



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this coverage section, the Company and the Insureds agree as follows:

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**Insuring Clauses**

*Executive Liability Coverage Insuring Clause 1*

1. The Company shall pay, on behalf of each of the **Insured Persons**, **Loss** for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **D&O Claim** first made against the **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **D&O Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **D&O Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 18 of this coverage section.
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*Executive Indemnification Coverage Insuring Clause 2*

2. The Company shall pay, on behalf of the **Organization**, **Loss** for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, and which the **Insured Person** becomes legally obligated to pay on account of any **D&O Claim** first made against the **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **D&O Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **D&O Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 18 of this coverage section.
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*Entity Coverage Insuring Clause 3 (If purchased)*

3. If Entity Coverage is purchased as set forth in Item 3(A) of the Declarations for this coverage section, the Company shall pay, on behalf of the **Organization**, **Loss** which the **Organization** becomes legally obligated to pay on account of any **Organization Claim** first made against the **Organization** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **D&O Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Organization** or the **Insured Persons** before or during the **Policy Period**, but only if such **Organization Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 18 of this coverage section.
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*Employment Practices Liability Coverage Insuring Clause 4 (If purchased)*

4. If Employment Practices Liability Coverage is purchased as set forth in Item 3(B) of the Declarations for this coverage section, the Company shall pay, on behalf of the **Insureds**, **Loss** which the **Insureds** become legally obligated to pay on account of any **Employment Claim** first made against the **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for an **Employment Practices Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Insureds** before or during the **Policy Period**, but only if such **Employment Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 18 of this coverage section.



*Third Party Liability Coverage Insuring Clause 5 (if purchased)*

5. If Third Party Liability Coverage is purchased as set forth in Item 3(C) of the Declarations for this coverage section, the Company shall pay, on behalf of the **Insureds**, **Loss** which the **Insureds** become legally obligated to pay on account of any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Third Party Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Insureds** before or during the **Policy Period**, but only if such **Third Party Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 18 of this coverage section.

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**Definitions**

6. When used in this coverage section:

**Antitrust Violation** means any actual or alleged violation of any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950 and the Federal Trade Commission Act of 1914), or amendments to or regulations promulgated under any such law, that governs competition, monopolistic practices, unfair trade practices, or price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment).

**Application** means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insureds** to the Company for this coverage section or for any coverage section or policy of which this coverage section is a direct or indirect renewal or replacement. **Application** shall also include, for each **Insured**, all documents provided by the **Insureds** to the Company in connection with the underwriting or issuance of this coverage section. All such applications, attachments, materials and other documents are deemed attached to, incorporated into and made a part of this coverage section.

**Benefits** means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an **Employee** arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, **Stock Benefits** or non-deferred cash incentive compensation.

**Breach of Employment Contract** means any breach of any oral, written or implied contract or contractual obligation, including but not limited to any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

**Claim** means:

- (a) when used in reference to the coverage provided by Insuring Clauses 1 and 2, a **D&O Claim**;
- (b) when used in reference to the coverage provided by Insuring Clause 3, an **Organization Claim**;



- (c) when used in reference to the coverage provided by Insuring Clause 4, an **Employment Claim**; and
- (d) when used in reference to the coverage provided by Insuring Clause 5, a **Third Party Claim**.

**D&O Claim** means:

- (a) a written demand for monetary damages;
- (b) a civil proceeding commenced by the service of a complaint or similar pleading;
- (c) a criminal proceeding commenced by the return of an indictment or information or similar document; or
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal order of investigation or similar document,

against an **Insured Person** for a **D&O Wrongful Act**, including any appeal therefrom.

Except as may otherwise be provided in Subsection 15, Subsection 16(j), or Subsection 18(b) of this coverage section, a **D&O Claim** will be deemed to have first been made when, with respect to any civil, criminal or formal civil administrative or civil regulatory proceeding described in (b), (c) or (d) above, such **D&O Claim** is commenced as set forth in this definition or, in the case of any written demand described in (a) above, when such demand is first received by an **Insured**.

**D&O Wrongful Act** means:

- (a) when used in reference to the coverage provided by Insuring Clauses 1 and 2:
  - (i) any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Insured Capacity**;
  - (ii) any **Outside Directorship Wrongful Act**; or
  - (iii) any other matter claimed against an **Insured Person** solely by reason of his or her serving in an **Insured Capacity**; or
- (b) when used in reference to the coverage provided by Insuring Clause 3, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Insured Capacity** or by the **Organization**;

provided that **D&O Wrongful Act** shall not include any **Employment Practices Wrongful Act** or **Third Party Wrongful Act** except with respect to any **D&O Claim** or **Organization Claim** that is also based upon, arising from, or in consequence of any **Antitrust Violation**.



**Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, **Benefits** or **Stock Benefits** of the directors, officers or **Employees** of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.

**Disqualified Person** means a "disqualified person" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.

**Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

**Employee** means any natural person whose labor or service is engaged by and directed by the **Organization**, including any part-time, seasonal, leased or temporary employee or any volunteer. **Employee** shall not include any **Independent Contractor**.

