



365 Complete Policy – Health Care Service Organizations

THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE INSURER IN ACCORDANCE WITH CONDITION (B) OF THE POLICY. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES, SETTLEMENTS OR JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer**, including the statements made in the **Application**, the **Insurer** and the **Insureds**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

I. INSURING AGREEMENTS

(A) Professional Services Liability

The **Insurer** will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period**, or any applicable **Extended Reporting Period**, and reported in accordance with CONDITION (B), for a **Professional Services Wrongful Act** committed on or after the Retroactive Date stated in ITEM 7(a) of the Declarations.

(B) Management Liability

The **Insurer** will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period**, or any applicable **Extended Reporting Period**, and reported in accordance with CONDITION (B), for a **Management Wrongful Act** committed on or after the Retroactive Date stated in ITEM 7(b) of the Declarations.

As part of and subject to any applicable Limit of Liability, the **Insurer** will have the right and duty to defend any **Claim** which is covered in whole or in part, even if such **Claim** is groundless, false, or fraudulent.

II. SUPPLEMENTAL COVERAGE FOR PRIVACY BREACH NOTIFICATION AND CREDIT MONITORING COSTS

In addition to the coverage for Professional Services Liability arising out of **Information Privacy Activities** under Insuring Agreement (A), and regardless of whether or not a **Claim** is made against an **Insured**, the **Insurer** will reimburse the **Named Insured** for any notification or credit monitoring costs incurred by the **Named Insured**, to comply with applicable state or federal privacy protection laws regarding an improper release or disclosure of non-public, medical or financial personally identifiable information which is in the care, custody and control of the **Named Insured**.

Such release or disclosure must first occur during the **Policy Period**. The notification and credit monitoring costs must be incurred by the **Named Insured** pursuant to a statutory mandate and must be approved in advance by the **Insurer**. All coverage for notification and credit monitoring costs is contained in this Section II. The maximum aggregate amount payable for all such

notification and credit monitoring costs shall be the amount stated in ITEM 3(b) of the Declarations, which shall be part of and not in addition to, the Limit of Liability stated in ITEM 3(c) of the Declarations. No Retention shall apply to such costs.

III. DEFINITIONS

(A) “**Application**” means the application submitted to the **Insurer**, any and all materials and information submitted to the **Insurer** in connection with such application and all other publicly available material created by the **Insured** about the **Insured** within eighteen (18) months prior to the Inception Date of this Policy. If the **Application** uses terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms, conditions and limitations of this Policy.

(B) “**Claim**” means:

- (1) any written demand for monetary, non-monetary, or injunctive relief;
- (2) any civil or criminal lawsuit or proceeding, including any appeal thereof;
- (3) a written request to toll or waive a statute of limitations;
- (4) any arbitration or mediation proceeding; or
- (5) any administrative or regulatory proceeding or formal investigation commenced by the filing of a notice of charges or similar document.

A **Claim** will be deemed to be made when written notice of such **Claim** is first received by an **Insured**.

(C) “**Covered Plan**” means:

- (1) any employee benefit plan or pension benefit plan, as defined by the Employee Retirement Income Security Act of 1974, including any regulations promulgated thereunder or amendments thereto (“ERISA”), sponsored solely for employees of any **Insured Entity**, if such plan (a) exists as of the Inception Date or is formed during the **Policy Period**, or (b) is acquired during the **Policy Period**, subject to CONDITION (H);
- (2) any welfare benefit plan sponsored solely for employees of any **Insured Entity**; or
- (3) any government mandated insurance program for workers’ compensation, unemployment, social security or disability benefits for employees of the **Named Insured** or any **Subsidiary**.

(D) “**Defense Expenses**” means reasonable legal fees and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**; provided, that **Defense Expenses** shall not include remuneration, salaries, overhead, fees or benefit expenses of any **Insured**.

(E) “**Director and Officer Wrongful Act**” means a **Wrongful Act** by:

- (1) an **Insured Person** in his or her capacity as such or in an **Outside Capacity** or any matter asserted against an **Insured Person** solely by reason of his or her status as such; or
- (2) the **Insured Entity**.

