



# Health Care Organization Professional and General Liability Insurance Policy

**THIS POLICY CONTAINS BOTH CLAIMS MADE AND OCCURRENCE COVERAGE PARTS, WHICH MAY BE SUBJECT TO SEPARATE LIMITS OF LIABILITY. THE APPLICABLE LIMIT 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 **Insured**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

## **I. INSURING AGREEMENTS**

### **A. CLAIMS MADE PROFESSIONAL LIABILITY**

The **Insurer** will pay on behalf of the **Insured**, subject to the Limit of Liability set forth in Item 3(a) of the Declarations, **Loss and Defense Expenses** in excess of the Deductible stated in Item 4(a) of the Declarations which the **Insured** becomes legally obligated to pay as a result of a **Claim** alleging a **Medical Professional Incident**, provided always that:

1. such **Claim** is first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period; and
2. notice of such **Claim** is given to the **Insurer** in accordance with Section IV.B.1 of this Policy.

The **Insurer** will have the right and duty to defend any such **Claim** brought against the **Insured**, and will do so even if any of the allegations of the **Claim** are groundless, false, or fraudulent.

### **B. OCCURRENCE-BASED GENERAL LIABILITY**

The **Insurer** will pay on behalf of the **Insured**, subject to the Limit of Liability set forth in Item 3(c) of the Declarations, **Loss and Defense Expenses** in excess of the Deductible stated in Item 4(b) of the Declarations which the **Insured** becomes legally obligated to pay as a result of a **Claim** alleging **Bodily Injury, Property Damage, or Personal or Advertising Injury** caused by an **Occurrence**; provided always that:

1. such **Bodily Injury, Property Damage or Personal or Advertising Injury** occurs during the Policy Period; and
2. notice of such **Claim** is given to the **Insurer** in accordance with Section IV.B.2 of this Policy.

The **Insurer** will have the right and duty to defend any such **Claim** brought against the **Insured**, and will do so even if any of the allegations of the **Claim** are groundless, false, or fraudulent.

### C. CLAIMS MADE EMPLOYEE BENEFITS LIABILITY

The **Insurer** will pay on behalf of the **Insured**, subject to the Limit of Liability set forth in Item 3(e) of the Declarations, **Loss and Defense Expenses** in excess of the Deductible stated in Item 4(c) of the Declarations which the **Insured** becomes legally obligated to pay as a result of a **Claim** alleging injury to **Employees** because of an act, error or omission in the **Insured's Administration** of its **Employee Benefit Program**; provided always that:

1. such **Claim** is first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period; and
2. notice of such **Claim** is given to the **Insurer** in accordance with Section IV.B.1 of this Policy.

The **Insurer** will have the right and duty to defend any such **Claim** brought against the **Insured**, and will do so even if any allegations of the **Claim** are groundless, false or fraudulent.

## II. DEFINITIONS

### A. "Administration" means:

1. giving advice or counsel to **Employees** or their beneficiaries concerning their rights or interest with regard to the **Employee Benefit Program**;
2. determining the eligibility of **Employees** to participate in such **Employee Benefit Program**;
3. interpreting the provisions of such **Employee Benefit Program**;
4. effecting enrollment and termination of **Employees** in such **Employee Benefit Program**; or
5. handling and keeping records pertaining to such **Employee Benefit Program**.

### B. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about the **Insured's** goods, products or services, for the purpose of attracting customers or supporters. For purposes of this Definition:

1. Notice that is broadcast or published includes material placed on the Internet or similar means of electronic communication; and
2. With regard to websites, only that part of a website that is about the **Insured's** goods, products or services, for the purpose of attracting customers or supporters, will be considered an **Advertisement**.

### C. "Application" means the application submitted to the **Insurer** for this 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 by 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. 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 serve to waive or change any of the terms, conditions and limitations of this Policy.