**Employment Claim** means:

- (a) any of the following:
- (i) a written demand for monetary damages or a written demand for reinstatement, re-employment or re-engagement;
  - (ii) a civil proceeding commenced by the service of a complaint or similar pleading;
  - (iii) a criminal proceeding outside the United States of America commenced by a return of an indictment or information or similar document;
  - (iv) an arbitration proceeding pursuant to an employment contract, policy or practice of the **Organization** commenced by receipt of a demand for arbitration or similar document; or
  - (v) an administrative, regulatory or tribunal proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, including but not limited to any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; provided that in the context of an audit conducted by the Office of Federal Contract Compliance Programs, **Employment Claim** shall be limited to a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief,

which is brought and maintained by or on behalf of a past, present or prospective **Employee** of the **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding), including any appeal therefrom; or

- (b) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in paragraph (a) above;

provided that **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant or related to a collective bargaining agreement.



Except as may otherwise be provided in Subsection 15, Subsection 16(j), or Subsection 18(b) of this coverage section, an **Employment Claim** will be deemed to have first been made when, with respect to any civil, criminal, arbitration, administrative, regulatory or tribunal proceeding described in (a)(ii), (a)(iii), (a)(iv) or (a)(v) above, such **Employment Claim** is commenced as set forth in this definition or, in the case of any written demand or written request described in (a)(i) or (b) above, when such demand or request is first received by an **Insured**.

**Employment Discrimination** means any actual or alleged violation of employment discrimination laws including any actual, alleged or constructive termination, dismissal, or discharge of employment, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote an **Employee** or applicant for employment, or any limitation, segregation or classification of any **Employee** or applicant for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise affect his or her status as an **Employee** based on such person's race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world.

**Employment Harassment** means:

- (a) sexual harassment, including any unwelcome sexual advances or requests for sexual favors, that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization**; or
- (b) workplace harassment, including work related harassment of a non-sexual nature, that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization**.

**Employment Practices Wrongful Act** means any actual or alleged:

- (a) **Breach of Employment Contract**;
- (b) **Employment Discrimination**;
- (c) **Employment Harassment**;
- (d) **Retaliation**;
- (e) **Workplace Tort**;
- (f) **Wrongful Employment Decision**; or
- (g) **Wrongful Termination**,

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her **Insured Capacity**; provided that **Employment Practices Wrongful Act** shall not include any **Provider Selection Practice**.

**Excess Benefit Transaction Excise Tax** means any excise tax imposed by the Internal Revenue Service on an **Insured Person** who is an **Organization Manager** as a result of such **Insured Person's** participation in an **Excess Benefit Transaction**.



**Excess Benefit Transaction** means an “excess benefit transaction” as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.

**Government Entity** means the United States or any federal, state or local governmental, regulatory or administrative agency or entity.

**HIPAA Violation** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty by an **Insured** in violation of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), amendments to such law or regulations promulgated under such law concerning privacy of health information.

**Independent Contractor** means any natural person working for the **Organization** in the capacity as an independent contractor pursuant to an **Independent Contractor Services Agreement**.

**Independent Contractor Services Agreement** means any express contract between an **Independent Contractor** and the **Organization**.

**Insured** means the **Organization** and any **Insured Person**.

**Insured Capacity** means the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person** set forth in this coverage section. **Insured Capacity** does not include any position or capacity held by an **Insured Person** in any organization other than the **Organization**.

**Insured Person** means any natural person who was, now is or shall become:

- (a) a duly elected or appointed director, officer, trustee, trustee emeritus, **Manager**, department head, executive director, duly constituted committee member, member of the staff or faculty, or the in-house general counsel of any **Organization** chartered in the United States of America;
- (b) a holder of a position equivalent to any position described in (a) above in an **Organization** chartered in any jurisdiction other than the United States of America;
- (c) an **Employee**; or
- (d) an **Independent Contractor** working for the **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees in writing, prior to or no later than thirty (30) days after the **Claim** is made, to indemnify the **Independent Contractor** for liability arising out of such **Claim**.

**Loss** means:

- (a) the amount that any **Insured Person** (for purposes of Insuring Clause 1 and 2), or the **Organization** (for purposes of Insuring Clause 3) becomes legally obligated to pay on account of any covered **D&O Claim** or **Organization Claim**, as applicable, including but not limited to:
  - (i) damages;
  - (ii) judgments;
  - (iii) settlements;