(F) “**Employment Practices Wrongful Act**” means a **Wrongful Act** by an **Insured** adversely affecting any past or present employee of or applicant for employment with the **Insured Entity** with respect to such person’s actual or prospective employment relationship with the **Insured Entity**, including but not limited to wrongful dismissal, discharge or termination of employment, harassment, discrimination, breach of the **Insured Entity’s** employment policies or procedures, retaliatory action in violation of

any federal, state or local law or in response to any actual or attempted exercise of any right protected by law, misrepresentation, libel, slander, humiliation, defamation or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion or evaluation or wrongful discipline.

- (G) “**Express Contract or Agreement**” means an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making.
- (H) “**Fiduciary**” means a fiduciary as defined in ERISA with respect to a **Covered Plan**, or a person or entity who exercises discretionary control respecting the management of a **Covered Plan** or the disposition of its assets.
- (I) “**Fiduciary Wrongful Act**” means a **Wrongful Act** by:
- (1) an **Insured** in breach of duties imposed upon a **Fiduciary** of a **Covered Plan** by ERISA, or by any similar common or statutory law in any jurisdiction in the world, or any other matter claimed against an **Insured** solely because of that **Insured’s** service as a **Fiduciary** of any **Covered Plan**; or
 - (2) an **Insured** in giving advice, counsel or notice to employees, participants or beneficiaries regarding a **Covered Plan**, handling records in connection with a **Covered Plan** or effecting enrollment, termination or cancellation of employees, participants or beneficiaries under a **Covered Plan**;
- (J) “**Information Privacy Activities**” means maintaining the confidentiality, integrity and security of non-public medical or financial personally identifiable information of third parties.
- (K) “**Insured**” means any **Insured Entity** and any **Insured Person**.
- (L) “**Insured Entity**” means the **Named Insured**, any **Subsidiary** and any **Covered Plan**.
- (M) “**Insured Person**” means any past or present:
- (1) director, officer, trustee, member of the board of managers, governor or medical director of any **Insured Entity**;
 - (2) employee of any **Insured Entity**, including a part-time, seasonal, leased or temporary employee, or any volunteer, but only to the extent that they are acting under the direction and control of the **Insured Entity**;
 - (3) member of, or provider of administrative support to, any review board or committee of any **Insured Entity**;
 - (4) individual duly authorized by any **Insured Entity** to conduct provider selection or utilization review, including but not limited to consultants and contractors, retained pursuant to an **Express Contract or Agreement** for such purposes;
 - (5) estate, heir, legal representative or assign of any person identified in (1) through (4) above in the event of such person’s death, incapacity or bankruptcy; and
 - (6) a lawful spouse or domestic partner of any person identified in (1) through (4) above, but only as to a **Wrongful Act** actually or allegedly committed by a person identified in (1) through (4) to whom such spouse is married or with whom the domestic partner is residing and a **Claim** in which such spouse or domestic partner is represented by the same counsel as the person identified in (1) through (4).
- (N) “**Insurer**” means the company identified in the Declarations.
- (O) “**Loss**” means any monetary amount which an **Insured** is legally obligated to pay as a result of a **Claim**, **Defense Expenses**, pre-and post-judgment interest awarded or imposed in any judgment, premiums on appeal bonds required to be furnished with respect to any

such judgment (without any obligation to furnish such bond), and punitive or exemplary damages where insurable by law.

Loss shall not include:

- (1) fines, penalties, taxes and the multiplied portion of multiplied damages, except for the following where insurable by law:
 - (a) fines, penalties or the multiplied portion of multiplied damages awarded in any **Claim** for any actual or alleged antitrust, predatory pricing, price fixing or discrimination, restraint of trade, monopolization, unfair trade practices or violation of the Federal Trade Commission Act, the Sherman Act or the Clayton Act;
 - (b) a five percent (5%) or less civil penalty under Section 502(i) or a twenty percent (20%) or less penalty under Section 502(1) of ERISA, imposed upon an **Insured** with respect to covered settlements or judgments;
 - (c) fines and penalties awarded under the Health Insurance Portability and Accountability Act, or any regulations promulgated thereunder or amendments thereto (“HIPAA”); or
 - (d) any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act as a result of a **Claim** for wrongful dismissal, discharge, or termination of employment;
- (2) fees, amounts, benefits or coverage owed under any contract with any party including providers of health care services, health care plan or trust, insurance or workers’ compensation policy or plan or program of self-insurance;
- (3) stock, restricted stock, stock options, performance shares, stock appreciation rights, or any other equity-based grant;
- (4) sums due under any contractual provision for liquidated damages, or pre-agreed penalties under any contract, or any similar contractual remedy; or
- (5) any benefit or other obligation under any **Covered Plan** to a participant or beneficiary under such **Covered Plan**, or that portion of any settlement or award in an amount equal to such benefit or other obligation, unless and to the extent that recovery of such benefit or other obligation is based upon a covered **Management Wrongful Act** and is payable as a personal obligation of an **Insured Person**.

