



# Health Care Organization Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage

**THIS IS A CLAIMS MADE AND REPORTED POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES, SETTLEMENTS OR JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THE INSURER HAS NO DUTY TO DEFEND ANY INSURED. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

The **Insurer** and the **Insureds**, subject to all of the terms, conditions and limitations of and any endorsements to this Policy, agree as follows:

## **I. INSURING AGREEMENTS**

- A. The **Insurer** will pay on behalf of the **Insured Persons Loss** from **Claims** first made against them during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, unless an **Insured Entity** is required or permitted to pay such **Loss** to or on behalf of the **Insured Persons** as indemnification.
- B. The **Insurer** will pay on behalf of an **Insured Entity**:
- (1) **Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, if an **Insured Entity** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification; and
  - (2) **Loss** from **Claims** first made against an **Insured Entity** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**.

## **II. DEFINITIONS**

- A. “**Application**” means the application submitted to the **Insurer** for the Policy, and any and all materials and information submitted to or obtained by the **Insurer** in connection with such applications, including all financial statements of the **Insureds** and any press releases or other materials disseminated publicly (including information contained on any Internet websites maintained or on behalf of any **Insured**), all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form part of, this Policy, as if physically attached.
- B. “**Claim**” means:
- (1) any written demand for monetary relief;
  - (2) any civil proceeding in a court of law or equity, which is commenced by the filing of a complaint, motion for judgment or similar proceeding;
  - (3) any administrative or regulatory proceeding, including proceedings brought by or before the Equal Employment Opportunity Commission or similar state or local agency, commenced by the filing of a notice of charges or similar document;

- (4) any arbitration proceeding; or
- (5) a criminal proceeding in a court of law commenced by the filing of an indictment or information.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

- C. “**Defense Expenses**” means reasonable legal fees and expenses incurred by or on behalf of the **Insureds** in the defense or appeal of a **Claim**, provided that **Defense Expenses** will not include any **Insured Entity’s** overhead expenses or any salaries, wages, remuneration fees or benefits of its directors, officers or employees.
- D. “**Discrimination**” means any failure or refusal to hire any person, any failure or refusal to promote any person, the demotion or discharge of any person, employment-related defamation, wrongful failure to grant tenure, or any limitation, segregation or classification of employees or applicants for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee, because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, sexual orientation or preference, military status, or other status that is protected pursuant to any applicable federal, state or local statute or ordinance.
- E. “**Domestic Partner**” shall have the meaning prescribed under applicable state law, or in the absence of such law, means one of two persons who form a couple living together in a committed, long-standing relationship, provided that such persons:
  - (1) have a common residence that they have shared for a period of two (2) years or more; and
  - (2) are not blood relatives; and
  - (3) are at least 18 years of age; and
  - (4) are mentally competent; and
  - (5) are either members of the same sex or one or both of them are over 62 years of age and eligible for social security benefits; and
  - (6) are not married or in a domestic partnership with someone else; and
  - (7) are registered as domestic partners in a local registry, if one exists.
- F. “**Employment Practices Wrongful Act**” means any actual or alleged: (1) **Wrongful Termination**; (2) **Discrimination**; (3) **Harassment**; (4) **Retaliation**; or (5) **Workplace Tort**.
- G. “**Harassment**” means:
  - (1) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made a condition of employment with the **Insured Entity**, is used as a basis for employment decisions by the **Insured Entity**, creates a work environment with the **Insured Entity** that interferes with performance, or creates an intimidating, hostile, or offensive working environment; or

- (2) workplace harassment (i.e., harassment of a non-sexual nature) which creates a work environment within any **Insured Entity** that interferes with performance, or creates an intimidating, hostile, or offensive working environment.
- H. “**Insured Entity**” means the **Parent Corporation** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to CONDITION J, during the **Policy Period**.
- I. “**Insured(s)**” means any **Insured Entity** and any **Insured Person**.
- J. “**Insured Person**” means any past, present or future director, officer, trustee, employee, member manager, member of the staff, faculty or duly constituted committee, or volunteer of an **Insured Entity**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