- (iv) pre-judgment and post-judgment interest;
- (v) fines and penalties levied against any:
  - (A) **Non-profit Organization** or the **Insured Persons** thereof for violation of any provision of the Internal Revenue Code of 1986, as amended; provided that the coverage afforded by this coverage section shall apply only if and to the extent the **Non-profit Organization** or the **Insured Persons** thereof relied upon, with respect to the matters giving rise to such violation: (1) a written “more likely than not” or “will” opinion of tax counsel licensed to practice law in the United States or Certified Public Accountant or Accounting Firm, or (2) a tax return prepared by a Certified Public Accountant or Accounting Firm duly appointed by the Board of Trustees of the **Non-profit Organization** (“IRC Coverage”);
  - (B) **Insured** for violation of the Emergency Medical Treatment and Active Labor Act, as amended (“EMTALA Coverage”); or
  - (C) **Insured** for any **HIPAA Violation**; provided that the coverage afforded by this coverage section shall apply only if and to the extent that indemnification by the **Organization** for such **HIPAA Violation** is not expressly prohibited in the by-laws, certificate of incorporation or other organizational documents of the **Organization** (“HIPAA Coverage”);
- (vi) any **Excess Benefit Transaction Excise Tax**; provided that the coverage afforded by this coverage section shall apply only if and to the extent that indemnification by the **Organization** for such **Excess Benefit Transaction Excise Tax** is not expressly prohibited in the by-laws, certificate of incorporation or other organizational documents of the **Organization** (“Excess Benefit Transaction Coverage”); and
- (vii) **Defense Costs**; or
- (b) the amount which any **Insured** (for purposes of Insuring Clause 4 and 5) becomes legally obligated to pay on account of any covered **Employment Claim** or **Third Party Claim**, including but not limited to:
  - (i) damages;
  - (ii) back pay and front pay;
  - (iii) claimant’s attorneys’ fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant’s attorneys’ fees are agreed to in writing by the Company at the time of or after a final settlement);
  - (iv) judgments;
  - (v) settlements;
  - (vi) pre-judgment and post-judgment interest;
  - (vii) fines and penalties levied against any **Insured** for violation of the Emergency Medical Treatment and Active Labor Act, as amended (“EMTALA Coverage”); and



(viii) **Defense Costs.**

**Loss**, when used in this coverage section, does not include:

- (1) any amount not indemnified by the **Organization** for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (2) any costs incurred by an **Insured** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (3) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that is not then a **Claim** even if (A) such amount also benefits the defense of a covered **Claim**, or (B) such action, proceeding or demand subsequently gives rise to a **Claim**;
- (4) taxes, fines or penalties, including punitive, exemplary or liquidated damages, or the multiple portion of any multiplied damage award, except as provided for in (a) or (b) above;
- (5) any amount not insurable under the law pursuant to which this coverage section is construed;
- (6) any amount allocated to non-covered loss pursuant to Subsection 20 of this coverage section;
- (7) any amount that represents or is substantially equivalent to an increase in the consideration paid (or proposed to be paid) by an **Organization** in connection with its purchase of any securities or assets;
- (8) any actual or alleged fees, benefits, amounts or coverage due under any contract or agreement;
- (9) **Stock Benefits**;
- (10) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (11) the future salary, wages, commissions or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Employment Claim**; or
- (12) any excise tax imposed on any **Disqualified Person** by the Internal Revenue Service for any **Excess Benefit Transaction**.

**Mass or Class Action** means any **Employment Claim** or any **Third Party Claim** brought or maintained:

- (a) by or on behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
- (b) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such





**Employment Claim or Third Party Claim**, whether or not such natural persons are represented by one or more legal counsel; or

- (c) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Employment Claim or Third Party Claim**.

**Non-Mass or Non-Class Action** means any **Employment Claim** or any **Third Party Claim** brought or maintained by or on behalf of one to four natural persons, whether or not such natural persons are represented by one or more legal counsel; provided that: (a) none of such natural persons are making a pattern and practice or systemic discrimination allegation; and/or (b) none of such natural persons are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Employment Claim or Third Party Claim**.

**Non-profit Organization** means any non-profit corporation, community chest, fund or foundation that is included in the definition of **Organization** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any other **Organization** organized for a religious or charitable purpose under any non-profit organization act or statute.

**Non-Profit Outside Entity** means any non-profit corporation, community chest, fund or foundation that is not included in the definition of **Organization** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

**Organization** means the **Parent Organization** and any **Subsidiary**. **Organization** shall also include any **Affiliate** added as an affiliate by specific written endorsement to the General Terms and Conditions Section of this policy.

**Organization Claim** means:

- (a) a written demand for monetary damages;
- (b) a civil proceeding commenced by the service of a complaint or similar pleading; or
- (c) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal order of investigation or similar document, but only while such proceeding is also pending against an **Insured Person**,

against an **Organization** for a **D&O Wrongful Act**, including any appeal therefrom.

Except as may otherwise be provided in Subsection 15, Subsection 16(j), or Subsection 18(b) of this coverage section, an **Organization Claim** will be deemed to have first been made when, with respect to any civil or formal civil administrative or civil regulatory proceeding described in (b) or (c) above, such **Organization Claim** is commenced as set forth in this definition or, in the case of any written demand described in (a) above, when such demand is first received by an **Insured**.