The insurability of any **Loss** shall be determined under the laws of the jurisdiction most favorable to the insurability of such **Loss**, provided that such jurisdiction is where either the **Insurer** or the **Insured Entity** is incorporated or has its principal place of business, where the **Wrongful Act** giving rise to such **Loss** occurred, the location of the court which awarded such **Loss** or the jurisdiction in which the **Loss** is awarded.

(P) “**Management Wrongful Act**” means any of the following:

- (1) a **Director and Officer Wrongful Act**;
- (2) a **Fiduciary Wrongful Act**;
- (3) an **Employment Practices Wrongful Act**; or
- (4) a **Third Party Wrongful Act**.

A Management Wrongful Act **does not include** a Professional Services Wrongful Act.

(Q) “**Media Activities**” means the gathering, creation, investigation, compilation and dissemination of promotional, advertising and educational materials.

- (R) “**Medical Services**” means health care, medical care, or treatment provided to any individual, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the use, prescription, 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; counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- (S) “**Named Insured**” means the entity designated in ITEM 1 of the Declarations.
- (T) “**Network Security Activities**” means the maintaining of security mechanisms which are designed to control or restrict access to a computer network, or parts thereof, in order to prevent a breach of such computer network which results in either: (1) unauthorized access to, use of, or tampering with, a third party’s computer network; or (2) the inability of an authorized third party to gain access to the **Insured’s** services. Such security mechanisms include hardware, software and firmware, including but not limited to firewalls, filters, routers, intrusion detection software, antivirus software and automated password management applications.
- (U) “**Outside Capacity**” means service by an **Insured Person** at the specific request of an **Insured Entity** as a director, officer, trustee, regent, or governor, or any functionally equivalent position, of an **Outside Entity**.
- (V) “**Outside Entity**” means any entity, other than an **Insured Entity**, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, or added by written endorsement to this Policy.
- (W) “**Policy Period**” means the period from the Inception Date of this Policy stated, in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations, or to any earlier cancellation date of this Policy.
- (X) “**Professional Services**” means services performed in the usual and customary conduct of the **Named Insured’s** business, by or on behalf of the **Named Insured**, including but not limited to: provider selection or utilization review; administration of health or other benefit plan or any program or arrangement to manage the costs of a health or other benefit plan; provider and patient education; reviewing the quality of **Medical Services** or providing quality assurance; development or implementation of clinical guidelines, practice parameters, protocols or financial incentives to promote health care provider improvements; establishing health care provider networks; claim servicing or handling; **Technology Activities; Information Privacy Activities; Network Security Activities; and Media Activities.**
- (Y) “**Professional Services Wrongful Act**” means a **Wrongful Act** in the performance of **Professional Services**. A **Professional Services Wrongful Act** does not include a **Management Wrongful Act**.
- (Z) “**Subsidiary**” means:
- (1) any not-for-profit entity which is:
 - (i) exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended;
 - (ii) exempt from federal income tax under any other subsection of Section 501(c) of the Internal Revenue Code, as amended, if listed in the **Application** for this Policy; or

(iii) such other not-for-profit entity if scheduled in an Endorsement to this Policy;

during any time the **Named Insured** controls, directly or indirectly, the present right to elect or appoint more than fifty percent (50%) of such entity's directors, managers or trustees; and