- D.** “**Bodily Injury**” means physical injury, sickness or disease sustained by a person other than a **Patient**, including mental anguish, emotional distress or death resulting there from.
- E.** “**Claim**” means a written demand seeking monetary damages otherwise covered by this Policy.
- F.** “**Defense Expenses**” means reasonable fees, costs and expenses incurred by or on behalf of the **Insured** in connection with the defense of a **Claim**; however, **Defense Expenses** shall not include:
1. salaries, remuneration, overhead, fees or benefit expenses of the **Insured**;
  2. fines, penalties, or taxes levied against the **Insured**;
  3. fees, costs or expenses incurred without the prior consent of the **Insurer**; or
  4. **Loss**.
- G.** “**Employee**” means a person who has been hired by the **Insured** to perform services, and who has an assigned work schedule and appears on the regular payroll of the **Insured**, with applicable federal, state and local taxes withheld. **Employee** does not include an Independent Contractor.
- H.** “**Employee Benefit Program**” means any group life insurance, group accident and health insurance, profit sharing plan, pension plan, **Employee** stock subscription plan, workers’ compensation, unemployment insurance, social security and disability benefits insurance, or any other similar plan administered by or on behalf of the **Insured** for the benefit of its **Employees**.
- I.** “**Employment Practices**” means any actual or alleged breach of employment contract; failure or refusal to hire, employ or promote a person; demotion or discharge of a person; employment-related defamation or humiliation; discipline or evaluation of an **Employee**; discrimination, harassment, segregation, limitation or classification of persons in any way that tends to deprive any person of employment opportunities or otherwise adversely affect his/her status as an **Employee**, because of his/her race, age, sex, national origin, marital status, physical or mental handicap, pregnancy, religion, sexual orientation or preference, military status, or any other status that is protected under any applicable federal, state or local statute or ordinance; retaliation; or employment-related misrepresentation. However, **Employment Practices** will not include any of the foregoing that are alleged to result from **Peer Review**.
- J.** “**Good Samaritan Acts**” means acts or services provided by or failed to be provided by the **Insured** in rendering emergency treatment, without remuneration, at the scene of an accident, medical crisis or disaster.
- K.** “**Hostile Fire**” means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- L.** “**Insured**” means any of the following:
1. the **Named Insured**;
  2. any **Insured Entity**;
  3. any **Employee**, but only while acting within the scope of his/her duties as such; and, solely with respect to Insuring Agreements A. and B., **Insured** shall also mean the following:
  4. any **Volunteer**, but only while acting within the scope of his/her duties as such;

5. any member of a duly authorized board or committee of the **Named Insured**, any person communicating information to such board or committee, or any person charged with the duty of acting as a hearing officer or agent of such committee or executing directives of any such board or committee; provided, however, that any such person shall only be an **Insured** while acting within the scope of his/her duties as such;
6. any of the **Insured's** medical directors, students, administrators, department heads or chiefs of staff, who are not **Employees**, while acting within the scope of their duties as such; provided, however, that such person shall not be an **Insured** for **Claims** arising out of direct patient care rendered or allegedly failed to be rendered by him/her; or
7. any member or partner of a joint venture or partnership specifically designated as such in Schedule A, but only with respect to such member or partner's liability arising out of such designated joint venture or partnership;

and solely with regard to Insuring Agreement A., CLAIMS MADE PROFESSIONAL LIABILITY, **Insured** shall also mean, in the event of the death, incapacity, or bankruptcy of an **Insured**, the estates, heirs, legal representatives and/or assigns of such **Insured**.

**M. "Insured Entity"** means the organization(s) listed in Schedule A.

**N. "Insured's Products"** means:

1. goods or products manufactured, sold, handled or distributed by:
  - a. the **Insured**;
  - b. others trading under the name of the **Insured**; or
  - c. a person or organization whose assets the **Insured** has acquired in accordance with Condition J.; and
2. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Insured's Products** does not mean vending machines, or other property rented to or located for the use of others but not sold.

**O. "Insurer"** means the Company identified in the Declarations.

**P. "Loss"** means any monetary amount paid on account of an award, judgment or settlement, in excess of the applicable Deductible, which the **Insured** is legally obligated to pay as a result of a **Claim**. However, **Loss** shall not include:

1. punitive, exemplary or multiplied damages;
2. salaries, remuneration, overhead, fees or benefit expenses of the **Insured**;
3. fines, penalties, sanctions or taxes levied against the **Insured**;
4. non-monetary relief or redress in any form other than monetary compensation or damages, including, but not limited to, injunctive, declaratory and administrative relief;
5. the return, restitution, refund or disgorgement of fees, profits or amounts allegedly wrongfully held and/or retained by an **Insured**;
6. matters which are uninsurable under applicable law;

7. the payment, satisfaction or writing off of any medical bills or charges by an **Insured**; or
8. **Defense Expenses.**