**Organization Manager** means an "organization manager" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.



**Outside Directorship** means the position of director, officer, trustee, governor or equivalent executive position held by any **Insured Person** in a **Non-Profit Outside Entity**, if service in such position is at the express written direction of the **Organization**.

**Outside Directorship Wrongful Act** means:

- (a) any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in an **Outside Directorship**; or
- (b) any other matter claimed against an **Insured Person** solely by reason of his or her serving in an **Outside Directorship**.

**Pollutants** means (a) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (b) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.

**Provider Selection Practice** means the evaluation, selection, credentialing, privileging or performing peer review of, or contracting with, any independently practicing health care professional providing medical services, including but not limited to physicians, surgeons, dentists, residents, fellows and doctorate professionals.

**Provider Selection Practice Claim** means any **D&O Claim** or **Organization Claim** brought or maintained by a provider of medical services based upon, arising from, or in consequence of any **Provider Selection Practice**.

**Related Claims** means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

**Retaliation** means retaliatory treatment against any **Employee** on account of such individual:

- (a) exercising his or her rights under law;
- (b) refusing to violate any law;
- (c) opposing any unlawful practice;
- (d) disclosing or threatening to disclose to a superior or to any governmental agency alleged violations of law; or
- (e) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the **Insured**.

**Stock Benefits** means (a) any offering, plan or agreement between the **Organization** and any employee which grants stock, stock warrants or stock options of the **Organization** to such employee, including but not limited to grants of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive granted in the form of securities of the **Organization**; or (b) any payment or instrument the amount or value of which is derived from the value of securities of the **Organization**, including but not



limited to stock appreciation rights or phantom stock plans or arrangements. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.

**Third Party** means any natural person who is a customer, patient, vendor, service provider or other business invitee of the **Organization**.

**Third Party Claim** means:

- (a) any of the following:
  - (i) a written demand for monetary damages;
  - (ii) a civil proceeding commenced by the service of a complaint or similar pleading;
  - (iii) an arbitration proceeding commenced by receipt of a demand for arbitration or similar document; or
  - (iv) an administrative, regulatory or tribunal proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

which is brought and maintained by or on behalf of a **Third Party** against any **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or

- (b) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in paragraph (a) above.

Except as may otherwise be provided in Subsection 15, Subsection 16(j), or Subsection 18(b) of this coverage section, a **Third Party Claim** will be deemed to have first been made when, with respect to any civil, arbitration or administrative, regulatory or tribunal proceeding described in (a)(ii), (a)(iii) or (a)(iv) above, such **Third Party Claim** is commenced as set forth in this definition or, in the case of any written demand or written request described in (a)(i) or (b) above, when such demand or request is first received by an **Insured**.

**Third Party Services Agreement** means any express contract between a **Third Party** and the **Organization**.

**Third Party Wrongful Act** means:

- (a) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world; or
- (b) sexual harassment, including unwelcome sexual advances or requests for sexual favors, against a **Third Party**;

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her **Insured Capacity**; provided that **Third Party Wrongful Act** shall not include any **Provider Selection Practice**.

**Workplace Tort** means:



- (a) any employment-related: defamation (including libel and slander), invasion of privacy, negligent evaluation, or wrongful discipline; or
- (b) any of the following:
  - (i) employment-related negligent retention;
  - (ii) employment-related negligent supervision;
  - (iii) employment-related negligent hiring;
  - (iv) employment-related negligent training;
  - (v) employment-related negligent or intentional misrepresentation;
  - (vi) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or
  - (vii) failure to provide or consistently enforce employment-related corporate policies and procedures;

but only when alleged as part of an **Employment Claim** for any actual or alleged **Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination, Wrongful Employment Decision** or any act set forth in (a) above.

**Wrongful Act** means:

- (a) when used in reference to the coverage provided by Insuring Clauses 1, 2 or 3, a **D&O Wrongful Act**;
- (b) when used in reference to the coverage provided by Insuring Clause 4, an **Employment Practices Wrongful Act**; and
- (c) when used in reference to the coverage provided under Insuring Clause 5, a **Third Party Wrongful Act**.

**Wrongful Employment Decision** means any wrongful demotion, denial of tenure or failure or refusal to promote.

**Wrongful Termination** means any wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

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### **Exclusions**

#### *Applicable To All Insuring Clauses*

- 7. The Company shall not be liable for **Loss** on account of any **Claim**:
  - (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any



notice given under any policy or coverage section of which this coverage section is a direct or indirect renewal or replacement;