- K. “**Insurer**” means the company identified in the Declarations.
- L. “**Loss**” means **Defense Expenses** and damages, judgments, settlements, pre- or post-judgment interest, or other amounts that an **Insured** is obligated to pay as a result of a **Claim**.
- M. “**Managed Care Organization**” means any entity which performs **Managed Care Organization Business Activities**, including but not limited to health maintenance organizations, physician-hospital organizations, independent practice associations, preferred provider organizations and management services organizations; except that **Managed Care Organization** shall not include the **Insured Entity** solely in its capacity as a provider of **Medical Services**, or any **Subsidiary** whose sole purpose is to provide insurance services exclusively to one or more **Insured Entities** or its employees.
- N. “**Managed Care Organization Business Activities**” means services or activities performed in the administration or management of healthcare plans; **Provider Selection Practices; Utilization Review**; case management; disease management; advertising, marketing, or selling healthcare plans or healthcare insurance products; handling, investigating, or adjusting claims for benefits or coverages under healthcare plans; establishing healthcare provider networks; and reviewing the quality of **Medical Services** or providing quality assurance.
- O. “**Medical Services**” means health care, medical care, or treatment provided to any individual, including without limitation any of the following: 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; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies; but shall not include **Managed Care Organization Business Activities**.

- P. **“Parent Corporation”** means the entity named in ITEM 1 of the Declarations.
- Q. **“Policy Period”** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancellation date.
- R. **“Provider Selection Practices”** means the process of evaluating, by members of a formal duly constituted professional review board or committee, any individual or entity for the purpose of selecting, employing, contracting with or credentialing providers for medical services.
- S. **“Regulatory Claim”** means a **Claim** or investigation brought by any federal, state or municipal agency, insurance department, or other governmental or quasi-governmental authority, in any capacity, whether in its own right, on behalf of an individual or entity, or by an individual or entity on the agency’s or authority’s behalf, including a qui tam action, for a **Regulatory Wrongful Act**.

Provided that a **Regulatory Claim** shall not include any customary, regularly-scheduled or routine examination, inquiry, audit or reconciliation by or on behalf of, or for the benefit of, a governmental or quasi-governmental entity, as described above.

- T. **“Regulatory Wrongful Act”** means any actual or alleged:
- (1) act, error, omission, misstatement, misconduct, fraud, reckless disregard or negligence committed by an **Insured** in the performance of, or failure to perform, any of the following activities in the Medicaid, Medicare, Federal Employee Health Benefit or TriCare Programs:
    - (a) procedure coding;
    - (b) bill, claim, cost report or data submissions; or
    - (c) the calculation of managed care payments;
  - (2) offer, acceptance or payment by any **Insured** in exchange for any patient referral(s), in violation of any state, local, or federal law;
  - (3) offer, acceptance or payment by an **Insured** in violation of any state, local or federal antikickback law; or
  - (4) act, error or omission by an **Insured** in violation of the Health Insurance Portability and Accountability Act (HIPAA),
- U. **“Related Claims”** means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.
- V. **“Retaliation”** means retaliatory treatment against an employee of any **Insured Entity** on account of such employee's exercise or attempted exercise of his or her rights under law.

- W. “**Subsidiary**” means any entity which the **Parent Corporation** owns or controls, at any time, directly or through one or more **Subsidiaries**, the right to elect or appoint more than fifty percent (50%) of such entity's directors, trustees or member managers, as applicable.
- X. “**Utilization Review**” means the process of evaluating the appropriateness, necessity, or cost of Medical Services for purposes of determining whether payment or coverage for such Medical Services will be authorized or paid for under any health care plan. **Utilization Review** shall include prospective review of proposed payment or coverage for Medical Services, concurrent review of ongoing **Medical Services**, and retrospective review of already rendered **Medical Services** or already incurred costs.
- Y. “**Workplace Tort**” means employment-related misrepresentation, negligent evaluation, wrongful discipline, or wrongful deprivation of career opportunity.
- Z. “**Wrongful Act**” means:
- (1) any **Employment Practices Wrongful Act** by an **Insured Person** in his or her capacity as such;
  - (2) any other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as such;
  - (3) any matter asserted against an **Insured Person** solely by reason of his or her status as such;
  - (4) any **Employment Practices Wrongful Act** by any **Insured Entity**;
  - (5) any other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured Entity**;
  - (6) any actual or alleged act, error or omission by an **Insured Person** in connection with the performance of or failure to perform **Provider Selection Practices** solely for an **Insured Entity** which is not a **Managed Care Organization**.
- AA. “**Wrongful Termination**” means the actual or constructive termination of the employment of, or demotion of, or failure or refusal to promote, any employee which is in violation of law or is against public policy, or is in breach of an implied agreement to continue employment.