**Q. “Medical Professional Incident”** means:

1. an actual or alleged act, error or omission in the **Insured’s** rendering of or failure to render **Medical Professional Services**;
2. an actual or alleged act, error or omission in connection with the **Insured’s** activities as a member of a duly authorized board or committee of the **Insured**, or as a member of any committee of the medical or professional staff of the **Insured** when engaged in **Peer Review** or **Utilization Review**;
3. an actual or alleged act, error or omission in connection with the **Insured’s** activities as a member of an accreditation, standards review or similar board or committee;
4. any actual or alleged act, error or omission in connection with the **Insured’s** performance of quality assurance activities; or
5. any actual or alleged act, error or omission in connection with **Good Samaritan Acts.**

**R. “Medical Professional Services”** means services performed by an **Insured** in the treatment or care of any person, including: medical, dental, nursing, psychiatric, osteopathic, chiropractic, dental or other professional care or services; the furnishing or dispensing of medications, drugs, blood, blood products, or medical or surgical supplies, equipment or appliances in connection with such treatment or care; the furnishing of food or beverages in connection with such treatment or care; the providing of counseling or social services in connection with such treatment or care; and the handling of or performance of post-mortem examinations on human bodies.

**S. “Named Insured”** means the entity identified in Item 1 of the Declarations.

**T. “Occurrence”** means:

1. With respect to **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in injury neither expected nor intended by the **Insured**;
2. With respect to **Personal or Advertising Injury**, a covered offense as set forth in Definition W.

**U. “Patients”** means any persons or human bodies admitted or registered to receive **Medical Professional Services** from an **Insured**, whether on an inpatient, outpatient or emergency basis.

**V. “Peer Review”** means the process of evaluating any individual or entity for purposes of selecting, employing, contracting with or credentialing current or prospective providers of **Medical Professional Services**; provided, however, that such evaluation must be performed by members of a duly authorized professional review board or committee of the **Insured**.

**W. “Personal or Advertising Injury”** means injury, other than **Bodily Injury**, arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution; or

3. The wrongful eviction from, wrongful entry into or invasion of the right of private occupation of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, product or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  6. The **Insured's** use of another's advertising idea in its **Advertisement**;
  7. The **Insured's** use of another's copyright, trade dress or slogan in its **Advertisement**; or
  8. The **Insured's** infringement upon another's copyright, trade dress or slogan in its **Advertisement**.
- X.** **"Policy Period"** means the period from the Inception Date stated in Item 2(a) of the Declarations to the earlier of the Expiration Date stated in Item 2(b) of the Declarations or the cancellation date.
- Y.** **"Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- Z.** **"Property Damage"** means:
1. physical injury to or destruction of tangible property, including all loss of use thereof as a result of such physical injury or destruction; or
  2. loss of use of tangible property that is not physically injured.
- AA.** **"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.
- BB.** **"Retroactive Date"** means the date set forth in Item 7 of the Declarations Page.
- CC.** **"Subsidiary"** means any entity during any time in which the **Named Insured** owns or controls, directly or indirectly, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors or members of the board of managers.
- DD.** **"Utilization Review"** means the process of evaluating the appropriateness or necessity of **Medical Professional Services** provided or to be provided by an **Insured**. **Utilization Review** includes prospective, concurrent and retrospective review of such **Medical Professional Services**; however, **Utilization Review** does not include services or activities performed in administering benefits or managing health care plans for others.
- EE.** **"Volunteer"** means a person providing services and/or labor to the **Insured**, without being paid by the **Insured** for providing such services and/or labor and under the supervision or direction of the **Insured**. **Volunteer** shall not include any **Employee** or Independent Contractor.

### III. EXCLUSIONS

#### A. **Exclusions Applicable To Insuring Agreement I.A., CLAIMS MADE PROFESSIONAL LIABILITY**

As respects Insuring Agreement I.A., CLAIMS MADE PROFESSIONAL LIABILITY, this Policy shall not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