- (b) based upon, arising from, or in consequence of:
- (i) any:
    - (A) written demand;
    - (B) civil proceeding;
    - (C) criminal proceeding;
    - (D) formal civil administrative or civil regulatory proceeding commenced by the issuance of a notice of charges or similar document or by the entry of a formal order of investigation or similar document alleging a **D&O Wrongful Act**;
    - (E) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charges or complaint of discrimination by the Equal Employment Opportunity Commission or any other federal, state or local governmental agency authorized to investigate or adjudicate an actual or alleged **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;
    - (F) Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs; or
    - (G) arbitration proceeding alleging an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;
- which was pending against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 7 of the Declarations for this coverage section, or any of the same or substantially the same facts or situations underlying or alleged therein, including but not limited to any such **Claim** which is brought by or on behalf of the original claimant in any matter set forth in subparagraphs (A)-(G) above or any other claimant; or
- (ii) any order, decree or judgment which was entered for or against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 7 of the Declarations for this coverage section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (c) based upon, arising from, or in consequence of:
- (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
  - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,



including but not limited to any **Claim** for financial loss to the **Organization**, the **Non-Profit Outside Entity**, or any members, securityholders or creditors of the **Organization** or **Non-Profit Outside Entity** based upon, arising from, or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 7(c); provided that this Exclusion 7(c) shall not apply to any **Employment Claim** for **Retaliation**;

- (d) based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion 7(d) shall not apply to: (i) mental anguish, emotional distress or humiliation for which a claimant seeks compensation in an **Employment Claim** or **Third Party Claim**; or (ii) allegations of mental anguish, emotional distress or humiliation to the extent that such allegations are made as part of a **Provider Selection Practice Claim**;
- (e) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Employee Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985), or amendments to or regulations promulgated under any such law, that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**) ("Employee Benefits Program Laws"), including but not limited to any:
  - (i) retirement income or pension benefit program;
  - (ii) employee stock purchase or employee stock ownership plan;
  - (iii) profit sharing plan;
  - (iv) deferred compensation plan;
  - (v) vacation, maternity leave, personal leave, or parental leave;
  - (vi) severance pay arrangement;
  - (vii) supplementary unemployment compensation plan;
  - (viii) apprenticeship program;
  - (ix) pre-paid legal service plan or scholarship plan;
  - (x) life insurance plan;
  - (xi) health, sickness, medical, dental, disability or dependant care plan;
  - (xii) welfare plan; or
  - (xiii) similar arrangement, program, plan or scheme;

provided that this Exclusion 7(e) shall not apply to any **Employment Claim** for **Retaliation**;



- (f) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Fair Labor Standards Act), or amendments to or regulations promulgated under any such law, that governs wage, hour and payroll policies and practices, except the Equal Pay Act ("Wage and Hour Laws"), including but not limited to:
  - (i) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
  - (ii) the classification of any organization or person for wage and hour purposes;
  - (iii) garnishments, withholdings or other deductions from wages;
  - (iv) child labor;
  - (v) pay equity or comparable worth; or
  - (vi) any similar policies or practices;provided that this Exclusion 7(f) shall not apply to any **Employment Claim for Retaliation**;
- (g) for any **Wrongful Act** of an **Insured Person** in his or her capacity as a director, officer, manager, trustee, regent, governor, employee, member of staff or faculty, administrator, general counsel, or member of a duly constituted committee of any entity other than the **Organization**; provided that this Exclusion 7(g) shall not apply to any **Outside Directorship Wrongful Act** of an **Insured Person** in an **Outside Directorship**;
- (h) based upon, arising from, or in consequence of any **Wrongful Act** committed, attempted, or allegedly committed or attempted by a **Subsidiary** or an **Insured Person** of such **Subsidiary** during any time when such entity was not a **Subsidiary**;
- (i) based upon, arising from, or in consequence of any actual or alleged violation of any federal, state, or local securities law anywhere in the world (including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Act of 1940), or amendments to or regulations promulgated under any such laws; provided that this Exclusion 7(i) shall not apply to matters involving tax exempt bonds and tax exempt bond holders;
- (j) for any actual or alleged breach of any **Independent Contractor Services Agreement** or **Third Party Services Agreement**;
- (k) based upon, arising from, or in consequence of any actual or alleged physical or sexual abuse, assault, or battery;
- (l) for any actual or alleged violation of the responsibilities, obligations or duties imposed by:
  - (i) the Federal False Claims Act, the Social Security Act, any similar federal, state, or local statutory law or common law anywhere in the world or amendments to or regulations promulgated under any such law; or



- (ii) any federal, state, or local anti-kickback, self-referral or healthcare fraud and abuse law anywhere in the world or amendments to or regulations promulgated under any such law,

brought by or on behalf of any federal, state, or local governmental, regulatory or administrative agency or entity, whether such **Claim** is brought in the name of such agency or entity or in the name of any other individual or entity; provided that this Exclusion 7(l) shall not apply to any **Claim** for any actual or alleged violation of Title II of the Health Insurance Portability and Accountability Act of 1996; or

- (m) based upon, arising from, or in consequence of any actual or alleged retaliatory treatment against an **Employee** on account of such individual:
  - (i) disclosing or threatening to disclose to any person, agency or entity alleged violations of;
  - (ii) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of; or
  - (iii) filing any **Claim** against an **Insured** under,

the Federal False Claims Act or the Social Security Act, any similar federal, state, or local statutory law or common law anywhere in the world, any federal, state, or local anti-kickback, self-referral or healthcare fraud and abuse law anywhere in the world, or amendments to or regulations promulgated under any such law.