### III. **EXCLUSIONS**

- A. This Policy shall not provide coverage for **Loss**, other than **Defense Expenses**, which an **Insured** is obligated to pay:
- (1) as a result of a **Claim** brought about or contributed to by: any dishonest or fraudulent act or omission; any willful violation of any statute, rule or law by any **Insured** (other than **Claims** arising solely out of an **Employment Practices Wrongful Act**); the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;
- provided that, for the purposes of determining the applicability of this

EXCLUSION A(1), no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**;

and,

provided that, the determination of the applicability of this EXCLUSION A(1) may be established by an admission, final adjudication or a finding in a proceeding constituting the **Claim** or any proceeding separate from or collateral to the **Claim**.

- (2) as a result of any portion of a **Claim**, other than a **Regulatory Claim**, seeking relief or redress in any form other than monetary damages, including, without limitation, costs to comply with any injunctive, declaratory or equitable relief, remedy or order;
- (3) by operation of the Fair Labor Standards 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, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing; provided that this Exclusion A(3) shall not apply to any **Claim** by an employee of the **Insured Entity** for **Retaliation**;
- (4) as a result of a written contract either to commence or continue employment or to make any payment in the event of a termination of employment;

B. This Policy shall not provide coverage for:

- (1) fines, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy will be construed; provided that, if applicable law so permits, this EXCLUSION B(1) will not apply to punitive or exemplary damages or to the multiplied portion of a multiple damage award in an amount not exceeding \$25,000 in connection with any **Claim**, such amount to be part of, and not in addition to, the maximum aggregate Limit of Liability set forth in ITEM 3 of the Declarations;
- (2) **Regulatory Claims**, provided however that this Exclusion B(2) will not apply to **Regulatory Claims** in an amount not exceeding \$25,000 in connection with all such **Regulatory Claims**, such amount to be part of, and not in addition to, the maximum aggregate Limit of Liability set forth in ITEM 3 of the Declarations;
- (3) **Medical Services**.

C. This Policy shall not provide coverage for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (1) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, damage to or destruction of any tangible property

including loss of use thereof, libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;

provided however, that this EXCLUSION C(1) will not apply to allegations of mental anguish, emotional distress or libel, slander or oral or written publication of defamatory or disparaging material if and only to the extent that such allegations are made as part of a **Claim** arising out of (a) **Provider Selection Practices** performed solely for an **Insured Entity** which is not a **Managed Care Organization**, or (b) an **Employment Practices Wrongful Act**;

- (2) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request, including but not limited to any such **Claim** alleging damage to the **Company** or to its security holders;
- (3) any fact, circumstance, situation, transaction, event or **Wrongful Act**:
  1. underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations; or
  2. which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any directors and officers or similar policy of insurance or plan or program of self insurance.
- (4) the service by any **Insured Person** as a director, officer, trustee, employee, member manager, or volunteer of any entity other than any **Insured Entity**, even if directed or requested by any **Insured Entity** to serve in such position.
- (5) any actual or alleged act, error or omission in the performance of, or failure to perform, **Managed Care Organization Business Activities** by any **Insured** or by any individual or entity for whose acts, errors or omissions an **Insured** is legally responsible, except that this Exclusion C(5) shall not apply to **Claims** for **Provider Selection Practices** performed solely for an **Insured Entity**, and provided that the **Insured Entity** is not a **Managed Care Organization**.