1. **Bodily Injury, Property Damage, or Personal or Advertising Injury**, unless such **Claim** arises out of an **Insured's** alleged rendering of or failure to render **Medical Professional Services**;
2. any actual or alleged Wrongful Act by any of the **Insured's** Directors or Officers in the discharge of their duties as such. For purposes of this Exclusion A.2, "Wrongful Act" shall mean any actual or alleged misstatement, misleading statement, act, error or omission;
3. the rendering of or failure to render **Medical Professional Services** by any person other than an **Insured**; However, this Exclusion shall not apply to the **Insured's** vicarious liability with regard to such **Medical Professional Services**; or
4. any **Medical Professional Incident** arising out of the ownership, maintenance, use, operation, or entrustment to others of any aircraft, auto, watercraft, motor vehicle or semi-trailer, or the loading or unloading thereof; provided, however, that this Exclusion A.4 will not apply to any **Claim** arising out of a **Medical Professional Incident** in connection with the loading or unloading of **Patients**; or
5. any **Medical Professional Incident** taking place prior to the **Retroactive Date** stated in Item 7(a) of the Declarations.

#### B. **Exclusions Applicable to Insuring Agreement I.B., OCCURRENCE-BASED GENERAL LIABILITY**

As respects Insuring Agreement I.B., OCCURRENCE-BASED GENERAL LIABILITY, this Policy shall not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

1. injury to a **Patient**; provided, however, that this Exclusion B.1 shall not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: fire or lightning; windstorm or hail; explosion; riot, including riot attending a strike or civil commotion; aircraft or vehicles; smoke; vandalism or malicious mischief; sprinkler leakage; elevator malfunction; earthquake or flood; or structural collapse of a building;
2. **Bodily Injury, Property Damage, or Personal or Advertising Injury** arising out of an **Occurrence** taking place before the Inception Date;
3. **Bodily Injury, Property Damage, or Personal or Advertising Injury** expected or intended from the standpoint of the **Insured**; provided, however, that this exclusion shall not apply to **Bodily Injury** resulting from the use of reasonable force to protect any person or property from injury or damage;
4. **Personal or Advertising Injury** arising out of the written or oral publication of material:

- a. if done by or at the direction of an **Insured** with knowledge of its falsity;  
or
  - b. which was first published prior to the Inception Date stated in Item 2(a) of the Declarations. For purposes of this subsection, if such material was first published prior to the Inception Date of this Policy, it shall be immaterial whether such material was re-published or allegedly caused injury during the **Policy Period**;
5. **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, use, operation, or entrustment to others of any aircraft, auto, watercraft, motor vehicle or semi-trailer, or the loading or unloading thereof;
6. **Property Damage** to:
  - a. any property the **Insured** owns or rents;
  - b. any premises sold, given away, or abandoned by the **Named Insured**;
  - c. any property loaned to the **Insured**;
  - d. any personal property in the care, custody or control of the **Insured**; or
  - e. the **Insured's Products**, arising out of such products or any part thereof;
7. **Property Damage** to property that has not been physically injured, arising out of:
  - a. a delay or failure by or on behalf of the **Insured** in performing any contract or agreement; or
  - b. the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability promised or warranted by the **Insured**; provided, however, that this exclusion shall not apply to loss of use of other tangible property resulting from the sudden or accidental physical damage to or destruction of the **Insured's Products** or work performed by or on behalf of the **Insured** after such products or work have been put to use by any person or organization other than the **Insured**;
8. **Bodily Injury** to an **Employee** arising out of such person's conduct in their capacity as such, or the spouse, child, parent, brother or sister of such **Employee**;  
or
9. any actual or alleged infringement of right of patent, trademark, service mark, trade name, copyright, title or slogan.
10. injury or damage arising in whole or in part, directly or indirectly, out of fungi, including mold or mildew, any mycotoxins, toxins, allergens, spores, scents, vapors, gases or by-products released by fungi, regardless of whether such fungi is:
  - a. airborne;
  - b. contained in a product; or
  - c. contained in or a part of any building, structure, building material, or any component part of any of the foregoing;

**C. Exclusions Applicable to Insuring Agreement I.C., CLAIMS MADE EMPLOYEE BENEFITS LIABILITY**

As respects Insuring Agreement I.C., CLAIMS MADE EMPLOYEE BENEFITS LIABILITY, this Policy will not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

1. **Bodily Injury, Property Damage, or Personal or Advertising Injury;**
2. a **Medical Professional Incident**, or injury to a **Patient**;
3. failure of performance by any insurer, including, but not limited to, the failure of such insurer to pay or provide benefits allegedly due under any contract relating to the **Insured's Employee Benefit Program**;
4. the insufficiency of funds to meet any obligations of the **Insured's Employee Benefit Program**;
5. failure of stock or any compensation, investment or savings program to produce the financial gain represented; or
6. any act, error or omission in the **Insured's Administration** of its **Employee Benefit Program** taking place prior to the **Retroactive Date** stated in Item 7(b) of the Declarations.