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*Applicable to Insuring Clauses 1, 2 and 3 Only*

- 8. The Company shall not be liable under Insuring Clauses 1, 2 or 3 for **Loss** on account of any **Claim**:
  - (a) brought or maintained by, at the behest of, on behalf of, or in the name or right of any **Insured** in any capacity; provided that this Exclusion 8(a) shall not apply to:
    - (i) a **Claim** brought or maintained derivatively on behalf of the **Organization**, including but not limited to any such **Claim** brought or maintained by one or more securityholders of the **Organization**, provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by, any **Insured**;
    - (ii) a **Claim** brought or maintained by an **Insured Person** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this coverage section;
    - (iii) a **Claim** brought by an **Insured Person** who has not served in an **Insured Capacity** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Organization** or any other **Insured Person** who is serving or has served in an **Insured Capacity** within such four (4) year period; or
    - (iv) a **Provider Selection Practice Claim**;
  - (b) brought or maintained by, at the behest of, on behalf of, or in the name or right of (i) any **Non-Profit Outside Entity** or (ii) one or more of any **Non-Profit Outside**





**Entity's** directors, officers, duly constituted committee members, trustees, governors or equivalent executives in any capacity; provided that this Exclusion 8(b) shall not apply to any **D&O Claim** brought or maintained derivatively on behalf of the **Non-Profit Outside Entity** by one or more securityholders of the **Non-Profit Outside Entity**, provided such **D&O Claim** is brought and maintained without any active assistance or participation of, or solicitation by, any director, officer, duly constituted committee member, trustee, governor or equivalent executive of the **Non-Profit Outside Entity**;

- (c) made against any **Insured** based upon, arising from, or in consequence of:
  - (i) the committing in fact of any dishonest or fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, as evidenced by (A) any written statement or written document by any **Insured**, (B) any plea of guilty, nolo contendere or no contest, or (C) any judgment or ruling in any judicial, administrative or alternative dispute resolution proceeding; or
  - (ii) such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- (d) based upon, arising from, or in consequence of the liability of any **Insured** under any contract or agreement; provided that this Exclusion 8(d) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (e) for any **Outside Directorship Wrongful Act** committed, attempted, or allegedly committed or attempted by an **Insured Person** before the date such **Insured Person** began to serve in the **Outside Directorship** or after the date such **Insured Person** ceased to serve in the **Outside Directorship**; or
- (f) for an accounting of profits made from the purchase or sale by an **Insured Person** of securities of the **Organization** or **Non-Profit Outside Entity** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, any amendments thereto, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

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*Applicable to Insuring Clause 4 and 5 Only*

- 9. The Company shall not be liable under Insuring Clause 4 or 5 for **Loss** on account of any **Claim**:
  - (a) based upon, arising from, or in consequence of any **Antitrust Violation**;
  - (b) based upon, arising from, or in consequence of any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world; provided that this Exclusion 9(b) shall not apply to any **Employment Claim** for **Retaliation**;
  - (c) based upon, arising from, or in consequence of any **Provider Selection Practice**;
  - (d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Occupational Safety and Health Act), or amendments



to or regulations promulgated under any such law, that governs workplace safety and health ("Occupational Safety and Health Laws"), including but not limited to any obligation to maintain a place of employment free from hazards likely to cause physical harm, injury or death; provided that this Exclusion 9(d) shall not apply to any:

- (i) **Employment Claim for Retaliation**; or
  - (ii) **Defense Costs** incurred in connection with any such **Claim** if such **Claim** is also for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;
- (e) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Worker Adjustment and Retraining Notification Act), or amendments to or regulations promulgated under any such law, that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, or mass layoff, or any similar obligation ("Workforce Notification Laws"); provided that this Exclusion 9(e) shall not apply to any:
- (i) **Employment Claim for Retaliation**; or
  - (ii) **Defense Costs** incurred in connection with any such **Claim** if such **Claim** is also for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**; or
- (f) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the National Labor Relations Act), or any amendments to or regulations promulgated under any such law, that governs:
- (i) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including but not limited to union organizing, union elections and other union activities;
  - (ii) the duty or obligation of an employer to meet, discuss, notify or bargain with any employee or employee representative, collectively or otherwise;
  - (iii) the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
  - (iv) strikes, work stoppages, boycotts, picketing and lockouts; or
  - (v) any similar rights or duties ("Labor Management Relations Laws");

provided that this Exclusion 9(f) shall not apply to any **Defense Costs** incurred in connection with any such **Claim** if such **Claim** is also for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

10. The Company shall not be liable for **Loss**, other than **Defense Costs**, resulting from any **Claim** based upon, arising from, or in consequence of any actual or alleged breach of any written employment contract; provided that this Exclusion 10 shall not apply to the extent an **Insured** would have been liable in the absence of such written employment contract.