- D. This Policy shall not provide coverage for any **Claim** by or on behalf of, or in the name or right of, any **Insured Entity** or any **Insured Person**, except that this EXCLUSION D will not apply to:
- (1) 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 the terms of this Policy;
  - (2) any derivative action by a security holder of an **Insured Entity** on behalf of, or in the name or right of, an **Insured Entity**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, any **Insured**;
  - (3) any **Claim** for an **Employment Practices Wrongful Act**;
  - (4) any **Claim** for any actual or alleged act error or omission by an **Insured Person** in connection with the performance of or failure to perform **Provider Selection Practices** solely for an **Insured Entity** which is not a **Managed Care Organization**;
  - (5) any **Claim** brought by an **Insured Person**, provided that their relationship with the **Insured Entity**, at the time the **Claim** is brought, was terminated more than four (4) years prior to the making of the **Claim**, or the first **Claim** in a series of **Related Claims**., and provided that this shall not include a former President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or controlling shareholder of a corporation, a former owner of a sole proprietorship, or a former partner of a partnership, or any equivalent position in any other type of business entity;
  - (6) any **Claim** brought on behalf of the **Insured Entity** in bankruptcy by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Insured Entity**;
- E. This Policy does not apply to any **Claim** for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder, or of any similar provisions of federal, state or local law or regulation;
- F. This Policy shall not provide coverage for any **Claim** against any **Subsidiary** or other entity acquired by any **Insured Entity**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary** or other entity in his or her capacity as such for any **Wrongful Act**, including any **Employment Practices Wrongful Act**, committed during any time in which such entity is not a **Subsidiary** or at any time before any **Insured Entity's** acquisition of such entity; or
- G. This Policy shall not provide coverage for any **Claim** arising out of any actual or alleged liability of any **Insured Entity** under any express contract or agreement unless such liability would have attached to the **Insured Entity** in the absence of such express contract or agreement. For the purposes of this EXCLUSION G, an “express contract or agreement” is 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, provided, that this EXCLUSION G shall not apply to **Claims** arising solely out of **Employment Practices Wrongful Act**.

#### IV. CONDITIONS

##### A. **Limit of Liability:**

- (1) The amount stated in ITEM 3 of the Declarations will be the maximum aggregate Limit of Liability of the **Insurer** under this Policy for all **Loss**, including **Defense Expenses**, for all **Claims** for which this Policy provides coverage, regardless of the time of payment by the **Insurer**, and regardless of whether such **Claims** are made during the **Policy Period** or during the **Extended Reporting Period**.
- (2) **Defense Expenses** are part of and not in addition to the **Insurer's** Limit of Liability, and payment of **Defense Expenses** by the Insurer will reduce the Limit of Liability.

##### B. **Order of Payments:**

The **Insurer** will pay **Loss**, including **Defense Expenses**, in the order in which such **Loss** is incurred. Provided, however, to the extent legally permissible, known **Claims** under Insuring Agreement A shall have priority over **Claims** under Insuring Agreements (B)(1) and (B)(2).

##### C. **Application of Retention; Presumption of Indemnification:**

- (1) The obligation of the **Insurer** to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention. The **Insurer** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the Insurer shall, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the **Insurer** any amounts so paid.
- (2) The certificate of incorporation or articles of association, bylaws and resolutions of the **Parent Corporation** and each **Subsidiary** will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (3) The retention set forth in ITEM 4(b) of the Declarations will apply to any **Loss** incurred by or on behalf of the **Insured Persons** as to which indemnification by any **Insured Entity** is legally required or permissible, whether or not actual indemnification is made, unless such indemnification is not made by any **Insured Entity** solely by reason of its financial insolvency.
- (4) If different retentions are applicable to different parts of any **Claim**, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 4 of the Declarations.

**D. Defense and Settlement of Claims:**

- (1) It is the duty of the **Insureds** and not the duty of the Insurer to defend **Claims**.
- (2) No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the **Insurer's** written consent. The **Insurer** will have the right to make investigations and conduct negotiations, to associate in the defense of any **Claim**, and, with the consent of the **Insureds**, to enter into such settlement of any **Claim** as the **Insurer** deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, then, subject to the **Insurer's** maximum aggregate Limit of Liability set forth in ITEM 3 of the Declarations, the **Insurer's** liability for such **Claim** will not exceed:
  - (a) the amount for which such **Claim** could have been settled by the **Insurer** plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim** ( the "Settlement Amount"); plus
  - (b) eighty percent (80%) of any **Loss** and/or **Defense Expenses** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** and/or **Defense Expenses** in excess of the Settlement Amount will be carried by the **Insured** at its own risk and will be uninsured.
- (3) Upon written request of the **Parent Corporation**, the **Insurer** shall pay or reimburse on a current basis any **Defense Expenses** for which this Policy provides coverage. Except for such **Defense Expenses**, the **Insurer** shall pay or reimburse **Loss** only upon the final disposition of the **Claim**.
- (4) The **Insurer** will have no obligation to pay **Loss** or **Defense Expenses** after the **Insurer's** maximum aggregate Limit of Liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss** or **Defense Expenses**, or both. If the **Insurer's** Limit of Liability is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