- (2) any for-profit entity, including any corporation, partnership, sole-proprietorship, limited liability corporation or limited liability partnership: (a) during any time which the **Named Insured** (i) owns more than fifty percent (50%) of its outstanding voting shares, partnership interest or member units, (ii) controls, directly or indirectly, the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees or (iii) has sole control over the management and operations of the entity through a written agreement; and (b) which:
- (i) was formed or created prior to the Inception Date of this Policy or is formed during the **Policy Period**; or
 - (ii) is acquired during the **Policy Period** and whose most recent annual revenue is less than 25% of the **Insured Entity's** most recent total annual revenue stated in the **Application**; or
 - (iii) is acquired during the **Policy Period** and whose most recent annual revenue is 25% or more of the **Insured Entity's** most recent total annual revenue stated in the **Application**, subject to CONDITIONS (H).

- (AA) "**Technology Activities**" means the creation, operation, maintenance and use the **Insured Entity's** website or network.
- (BB) "**Third Party Wrongful Act**" means a **Wrongful Act** by an **Insured** directed toward a natural person who is or was a customer, client or business invitee of the **Insured Entity**, but only as to allegations by such person of humiliation, invasion of privacy or infliction of emotional distress, harassment or discrimination as a result of such **Wrongful Act**.
- (CC) "**Wrongful Act**" means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured** or any person for whom an **Insured** is legally liable.

IV. EXCLUSIONS

- (A) Except for **Defense Expenses**, the **Insurer** shall not pay **Loss** for any **Claim**:
- (1) brought about or contributed to by any dishonest, fraudulent, criminal or malicious act, error or omission or willful violation of law by any **Insured** or by any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled; provided, however, the applicability of this EXCLUSION (A)(1) may only be determined by a testimonial and uncontradicted admission, final adjudication or a finding either in the **Claim** or in another proceeding so long as such proceeding was not filed by the **Insurer** or **Insured** to determine coverage for the **Claim**; or
 - (2) for any actual or alleged violation of the Fair Labor Standards Act (other than the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, and any amendments thereto or any other similar provisions of federal, state or local statute or common law; provided, however, this EXCLUSION (A)(2) shall not apply to that portion of any **Claim** that alleges retaliatory action by an

Insured in response to an employee's exercise of rights under any such statute or law;

- (3) seeking relief or redress in any form other than monetary damages, including without limitation the restitution the disgorgement of funds and the cost of complying with any injunctive, declaratory, or administrative relief; or
 - (4) against any **Insured Entity** for any actual or alleged liability under an indemnification agreement; provided, however, this EXCLUSION (A)(4) shall not apply if such liability would have existed in the absence of the indemnification agreement.
- (B) The **Insurer** shall not pay any **Loss**, including **Defense Expenses**, for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) damage to, destruction of or loss of use of, any tangible property; or ownership, operation, use, maintenance, loading or unloading of any motor vehicle, trailer, watercraft, aircraft or helipad;
 - (2) any actual or alleged bodily injury, sickness, disease or death of:
 - (a) any employee of any **Insured Entity** arising out of or in the course of employment by the **Insured Entity**; or
 - (b) any other person, unless allegedly resulting from a **Professional Services Wrongful Act** that is not otherwise excluded under this Policy;
 - (3) mental anguish or emotional distress arising out of: (a) **Directors and Officers Wrongful Acts** other than those directly involving provider selection, (b) **Fiduciary Wrongful Acts**, (c) **Technology Activities**, or (d) **Network Security Activities**;
 - (4) any fact, circumstance, situation, transaction, event, **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:
 - (a) underlying in any litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date stated in ITEM 2(a) of the Declarations:
 - (i) to which any **Insured** is or was a party; or
 - (ii) with respect to which any **Insured**, as of the Inception Date, knew that an **Insured** would be made a party thereto;
 - (b) which was the subject of any notice given prior to the Inception Date under any other policy of insurance or plan or program of self-insurance; or
 - (c) which was the subject of any **Claim** made prior to the Inception Date;

if, however, this Policy is a renewal of one or more policies previously issued by the **Insurer** to the **Insured Entity**, and the coverage provided by the **Insurer** to the **Insured Entity** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (B)(4)(c) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the **Insurer** began to provide the **Insured Entity** with the continuous and uninterrupted coverage of which this Policy is a renewal;