**D. Exclusions Applicable to All Insuring Agreements**

As respects Insuring Agreement I.A., CLAIMS MADE PROFESSIONAL LIABILITY, Insuring Agreement I.B., OCCURRENCE-BASED GENERAL LIABILITY, and Insuring Agreement I.C., CLAIMS MADE EMPLOYEE BENEFITS LIABILITY, this Policy shall not apply to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

1. any willful misconduct or dishonest, fraudulent, or malicious act, error or omission by any **Insured**; any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; any **Insured** gaining any profit, remuneration or advantage to which such Insured was not legally entitled; or any alleged criminal conduct by an **Insured**. For purposes of this Exclusion D.1, no act, error or omission of any **Insured** shall be imputed to any other **Insured**;
2. any acts, errors, omissions, **Medical Professional Incidents, Occurrences**, facts, matters, events, suits or demands notified or reported to, or in accordance with, any policy of insurance or policy or program of self-insurance in effect prior to the Inception Date of this Policy;
3. any acts, errors, omissions or **Occurrences** taking place prior to the earlier of:
  - a. the Inception Date; or
  - b. the Inception Date of the first policy issued by the **Insurer** to the **Insured**, of which this Policy is a renewal;if any **Insured** on or before such date knew or reasonably could have foreseen that such act, error, omission or **Occurrence** might result in a **Claim**;
4. any actual or alleged sexual misconduct or sexual abuse, including, but not limited to, any physical acts or oral statements of a sexually suggestive manner, or any unwelcome physical contact or touching;

5. any actual or alleged price fixing; restraint of trade; monopolization; unfair trade practices; or violation of the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any rules or regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, rule or regulation or common law, except to the extent such **Claim** arises out of any **Insured's** alleged rendering of or failure to render **Medical Professional Services**;
6. any actual or alleged liability of an **Insured** under any express contract or agreement, unless such liability would have attached in the absence of such contract or agreement. For purposes of this Exclusion D.6, an "express contract or agreement" is an actual agreement by 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;
7. any actual or alleged liability of an **Insured** under any workers compensation, unemployment compensation, disability benefits or similar law or regulation;
8. any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA), or any similar federal, state or local law or regulation, except to the extent such **Claim** arises out of any **Insured's** alleged rendering of or failure to render **Medical Professional Services**;
9. injury or damage arising in whole or in part, directly or indirectly, out of asbestos or silica, regardless of whether such asbestos or silica is:
  - a. airborne, as a fiber or particle;
  - b. contained in a product;
  - c. carried or transmitted by clothing or any other means; or
  - d. contained in or a part of any building, structure, building material, insulation product, or any component part of any of the foregoing;
10. any direct or indirect consequence of war, invasion, act of foreign enemy, hostilities (whether or not war is declared), civil war, rebellion, revolution, civil insurrection, strike, or riot; provided, however, that this Exclusion D.11 shall not apply to "terrorism" as that term is defined in the Terrorism Risk Insurance Act of 2002;
11. **Employment Practices**;
12. any **Insured's** failure to maintain licensure status;
13. managed care activities. For purposes of this Exclusion D.13, "managed care activities" includes any of the following activities performed for any person or entity other than an **Insured**: advertising, marketing, selling, or enrollment for health care or workers' compensation plans; administering claims for health benefits; establishing health care provider networks; reviewing the quality of **Medical Professional Services** or providing quality assurance; design and/or implementation of financial incentive plans; wellness or health promotion education; development or implementation of clinical guidelines, practice parameters or protocols; triage for payment of Medical Services; and services or activities performed in the administration or management of health care or workers' compensation plans;

14. any misuse or improper release of confidential, private or proprietary information, or any actual or alleged act, error or omission in violation of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any regulations promulgated in connection therewith, including but not limited to the Privacy Rule and the Security Rule;
15. any administrative, disciplinary, licensing or regulatory **Claim** asserted by or on behalf of a government entity;
16. any **Claim** asserted by or on behalf of an **Insured** against another **Insured**; provided, however, that this Exclusion D.16 will not apply to preclude or limit coverage for an otherwise covered **Claim** based on, arising out of or in any way involving **Peer Review** or the **Insured’s Administration** of its **Employee Benefit Program**; or
17. any liability or obligation:
  - a. arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; provided, however, that this exclusion shall not apply to **Bodily Injury** to a **Patient**, visitor or invitee, or to **Bodily Injury** or **Property Damage** arising out of heat, smoke or fumes from a **Hostile Fire**; or
  - b. to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, whether or not any of the foregoing are to be performed by or on behalf of the **Insured**.