11. The Company shall not be liable under Insuring Clauses 4 or 5 for that part of **Loss**, other than **Defense Costs**:
- (a) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion 11(a) shall not apply to any **Employment Claim** for **Wrongful Termination**;
  - (b) which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law; or
  - (c) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
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#### **Severability of Exclusions**

12. (a) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of applying the exclusion set forth in Subsection 8(c) of this coverage section.
- (b) Only facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, administrator, risk manager, general counsel, president, chief executive officer, trustee, member of a duly constituted committee or chairperson of an **Organization** shall be imputed to such **Organization** for the purpose of applying the exclusion set forth in Subsection 8(c) of this coverage section.
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#### **Scope of Coverage**

13. The coverage afforded under Insuring Clauses 1 and 2 of this coverage section shall not be construed under any circumstance to extend to any **Non-Profit Outside Entity** or to any director, officer, trustee, governor or other executive or employee of any **Non-Profit Outside Entity**, other than an **Insured Person** in his or her **Outside Directorship**.
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#### **Spouses, Estates and Legal Representatives**

14. Subject otherwise to the General Terms and Conditions and the limitations, conditions, provisions and other terms of this coverage section, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
- (a) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
  - (b) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.



All terms and conditions of this coverage section, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Persons**, shall also apply to loss incurred by the estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of such **Insured Persons**. The coverage provided by this Subsection 14 shall not apply with respect to any loss arising from an act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

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#### ***Extended Reporting Period***

15. If the Company or the **Parent Organization** terminates or does not renew this coverage section, other than termination by the Company for nonpayment of premium, the **Parent Organization**, on behalf of all **Organizations** and **Insured Persons**, shall have the sole right, upon payment of the additional premium set forth in Item 6(B) of the Declarations for this coverage section, to an extension of the coverage granted by this coverage section for **Claims** that are (i) first made during the period set forth in Item 6(A) of the Declarations for this coverage section (the "Extended Reporting Period") following the effective date of termination or nonrenewal, and (ii) reported to the Company in writing within the time provided in Subsection 18(a) of this coverage section, but only to the extent such **Claims** are for **Wrongful Acts** committed, attempted, or allegedly committed or attempted before the effective date of termination or nonrenewal or the date of the first merger, consolidation, acquisition or **Financial Impairment** event described in Subsection 25 below. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew. The right to purchase an extension of coverage as described in this Subsection 15 shall lapse unless written notice of election to purchase the extension, together with payment of the additional premium due, is received by the Company within thirty (30) days after the effective date of termination or nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.

#### ***Limit of Liability, Retention and Coinsurance***

16. (a) The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the **Policy Period**, whether covered under one or more Insuring Clauses, shall be the Limit of Liability for each **Policy Period** set forth in Item 2(J) of the Declarations for this coverage section.
- (b) The Company's maximum liability for all **Loss** on account of each **D&O Claim** shall be the Limit of Liability set forth in Item 2(A) of the Declarations for this coverage section. If Entity Liability Coverage is purchased, the Company's maximum liability for all **Loss** on account of each **Organization Claim** shall be the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section. If Employment Practices Liability Coverage is purchased, the Company's maximum liability for all **Loss** on account of each **Employment Claim** shall be the Limit of Liability set forth in Item 2(C) of the Declarations for this coverage section. If Third Party Liability Coverage is purchased, the Company's maximum liability for all **Loss** on account of each **Third Party Claim** shall be the Limit of Liability set forth in Item 2(D) of the Declarations for this coverage section.
- (c) The Company's maximum aggregate liability under Insuring Clauses 1, 2 and 3 for all **Loss** on account of all **Claims** based upon, arising from, or in consequence of any **Antitrust Violation** shall be the Sublimit set forth in Item 2(E) of the Declarations for this coverage section, which amount is part of and not in addition to the Company's



maximum aggregate Limit of Liability for all **Loss** on account of all **Claims** first made during the **Policy Period** as set forth in Item 2(J) of the Declarations for this coverage section.

- (d) The Company's maximum aggregate liability for all:
- (i) fines and penalties levied against the **Insureds** on account of all **Claims**, whether covered under one or more Insuring Clauses, for all violations of the provisions of:
    - (A) the Internal Revenue Code of 1986, as amended, shall be the Sublimit set forth in Item 2(F) of the Declarations for this coverage section; and
    - (B) the Emergency Medical Treatment and Active Labor Act, as amended, shall be the Sublimit set forth in Item 2(G) of the Declarations for this coverage section;
  - (ii) **Excess Benefit Transaction Excise Taxes** on account of all **Claims**, whether covered under one or more Insuring Clauses, shall be the Sublimit set forth in Item 2(H) of the Declarations for this coverage section; and
  - (iii) fines and penalties levied against the **Insureds** on account of all **Claims**, whether covered under one or more Insuring Clauses, for all **HIPAA Violations** shall be the Sublimit set forth in Item 2(I) of the Declarations for this coverage section;

which Sublimits are part of and not in addition to the Company's maximum aggregate Limit of Liability for all **Loss** on account of all **Claims** first made during the **Policy Period** as set forth in Item 2(J) of the Declarations for this coverage section.