**E. Other Insurance; Other Indemnification:**

All **Loss** payable under this Policy will be specifically excess of and will not contribute with: (1) other existing valid and collectible insurance, including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically written in excess of this Policy and this Policy is expressly scheduled as underlying insurance, and (2) indemnification to which an **Insured** is entitled from any entity other than any **Insured Entity**. This Policy will not be subject to the terms of any other insurance.

**F. Spouses and Domestic Partners of Insured Persons:**

- (1) The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to **Loss** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or **Domestic Partner** of an **Insured Person**, but only if:

- (a) the claim against such spouse results from a **Wrongful Act** actually or allegedly committed by the **Insured Person** to whom the spouse is married or who is a partner to the **Domestic Partner**;
  - (b) such **Insured Person** and his or her spouse or **Domestic Partner** are represented by the same counsel in connection with such **Claim**; and
  - (c) the **Claim** against the spouse or **Domestic Partner** seeks damages from marital community property.
- (2) No spouse or **Domestic Partner** of an **Insured Person** will, by reason of this CONDITION (F), have any greater right to coverage under this Policy than the **Insured Person**.
- (3) The **Insurer** will not be liable under this CONDITION (F) to make any payment of **Loss** in connection with any **Claim** against the spouse or **Domestic Partner** of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse.

**G. Cooperation; Subrogation:**

In the event of a **Claim**, the **Insureds** will provide the Insurer with all information, assistance and cooperation that the Insurer reasonably requests, and will do nothing that may prejudice the Insurer's position or potential or actual rights of recovery. At the Insurer's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to, without cost to the Insurer, attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the Insurer will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will 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 the name of any **Insured**. The obligations of the **Insureds** under this CONDITION G will survive the Policy.

**H. Extended Reporting Period:**

If the Policy is canceled for any reason other than nonpayment of premium or the Insurer or the **Parent Corporation** refuses or declines to renew this Policy for any reason and, within thirty (30) days of the end of the Policy Period, the **Parent Corporation** elects to purchase the Extended Reporting Period set forth in ITEM 7 of the Declarations by paying the additional premium set forth in ITEM 7 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** arise solely from **Wrongful Acts** committed before the end of the Policy Period or the date of any conversion of coverage under CONDITION K, whichever is earlier.

I. **Notice; Timing and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, including any **Claim** for a **Wrongful Act** of which notice was previously given under CONDITION I(2), the **Insureds** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made. In no event may notice be provided more than ninety (90) days after expiration or other termination of the **Policy Period**. In the event of cancellation of this Policy by the **Insureds**, notice of claim must be provided to the Insurer prior to notice of cancellation.
- (2) If, during the **Policy Period**, the **Insureds** first become aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of the Policy give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insureds** first became aware of such **Wrongful Act** then the Insurer will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period** during which such notice was given.
- (3) All notices under CONDITIONS I(1) and I(2) must be sent by certified or registered U.S. mail or by prepaid overnight delivery service to the address set forth in ITEM 5 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION I(2), whichever is earlier.

J. **Adjustments:**

If, during the **Policy Period**, any of the following events occurs:

- (1) any **Insured Entity** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired exceed fifteen percent (15%) of the total assets of the **Parent Corporation** as reflected in the **Parent Corporation's** most recent consolidated financial statements; or
- (2) any **Insured Entity** assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed fifteen percent (15%) of the total liabilities of the **Parent Corporation** as reflected in the **Parent Corporation's** most recent consolidated financial statements;

for a period of sixty (60) days after the effective date of such event, coverage granted by this Policy, subject to EXCLUSION F, shall extend to **Loss from Claims for Wrongful Acts** occurring after the effective date of such event which arise out of or relate to the entity, assets or liabilities acquired, assumed or merged with. After the expiration of such sixty (60) day period, there shall be no coverage under this Policy for **Loss from Claims**

for such **Wrongful Acts** unless: (a) within such sixty (60) day period, the Insurer receives from the **Insured** such information regarding details of the transaction as the Insurer requests and (b) the Insurer specifically agrees by written endorsement to this Policy to provide such coverage upon such terms, conditions and limitations as, at its sole discretion, the Insurer may require.