- (5) any actual or alleged conduct, physical acts, gestures or spoken or written words of a sexual nature, including without limitation sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act; provided, however, this EXCLUSION (B)(5) shall not apply to:
 - (a) any portion of a **Claim** alleging any **Insured** is liable for the acts of a person or entity other than an **Insured** via a theory of agency, ostensible agency, apparent agency or respondeat superior; or
 - (b) any **Claim** for a **Wrongful Act** adversely affecting any past or present employee of or applicant for employment with the **Insured Entity** with respect to such person's actual or prospective employment relationship with the **Insured Entity**;
 - (6) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any pollutant, toxin, contaminant, irritant, mold, or radiation, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutant, toxin, contaminant, irritant, mold, or radiation, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; provided however, this EXCLUSION (B)(6) shall not apply to any **Loss** from any **Claim** for a **Management Wrongful Act** as to which indemnification of the **Insured Persons** by the **Insured Entity** is not legally permissible or is unavailable solely by reason of the financial insolvency of the **Insured Entity**;
 - (7) any of the following services actually or allegedly provided by any **Insured** to a third party: financial, investment, legal or actuarial services; auditing of financial statements; or development, licensing or sales of software; or
 - (8) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" law, or any other federal, state, or local securities law, or any rule or regulation promulgated thereunder, or any actual or alleged violation of any provision of the common law imposing liability in connection with the offer, sale, or purchase of securities.
- (C) The **Insurer** shall not pay any **Loss**, including **Defense Expenses**, for any **Claim**:
- (1) for any actual or alleged act, error or omission by an **Insured** in the rendering of, or failure to render, **Medical Services**; provided, however, that, this EXCLUSION (C)(1) shall not apply to:
 - (a) any portion of a **Claim** alleging, under statute, rule, regulation or common law tort, that the performance of any **Professional Services** by an **Insured** constitutes the rendering of **Medical Services**;
 - (b) any **Claim** arising out of any actual or alleged act, error or omission of an **Insured** in connection with the rendering or failure to render emergency medical treatment, without remuneration, at the scene of an accident, medical crisis or disaster; or
 - (c) any portion of a **Claim** alleging that any **Insured** is vicariously liable for the acts of a person or entity other than an **Insured** via a theory of agency, ostensible agency, apparent agency or respondeat superior;
 - (2) made by, on behalf of, or in the name or right of, or for the benefit of, any

Insured; provided, that this EXCLUSION (C)(2) shall not apply to:

- (a) any **Claim** by an **Insured Person** in their capacity as a customer or client of the **Insured Entity** and arising out of **Professional Services** performed for such **Insured Person**;
 - (b) any **Claim** by an **Insured Person** for **Fiduciary Wrongful Acts**;
 - (c) any **Claim** brought and maintained independently by an **Insured Person** in such **Insured Person's** capacity as a participant in a health or other benefits plan administered or managed by the **Insured Entity**; or
 - (d) any derivative action by a security holder of the **Insured Entity** on behalf of, or in the name or right of, the **Insured Entity**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation, or intervention of, the **Insured Entity** or any **Insured Person** who is an senior officer or controlling shareholder of the **Insured Entity**;
 - (e) any **Claim** in the form of a cross-claim, third party claim, or other **Claim** for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by this Policy;
 - (f) any **Claim** brought on behalf of the **Insured Entity** in bankruptcy by the examiner, trustee, receiver, liquidator or rehabilitator of the **Insured Entity**; or
 - (g) any **Claim** by an **Insured Person** for **Employment Practices Wrongful Acts**;
- (3) for **Management Wrongful Acts** against any **Insured Entity** for any actual or alleged liability under any **Express Contract or Agreement** other than an employment contract; provided, however, that this EXCLUSION (C)(3) shall not apply if such liability would have existed in the absence of the **Express Contract or Agreement**; or
- (4) for actual or alleged infringement of any patent.

No **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person** to determine the applicability of EXCLUSIONS (A), (B) and (C) above.