#### IV. CONDITIONS

##### A. **Limits of Liability**

1. The amount stated in Item 3(g) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss** or **Defense Expenses** resulting from all **Claims** for which this Policy provides coverage, regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of Claimants.
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 Deductible and/or applicable Limit of Liability.
3. The obligation of the **Insurer** to pay **Loss** or **Defense Expenses** will only be in excess of the applicable Deductible set forth in Item 4 of the Declarations. 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 such Deductible 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 **Insureds** agree to repay the **Insurer** any amounts so paid. The Deductible shall be included in, and shall not be in addition to, the applicable Limit of Liability.
4. In the event a **Claim** is first made against the **Insured** during the **Policy Period** that involves more than one (1) Insuring Agreement hereunder, it is understood and agreed that only one (1) Deductible and one (1) Limit of Liability will apply to such **Claim**, which shall be the highest applicable per **Claim** Limit of Liability set forth in Item 3(a), 3(c) or 3(e) of the Declarations and the Deductible corresponding to such Limit of Liability.

5. All **Insureds** under this Policy share in the applicable Limit of Liability. In no event will the number of **Insureds** involved in a **Claim** increase the Limit of Liability.
6. If a **Claim** involves this Policy and any other policy issued by the **Insurer**, its predecessor, or any of the **Insurer's** affiliated companies or their predecessors, the Limits of Liability which will apply to such **Claim** will be a single Limit of Liability, which shall be the highest applicable per **Claim** limit available under all such policies. In no event will more than one policy issued by the **Insurer** respond to a **Claim**, and the single policy responding to such **Claim** shall be the Policy in force at the time the earliest act, error, omission or **Occurrence** giving rise to such **Claim** took place, consistent with Section IV.D. below, "Related Acts Deemed Single Act."

## **B. Reporting of Claims and Circumstances**

1. With respect to Insuring Agreement I.A., CLAIMS MADE PROFESSIONAL LIABILITY, and Insuring Agreement I.C., CLAIMS MADE EMPLOYEE BENEFITS LIABILITY, the following shall apply:
  - a. If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against any **Insured**, the **Insureds** 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:
    - i. with respect to a **Claim** first made during the **Policy Period**, thirty (30) days after the Expiration Date; or
    - ii. with respect to a **Claim** first made during an Extended Reporting Period, thirty (30) days after such **Claim** is first made.

Timely and sufficient notice by one **Insured** of a **Claim** or **Related Claims** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim** or **Related Claims**. Such notice shall give full particulars of the **Claim** or **Related Claims**, including, without limitation, a description of the acts, errors or omissions, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such acts, errors or omissions, and the manner in which the **Insured** first became aware of such acts, errors or omissions.
  - b. If, during the **Policy Period**, an **Insured** first becomes aware of any acts, errors or omissions which may subsequently give rise to a **Claim**, and:
    - i. gives the **Insurer** written notice of such acts, errors or omissions with full particulars as soon as practicable thereafter, but in any event before the end of the **Policy Period**; and
    - ii. requests coverage under this Policy for any **Claim** subsequently arising from such reported acts, errors or omissions as soon as possible practicable after such **Claim** is made;

then any **Claim** subsequently made against the **Insured** arising out of such acts, errors or omissions shall, subject to Condition C. below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under Condition B.1(b) above must include, without limitation, a description of the acts, errors or

omissions, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such acts, errors or omissions, the manner in which the **Insured** first became aware of such acts, errors or omissions, and the reasons why the **Insured** believes a **Claim** is likely to be made. The Insured's conduct of internal loss control activities, without more, will not constitute reporting under Condition B.1(b).