In the event of the acquisition of assets or assumption of liabilities by an **Insured Entity** in aggregate amounts less than the thresholds specified above, the coverage provided by this Policy will remain in effect, without further underwriting or the payment of additional premium.

**K. Conversion of Coverage Under Certain Circumstances:**

(1) If, during the **Policy Period**, any of the following events occurs:

- (a) the **Parent Corporation** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Parent Corporation** is not the surviving entity; or
- (b) any person, entity or affiliated group of persons or entities obtains: (i) the right to elect, appoint or designate more than fifty percent (50%) of the **Parent Corporation's** directors, trustees or member managers, or (ii) more than fifty percent (50%) of the **Parent Corporation's** equity or assets; or
- (c) the **Parent Corporation** ceases to do business for any reason, or a receiver, liquidator, conservator, trustee, rehabilitator, or similar administrator is appointed for the **Parent Corporation**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be canceled, regardless of CONDITION L(2), and the entire premium for the Policy will be deemed fully earned.

(2) If, during the **Policy Period**, any of the following events occurs:

- (a) an **Insured** entity other than the **Parent Corporation** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that neither the **Insured** entity nor the **Parent Corporation** is the surviving entity; or
- (b) any person, entity, or affiliated group of persons or entities other than the **Parent Corporation** obtains: (i) the right to elect, appoint or designate more than fifty percent (50%) of any **Insured Entity's** directors, trustees or member managers or (ii) more than fifty percent (50%) of any **Insured Entity** equity or assets; or
- (c) any **Insured Entity** other than the **Parent Corporation** ceases to do business for any reason, or a receiver, liquidator, conservator, trustee,

rehabilitator, or similar administrator is appointed for an Insured entity;

coverage under this Policy for such **Insured Entity** and its **Insured Persons** will continue in full force and effect with respect to **Claims** against such **Insured Entity** and its **Insured Persons** for **Wrongful Acts** committed before such event, but coverage for such **Insured Entity** and its **Insured Persons** will cease with respect to **Claims** for **Wrongful Acts** committed after such event.

**L. Cancellation; No Obligation to Renew:**

- (1) The **Insurer** may not cancel this Policy except for failure to pay a premium when due, in which case twenty (20) days written notice will be given.
- (2) The **Parent Corporation** may cancel this Policy by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation by the **Parent Corporation** is effective or as soon as practicable thereafter, but payment or tender by the **Insurer** of unearned premium is not a condition of cancellation by the **Parent Corporation**.
- (3) The **Insurer** will not be required to renew this Policy upon its expiration. If the **Insurer** elects not to renew this Policy, the **Insurer** will deliver or mail to the **Parent Corporation** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

**M. Representations and Warranties; Severability:**

The **Insureds** represent and warrant that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of such representations and warranties, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, 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 will only be void with respect to the **Insured Entity** and any **Insured Person** who made the material untruth, misrepresentation or omission, or who knew of such material untruth, misrepresentation or omission and remained passive after having such knowledge.

**N. No Action Against the Insurer:**

- (1) No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance 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 person or entity will have any right under this Policy to join the **Insurer** as a

party to any **Claim** to determine the liability of any **Insured**; nor may the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. The **Insurer** will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

O. **Territory:**

This Policy applies to **Wrongfuls Acts** committed by any **Insured Person**, and **Claims** brought and maintained against the **Insured**, anywhere in the world.

P. **Authorization and Notices:**

The **Insureds** agree that the **Parent Corporation** will act on their behalf with respect to all matters involving this Policy, including receiving any notices and return premiums from the **Insurer**.

Q. **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

R. **Assignment:**

No assignment of interest under this Policy will bind the **Insurer** without its consent.

S. **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of its 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.**