V. CONDITIONS

(A) Limits of Liability and Retentions:

- (1) Subject to CONDITION (A)(3), the amount stated in ITEM 3(a) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss**, including **Defense Expenses**, resulting from each **Claim** for which this Policy provides coverage.
- (2) Subject to CONDITION (A)(3), the amount stated in ITEM 3(b) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all costs under Section II.
- (3) The amount stated in ITEM 3(c) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** all **Loss**, including **Defense Expenses**, resulting from all **Claims** under this Policy and for all costs under Section II.
- (4) **Defense Expenses** are part of and not in addition to the applicable Limit of Liability, and payment of **Defense Expenses** by the **Insurer** will reduce the applicable Limit of Liability.
- (5) The **Insurer's** obligation to pay **Loss**, including **Defense Expenses**, will only be

in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of any Retention on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to do so, in which event the **Insured** agrees to repay the **Insurer** any amounts so paid. If more than one Retention applies to a **Claim**, the applicable Retentions will be applied to such **Claim** but the sum of such Retentions will not exceed the largest applicable Retention.

- (6) The Retention set forth in ITEM 4(a) of the Declarations applies to **Loss** from any **Claim** for **Management Wrongful Acts** for which neither the **Insured Entity** nor any **Outside Entity** is (a) required or permitted to indemnify the **Insured Persons** or (b) able to indemnify solely by reason of financial insolvency. The certificate of incorporation, charter, articles of association, or other organizational documents of the **Insured Entity** and each **Outside Entity** will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

(B) **Reporting of Claims and Circumstances:**

- (1) If, during the **Policy Period** or any applicable **Extended Reporting Period**, any **Claim** is first made against any **Insured**, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the **Insurer** written notice of such **Claim** as soon as practicable thereafter and in no event later than:
- (a) with respect to a **Claim** made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (b) with respect to a **Claim** made during an **Extended Reporting Period**, before the expiration of the **Extended Reporting Period**.
- (2) If, during the **Policy Period**, an **Insured** first becomes aware of any **Wrongful Act** which may subsequently give rise to a **Claim**, and:
- (a) gives the **Insurer** written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
 - (b) requests coverage under this Policy for any **Claim** subsequently arising from such **Wrongful Act** as soon as practicable after such **Claim** is made;

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to CONDITION (C), be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under CONDITION (B)(2)(a) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insured** first became aware of such **Wrongful Act**, and the reasons why the **Insured** believes the **Wrongful Act** is likely to result in a **Claim** being made.

(C) **Single Claim; Date Claim Made:**

All **Claims** arising out of the same **Wrongful Act** or involving the same or related circumstances, transactions or events shall be deemed a single **Claim**, which shall be deemed to have been first made on the date on which the earliest **Claim** within such single **Claim** was first made or deemed made.

(D) **Defense and Settlement:**

- (1) No **Insured** may incur any **Defense Expenses** or admit liability for, or settle or offer to settle, any **Claim** without the **Insurer's** prior written consent. The **Insurer** will have the right to make investigations, conduct negotiations and enter into such settlement of any **Claim** as the **Insurer** deems appropriate; provided, however, if the applicable Retention exceeds the amount of any proposed settlement and **Defense Expenses** in any **Claim**, the **Insurer** shall only agree to such settlement with the **Insured's** consent, such consent not to be unreasonably withheld.
- (2) As long as there are both covered and uncovered allegations in a **Claim**, there shall be no allocation of **Defense Expenses** between covered and uncovered allegations, and all such **Defense Expenses** will be considered covered **Loss** under this Policy.
- (3) The **Insurer** will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim**, after the applicable Limit of Liability has been exhausted by payments of costs or **Loss**, including **Defense Expenses**. If the Limit of Liability stated in ITEM 3(c) of the Declarations is exhausted by payments of costs or **Loss**, including **Defense Expenses**, the premium will be fully earned.

(E) **Assistance and Cooperation:**

In the event of a **Claim**, the **Insureds** shall provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and shall do nothing that may prejudice the **Insurer's** position. At the **Insurer's** request, the **Insureds** shall assist in investigating, defending and settling **Claims** and in the conduct of actions, suits, appeals or other proceedings, including but not limited to attending trials, hearings and depositions, securing and giving evidence, and obtaining the attendance of witnesses.

(F) **Subrogation:**

In the event of any payment hereunder, the **Insurer** shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The **Insureds** shall do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. The obligations of the **Insureds** under this CONDITION (F) shall survive the cancellation or other termination of this Policy.