2. With respect to Insuring Agreement I.B., OCCURRENCE BASED GENERAL LIABILITY, the following shall apply:

a. The **Insured** must see to it that the **Insurer** is immediately notified in writing of any **Claim**, and must see to it that the **Insurer** is notified as soon as practicable in writing of an **Occurrence** that may result in a **Claim**. To the extent possible, such notice should include, without limitation: a description of the nature, time and place of the **Occurrence**; the identities of the potential claimants, any witnesses and involved **Insureds**; and the injury or damages which have resulted and/or may result from such **Occurrence**.

b. The **Insureds** also must:

- i. immediately send the **Insurer** copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
- ii. authorize the **Insurer** to obtain records and other information;
- iii. cooperate with the **Insurer** in the investigation, defense or settlement of the **Claim**; and
- iv. assist the **Insurer**, upon the **Insurer's** request, in the enforcement of any right against any person or organization which may be liable to the **Insured** because of injury or damage to which this Policy may also apply.

### C. **Related Claims Deemed Single Claim; Date Claim Made**

All **Related Claims**, whenever made, shall be deemed to be a single **Claim** and shall be deemed to have been first made on the earliest of the following dates:

1. the date on which the earliest **Claim** within such **Related Claims** was received by an **Insured**; or
2. the date on which written notice was first given to the **Insurer** of an act, error, omission or **Occurrence** which subsequently gave rise to any of the **Related Claims**, regardless of the number and identity of claimants, the number and identity of **Insureds** involved, or the number and timing of the **Related Claims**, and even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period**.

### D. **Related Acts Deemed Single Act**

1. With regard to Insuring Agreement I.A., CLAIMS MADE PROFESSIONAL LIABILITY, all damages arising from the same or related acts, errors or omissions are considered to arise out of a single **Medical Professional Incident**.

Such **Medical Professional Incident** will be deemed to have first taken place at the time the first **Claim** seeking such damages is made and reported in accordance with Condition B.1.

2. With regard to Insuring Agreement I.B., OCCURRENCE-BASED GENERAL LIABILITY, all damages arising from the same or related accidents, acts, offenses, publications or general conditions are considered to arise out of a single **Occurrence**, regardless of the frequency or repetition thereof, the type of damage at issue, or the number of claimants. Such **Occurrence** will be deemed to have first taken place at the time the first such accident, act, publication or general condition occurs.
3. With regard to Insuring Agreement I.C., CLAIMS MADE EMPLOYEE BENEFITS LIABILITY, all damages arising from the same or related acts, errors or omissions in the **Insured's Administration** of its **Employee Benefit Program** are considered to arise out of a single act, error or omission. Such act, error or omission will be deemed to have first taken place at the time the first **Claim** seeking such damages is made and reported in accordance with Condition B.1.

#### **E. Defense and Settlement**

1. The **Insurer** will have the right to make investigations and conduct negotiations and to enter into such settlement of any **Claim** as the **Insurer** deems appropriate.
2. The **Insurer** will have no obligation to pay **Loss** or **Defense Expenses**, or to defend or continue to defend any **Claim** after the **Insurer's** maximum aggregate Limit of Liability, as set forth in Item 3(g) of the Declarations, has been exhausted by the payment of **Loss** or **Defense Expenses**. If the **Insurer's** maximum aggregate Limit of Liability, as set forth in Item 3(g) of the Declarations, is exhausted by the payment of **Loss** or **Defense Expenses**, the premium will be fully earned.

#### **F. 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. At the **Insurer's** request, the **Insureds** shall assist in:

1. investigating, defending and settling **Claims**;
2. enforcing any right of contribution or indemnity against a third party who may be liable to any **Insured**, and
3. 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.

#### **G. Inspection and Audit**

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

## H. 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 the **Insureds'** 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 H. shall survive the cancellation or other termination of this Policy.

## I. Other Insurance/Other Indemnification

1. This Policy shall be excess of and shall not contribute with:
  - a. any other insurance or plan or program of self-insurance (whether collectible or not), unless such other insurance or self-insurance is specifically stated to be in excess of this Policy; and
  - b. any contribution or indemnification to which an **Insured** is entitled from any entity other than another **Insured**.

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

2. 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, shall apply to any **Claim**, then the aggregate limit of liability with respect to all **Loss** covered 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 I.2 shall not apply with respect to any other policy which is specifically written as excess insurance over this Policy.

## J. Mergers, Acquisitions, or Newly Created Entities

**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 (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;

then for a period of thirty (30) days after the effective date of such event, the coverage granted by this Policy shall extend to any **Claims** arising out of covered acts, errors, omissions or **Occurrences** that take place after the effective date of such event and arise out of or relate to the entity, assets or liabilities acquired, assumed or merged with. After the expiration of such thirty (30) day period, there shall be no coverage under this Policy for such **Claims** unless: (a) within such thirty (30) 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, including payment of additional premium, as the **Insurer**, at its sole discretion, may require.

