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, or an individual acting in a similar capacity with the **Insured Organization**.
- K. **“HIPAA”** means the Health Insurance Portability and Accountability Act, as amended.

- L. **"HIPAA Claim"** an actual or alleged civil violation of **HIPAA** or the Health Information Technology for Economic and Clinical Health Act, provided that such violation did not result from willful neglect or dishonesty.
- 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**; or
 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 Contractor**;

including all persons outside the United States serving in a functionally equivalent role as 1.a. and 1.b., above, 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 (except that 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; except that this paragraph 2 shall not apply to:
 - a. civil fines or penalties resulting from **HIPAA Claims, IRS Claims** or **EMTALA Claims**, each subject to the sublimits specified in Item 4. of the Declarations;
 - b. 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, except that there shall be 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 b. 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; or
 4. any investigative costs other than **Costs of Investigation** or **Defense Costs** in connection with a **Claim**.
- R. “**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.

- S. **“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
 3. any other entity, if specified in an endorsement to this **Policy**.
- T. **“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**.
- U. **“Provider Selection”** means evaluation, selection, deselection, credentialing, privileging, conducting disciplinary proceedings, performing peer review of or contracting with an individual provider of **Medical Services**.
- V. **“Provider Selection Claim”** means a **Claim** by a provider of **Medical Services** alleging a **Wrongful Act** by an Insured in **Provider Selection**, which shall be subject to the retention specified in Item 5. of the Declarations.
- W. **“Unauthorized Disclosure”** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Insured** and is without knowledge of, consent, or acquiescence of any, member of the Board of Directors, **Executive Officer**, Chief Information Officer, Chief Security Officer, Chief Privacy Officer, staff attorneys employed by the **Insured Organization**.
- X. **“Wrongful Act”** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission by:
1. any of the **Insured Persons** solely in their capacity as such;
 2. any of the **Insured Persons** while in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E; or
 3. the **Insured Organization** solely with respect to the coverage afforded under Insuring Clause I.C..

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 property (including loss of use thereof); except 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, libel, slander, or defamation;

- 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, provide notice of, 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, any federal, state, statutory, regulatory, local or common law relating to any wage and hour practice, including, but not limited to, any **Claim** for off-the-clock work; failure to provide rest or meal periods; failure to provide or pay for vacation, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of employees as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages or compensation; improper deductions from pay; improper credit for food, lodging or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any person; and any related **Claim** to the foregoing for conversions, unjust enrichment, consumer or employment protection laws, unfair business practice, including but not limited to, **Claims** under the Fair Labor Standards Act (except Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including, but not limited to, 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, but not limited to, 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**, including such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or having similar legal status under foreign law, 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 cross-claim, 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 first 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 three (3) 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 three (3) year period; except that this exclusion shall not apply to any **Claim** brought by an **Insured Person** for a **Wrongful Act** as a “whistleblower”;
 6. is brought by a provider of **Medical Services** alleging a **Wrongful Act** in **Provider Selection**;
 7. is first brought by the creditor committee; or
 8. is brought and maintained solely and entirely in a jurisdiction outside of the United States, its possessions or territories; and subject to the substantive and procedural laws of a jurisdiction other than the United States, its possessions or territories;
- 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;

except that 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 or to any offer of tax exempt bonds (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 final non-appealable adjudication, except that 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**; except 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 final non-appealable adjudication that such payment was unlawful;

- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged;
1. presenting, or allowing to be presented, by an insured any erroneous submission (including submissions presented by third parties on behalf of the **Insured** only to the extent of the **Insured's** liability) to a governmental health benefit program or 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 the Stark Act (42 U.S.C. §1395nn) or any federal, state or local anti-kickback or self-referral laws, or any rules or regulations promulgated thereunder; or
 3. a negligent or reckless act, error or omission by the **Insured** in violation of 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));
- L. for **Loss**, including **Defense Costs** or the payment of fines and penalties in connection with or resulting from any **Claim** for the theft, loss, or **Unauthorized Disclosure** of personally identifiable information, including "protected health information" as defined in the Health Insurance Portability and Accountability Act ("HIPAA"), as amended, and regulations issued pursuant to the Act, that is in the care, custody or control of the **Insured**, or a third party for whose theft, loss or **Unauthorized Disclosure** of such information is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")). Provided, however this exclusion shall not apply for any **Claim** resulting from any actual or alleged act, error or omission or breach of duty by any director, officer or **Manager** in the discharge of their duty if the **Claim** is brought by or on behalf of the **Insured Organization**, or any principals, directors, officers, **Managers**, stockholders, members or employees of the **Insured Organization** in his or her capacity as such;
- M. with respect to Insuring Clause I. 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. based upon, arising out of, directly or indirectly resulting from or in consequence of any actual or alleged breach of 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; except 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, but not limited to, any leased employee, seasonal employee or volunteer; except 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 other **Insured Person** for the purpose of determining the applicability of exclusions I. and J. above. **Wrongful Acts** committed by any past, present or future **Executive Officer** of the **Named Insured** shall be imputed to the **Insured Organization** for the purpose of determining the applicability of exclusions I. and J. above.

IV. MERGERS & ACQUISITIONS

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

1. merges with another entity such that the **Named Insured** is the surviving entity, or

2. acquires assets of another entity or creates or acquires a **Subsidiary** whose assets exceed twenty five percent (25%) of the total assets of the **Insured Organization** at the time of acquisition;

for a period of ninety (90) days, coverage granted by this **Policy** shall extend to **Loss** from **Claims** for **Wrongful Acts** occurring after the effective date of such event which arise of or relate to the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage for such loss beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to the Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as the 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. SETTLEMENT AND DEFENSE

- A. 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.
- B. 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 the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which they have 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 the Underwriters' consent shall not be required for such disposition.
- C. The Underwriters shall advance, on behalf of the **Insured**, **Defense Costs** which the **Insured** have incurred in excess of the **Retention** 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 **Defense Costs** are not covered under this **Policy**, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Underwriters. The Underwriters shall pay **Defense Costs** no more than once every sixty (60) days.
- D. The Limit of Liability available to pay **Loss** shall be reduced and may be completely exhausted by payment of **Defense Costs**. **Underwriters** shall not be liable for any **Loss** incurred within the Retention specified in Item 5. of the Declarations.
- E. The Underwriters shall not be obligated to pay any **Loss**, after the applicable Limit of Liability has been exhausted by payment of **Loss**, including **Defense Costs** or by reason of the tender of the remaining applicable limits into a court of competent jurisdiction.

- F. The 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**; and
 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.

VI. ALLOCATION

If **Loss** covered by this **Policy** and **Loss** 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 use their best efforts to fairly and reasonably allocate such amount between covered loss, and uninsured **Loss** based upon the relative legal and financial exposure to the **Insureds** for the uninsured amounts. In the event that an allocation cannot be agreed to, then the 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.

In the event that an 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 **Defense Costs** 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 through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and 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 **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

VII. ORDER OF PAYMENT

In the event of **Loss** for which payment is due under the provisions of this **Policy** which exceeds the remaining aggregate limit of liability, then the Underwriters shall:

1. first, pay **Loss** for which coverage is provided under this **Policy** for any **Insured Person**;
2. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for any **Plan**; and
3. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for the **Insured Organization**.

VIII. RETENTION AND COINSURANCE

In addition to the applicable Retention(s) the **Insureds** shall bear uninsured and retain at their own risk a percentage of any **Claim** ("Coinsurance") as set forth in Item 6. of the Declarations of any **Loss, Defense Costs** or **Costs of Investigation** resulting from an **Antitrust Claim**.

The Retention and Coinsurance applicable to I. Insuring Clauses A shall not apply 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**.

IX. 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.