(G) **Other Insurance; Other Indemnification:**

- (1) This Policy shall be excess of and shall not contribute with:
 - (a) any other valid and collectible insurance or plan or program of self-insurance, unless specifically stated to be in excess of this Policy; and
 - (b) subject to CONDITION (G)(2), any indemnification to which an **Insured** is entitled from any person or entity other than another **Insured**; provided however, that the third party actually indemnified the **Insured** for the **Claim**.

This Policy shall not be subject to the terms of any other policy of insurance or plan or program of self-insurance

- (2) All coverage for **Loss** from **Claims** against **Insured Persons** for **Wrongful Acts** in their **Outside Capacities** will be specifically excess of, and not contribute with, any other valid and collectible insurance available to such **Insured Persons** by reason of their service in **Outside Capacities**, and any indemnification by any **Outside Entity** available to such **Insured Persons** in connection with their service in **Outside Capacities**.
- (3) If any other policy or policies issued by the **Insurer** or any of its affiliated companies, or by any predecessors or successors of the **Insurer** or its affiliated companies, to the **Insured** shall apply to any **Claim**, then the aggregate limit of liability with respect to all costs and **Loss** under this Policy and all covered loss under such other policies shall not exceed the highest applicable limit of liability, subject to its applicable deductible or retention, that shall be available under any one of such policies, including this Policy. This CONDITION (G)(3) shall not apply with respect to any policy written only as specific excess insurance over the Limit of Liability of this Policy stated in ITEM 3(c) of the Declarations.

(H) **Mergers, Acquisitions, or Newly Created Entities:**

If, during the **Policy Period**, any **Insured Entity**:

- (1) acquires a **Subsidiary** whose most recent annual revenue is 25% or more of the **Insured Entity's** most recent total annual revenue stated in the **Application**; or
- (2) merges or consolidates with another entity which is not designated on SCHEDULE A such that the **Insured Entity** is the surviving entity (any such acquired, created, merged or consolidated entity hereinafter referred to as an "**Acquired Entity**");

then for a period of ninety (90) days after the effective date of such acquisition of the **Subsidiary**, or the merger or consolidation creating the **Acquired Entity**, this Policy will provide coverage for such **Subsidiary** or **Acquired Entity**, but only with respect to the **Wrongful Acts** of such **Subsidiary** or **Acquired Entity** and its **Covered Plans** as defined in DEFINITION (C)(1) and **Insured Persons** committed or allegedly committed after the effective date of such acquisition, merger or consolidation. Upon the expiration of the ninety (90)-day period, there shall be no coverage under this Policy for **Wrongful Acts** with respect to such **Subsidiary** or **Acquired Entity** and its **Covered Plans** as defined in DEFINITION (C)(1) and **Insured Persons** unless the **Insured Entity** has provided the **Insurer** with written notice of such acquisition, merger or consolidation, containing full details thereof, and the **Insured Entity** and the **Insurer** have agreed to add coverage for such **Subsidiary** or **Acquired Entity** upon such terms, conditions, and limitations of coverage and such additional premium as the **Insurer**, in its sole discretion, may require.

(I) **Sales or Dissolution of Insured Entities; Cessation of Business:**

If, during the **Policy Period**, the **Named Insured**:

- (1) ceases to do business for any reason; or
- (2) is dissolved, sold, acquired by, merged into or consolidated with another entity such that the **Named Insured** is not the surviving entity, or such that any person, entity or affiliated group of persons or entities obtains the right to elect or appoint more than fifty percent (50%) of the **Named Insured's** directors, trustees or member managers, as applicable, or more than fifty percent (50%) of the **Named Insured's** equity or assets;

(either of which is referred to in this CONDITION (I) as a "**Material Event**"), then coverage under this Policy for all **Insureds** shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall apply only to **Wrongful Acts** committed or allegedly committed before such **Material Event**; no coverage will be provided under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** committed or allegedly committed on or after the date of such **Material Event**.