**K. Sales or Dissolution of Insured Entities; Cessation of Business**

1. If, during the **Policy Period**:
  - a. the **Named Insured** 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:
    - i. the right to elect or appoint more than fifty percent (50%) of the **Named Insured's** directors, trustees or member managers, as applicable; or
    - ii. more than fifty percent (50%) of the **Named Insured's** equity or assets;
  - b. the **Named Insured** ceases to do business for any reason; or
  - c. a receiver, liquidator, conservator, trustee, rehabilitator or similar administrator is appointed for the **Named Insured**;

then in any such event (any of which events is referred to in this Condition K. as a "Material Event"), 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 covered acts, errors or omissions committed or allegedly committed before such Material Event. There will be no coverage under this Policy with respect to any **Claim** against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any covered acts, errors or omissions committed or allegedly committed on or after the date of such Material Event.

2. If, during the **Policy Period**, any **Insured Entity** other than the **Named Insured** is involved in a Material Event, coverage under this Policy for covered acts, errors or omissions committed or allegedly committed before such Material Event by such **Insured Entity** shall continue in full force and effect until the Expiration Date or any earlier cancellation date. There will be no coverage under this Policy with respect to any **Claim** against such **Insured Entity** based upon, arising out of, directly or indirectly resulting from, in consequence of or involving any way involving any covered acts, errors or omissions of such **Insured Entity** committed or allegedly committed on or after the date of such Material Event. Coverage under this Policy shall continue in full force and effect for all other **Insureds**.

**L. Cancellation or Non-Renewal**

1. The **Insurer** may cancel this Policy by mailing written notice to the **Named Insured** at the last known address stated in Item 1 of the Declarations stating when, no less than sixty (60) days thereafter or such longer period as may be required by law, such cancellation shall be effective. However, in the event the **Insured** fails to pay a premium when due, the **Insurer** may cancel this Policy effective upon ten (10) days' written notice, or such longer period as may be required by law, by providing notice to the **Named Insured** in the manner set forth in the preceding sentence.

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.

**M. Extended Reporting Periods**

If this Policy is canceled for any reason other than non-payment of premium or is not renewed by the **Insurer**, an Extended Reporting Period shall be made available as described in this Condition M.; however, any such Extended Reporting Period shall apply only to **Claims**:

1. involving Insuring Agreements A and C, and
2. which arise out of acts, errors, or omissions taking place before the effective date of such cancellation or non-renewal (“Termination Date”).

No Extended Reporting Period shall in any way increase the applicable Limit of Liability as stated in Items 3(a)-(f) of the Declarations, and the **Insurer’s** maximum aggregate Limit of Liability for all **Loss** from all **Claims** first made during the **Policy Period** or any Extended Reporting Period shall not exceed the Limit of Liability stated in Item 3(g) of the Declarations. The offer of renewal terms, conditions, limits of liability, retentions or premium different from those in effect prior to renewal shall not constitute cancellation or refusal to renew for purposes of this Condition M. The Extended Reporting Period will apply as follows:

1. The **Insured** shall be entitled to an automatic Extended Reporting Period of sixty (60) days, beginning as of the Termination Date and requiring no additional premium; provided, however, that such automatic 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 the **Insured** does not elect to purchase an additional Extended Reporting Period as described in Condition M.2 above or fails to pay the additional premium therefore within thirty (30) days after the Termination Date, the **Insured** will not have any right to purchase an additional Extended Reporting Period at a 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 M.1 above.

**N. Representations and Warranties; Incorporation of Application**

The **Insureds** represent and warrant that the particulars and statements contained in the **Application** attached to this Policy 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 representation;
2. those particulars and statements are the basis of this Policy; and
3. the **Application** and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured** for purposes of this Condition N., 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, or to whom such knowledge is imputed.

**O. Action against Insurer**

1. No action shall lie against the **Insurer** 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 connection with any such **Claim**.

**P. 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.

**Q. Notice**

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 with 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.

**R. Changes**

Notice to or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not effect 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 to form a part of this Policy.

**S. 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.

**T. 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.

**U. 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.**

SPECIMEN