(J) **Cancellation; Non-Renewal:**

- (1) The **Insurer** may not cancel this Policy except for the **Named Insured's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Named Insured** by the **Insurer**.
- (2) The **Named Insured** may cancel this Policy prospectively only by mailing the **Insurer** written notice stating when thereafter such cancellation shall be effective. In such event, the earned premium shall be computed in accordance with the customary short rate table and procedure.
- (3) Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (4) The **Insurer** will not be required to renew this Policy upon its expiration. The **Insurer** will provide the **Named Insured** with sixty (60) days notice of any non-renewal.

(K) **Extended Reporting Periods:**

If this Policy is canceled for any reason other than non-payment of premium or is not renewed by the **Insurer** or the **Named Insured**, an additional period of time during which **Claims** may be reported under this Policy (an "**Extended Reporting Period**") shall be made available as described in this CONDITION (K), but any such **Extended Reporting Period** shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the earlier of a **Material Event** or the effective date of such cancellation or non-renewal ("**Termination Date**"). No **Extended Reporting Period** shall in any way increase the Limits of Liability as stated in ITEM 3 of the Declarations. The **Extended Reporting Period** will apply as follows:

- (1) An **Extended Reporting Period** of ninety (90) days beginning as of the **Termination Date** will apply automatically and requires no additional premium; provided, that such **Extended Reporting Period** will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such **Extended Reporting Period**.
- (2) The **Named Insured** may purchase an additional **Extended Reporting Period** for the period of time stated in ITEM 8 of the Declarations by notifying the **Insurer** in writing of its intention to do so no later than thirty (30) days after the **Termination Date**. The additional premium for this additional **Extended Reporting Period** shall be equal to the amount stated in ITEM 8 of the Declarations and must be paid no later than thirty (30) days after the **Termination Date**.

If no election to purchase an additional **Extended Reporting Period** is made as described in CONDITION (K)(2) above or if the additional premium therefore is not paid within thirty (30) days after the **Termination Date**, there will be no right to purchase an additional **Extended Reporting Period** at any later time. Failure to elect to purchase an additional **Extended Reporting Period** or to pay the additional premium

therefore will not affect the application of the automatic **Extended Reporting Period** described in CONDITION (K)(1) above.

(L) **Representations and Warranties; Incorporation of Application:**

The **Insureds** represent and warrant that the statements and particulars of the **Application**, which is deemed to be attached to and form a part of this Policy as if physically attached, are true, accurate and complete, and agree that:

- (1) this Policy is issued and continued in force by the **Insurer** in reliance upon the truth of such representations; and
- (2) the **Application** and those particulars and statements are the basis of this Policy and are incorporated into and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured** for the purposes of this CONDITION (L), except for material facts or information known to the person or persons who signed the **Application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission. The Policy shall be void as to the **Insured Entity** if and only if the Chief Executive Officer, Chairman of the Board of Directors, Chief Financial Officer, President or General Counsel of the **Insured Entity**, or any individual in a functionally equivalent position within the **Insured Entity**, knew of such untruth, misrepresentation or omission.

(M) **Action against Insurer:**

- (1) No action shall be taken against the **Insurer** by any **Insured** unless, as conditions precedent thereto, the **Insureds** have fully complied with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the **Insurer**.
- (2) No individual or entity shall have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any **Insured**; nor shall the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

(N) **Insolvency of Insured:**

The **Insurer** shall not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any of the **Insureds** or any of their estates.

(O) **Notice; Named Insured Authorization:**

- (1) Notice to any Insured shall be sent to **Named Insured** at the address designated in ITEM 1 of the Declarations. The **Insureds** agree that the **Named Insured** shall act on their behalf respect to receiving any notices and any return premiums from the **Insurer**.
- (2) Notice to the **Insurer** shall be sent to the address designated in ITEM 5 of the Declarations.

(P) **Territory:**

This Policy applies to **Wrongful Acts** which take place anywhere in the world and to **Claims** brought against the **Insured** anywhere in the world.

(Q) **Changes:**

Notice to or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not affect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under this Policy. This Policy can be altered, waived or changed only by written endorsement issued by the **Insurer** to form a part of this Policy.

(R) **Assignment:**

No assignment of interest under this Policy shall bind the **Insurer** without its written consent issued as an endorsement to form a part of this Policy.

(S) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of the **Insurer's** agents relating to this insurance.

(T) **Headings:**

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

In witness whereof, the Insurer has caused this Policy to be executed on the Declarations Page.