- (e) **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Items 2(A)-(E) and 2(J) of the Declarations for this coverage section, and the payment by the Company of **Defense Costs** shall reduce and may exhaust such applicable Limits of Liability.
- (f) The Company's liability under all Insuring Clauses shall apply only to that part of covered **Loss** (as determined by any applicable provision in Subsection 20 of this coverage section) on account of each **Claim** which is excess of the applicable Retention set forth in Item 5 of the Declarations for this coverage section. Such Retention shall be depleted only by **Loss** otherwise covered under this coverage section and shall be borne by the **Insureds** uninsured and at their own risk. In the event that any **Insured** is unwilling or unable to bear the Retention it shall be the obligation of the **Parent Organization** to bear such Retention uninsured and at its own risk.

If at any time a **D&O Claim** under Insuring Clause 2 or an **Organization Claim** that is based upon, arising from, or in consequence of any **Antitrust Violation** ceases to be based upon, arising from, or in consequence of any **Antitrust Violation**, the Retention applicable to such **D&O Claim** or **Organization Claim** shall be the amount set forth in Item 5(B) or 5(C) of the Declarations for this coverage section, as applicable, however, no Retention borne by the **Insureds** while the **D&O Claim** or **Organization Claim** was based upon, arising from, or in consequence of any **Antitrust Violation** will be reimbursed or indemnified by the Company. If at any time a **D&O Claim** under Insuring Clause 2 or an **Organization Claim** that was not based upon, arising from, or in consequence of any **Antitrust Violation** becomes a **D&O**



**Claim** or **Organization Claim** that is based upon, arising from, or in consequence of any **Antitrust Violation**, the Retention applicable to such **D&O Claim** or **Organization Claim** shall be the amount set forth in Item 5(D) of the Declarations for this coverage section.

If at any time an **Employment Claim** or **Third Party Claim** ceases to be a **Mass or Class Action**, and becomes a **Non-Mass or Non-Class Action**, the Retention applicable to such **Employment Claim** or **Third Party Claim** shall be the amount set forth in Item 5(E) or 5(G) of the Declarations for this coverage section, as applicable, however, no Retention borne by the **Insureds** while the **Employment Claim** or **Third Party Claim** was a **Mass or Class Action** will be reimbursed or indemnified by the Company. If at any time an **Employment Claim** or **Third Party Claim** ceases to be a **Non-Mass or Non-Class Action**, and becomes a **Mass or Class Action**, the Retention applicable to such **Employment Claim** or **Third Party Claim** shall be the amount set forth in Item 5(F) or 5(H) of the Declarations for this coverage section, as applicable.

- (g) If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**; provided that the maximum Retention shall be no greater than the single largest Retention set forth in the Declarations for this coverage section.
- (h) To the extent that covered **Loss** resulting from any **Claim** (as determined by Subsection 20 of this coverage section) is subject to a Coinsurance Percentage as set forth in Item 4 of the Declarations for this coverage section and is in excess of the applicable Retention, the **Insureds** shall bear uninsured and at their own risk that percentage of such **Loss** specified as the applicable Coinsurance Percentage in Item 4 of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss**.  
If at any time a **D&O Claim** or **Organization Claim** that is based upon, arising from, or in consequence of any **Antitrust Violation** ceases to be based upon, arising from, or in consequence of any **Antitrust Violation**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **D&O Claim** or **Organization Claim** specified as the Coinsurance Percentage in Item 4(A) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **D&O Claim** or **Organization Claim**. Provided that, no **Loss** borne by the **Insureds** while such **D&O Claim** or **Organization Claim** was based upon, arising from, or in consequence of any **Antitrust Violation** will be reimbursed or indemnified by the Company. If at any time a **D&O Claim** or **Organization Claim** that was not based upon, arising from, or in consequence of any **Antitrust Violation** becomes a **D&O Claim** or **Organization Claim** that is based upon, arising from, or in consequence of any **Antitrust Violation**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **D&O Claim** or **Organization Claim** specified as the Coinsurance Percentage in Item 4(B) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **D&O Claim** or **Organization Claim**.

If at any time an **Employment Claim** or **Third Party Claim** ceases to be a **Mass or Class Action**, and becomes a **Non-Mass or Non-Class Action**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **Non-Mass or Non-Class Action** specified as the Coinsurance Percentage in Item 4(C) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **Non-Mass or Non-Class Action**. Provided that, no **Loss** borne by the **Insureds** while



such **Employment Claim** was a **Mass or Class Action** will be reimbursed or indemnified by the Company. If at any time an **Employment Claim** or **Third Party Claim** ceases to be a **Non-Mass or Non-Class Action**, and becomes a **Mass or Class Action**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **Mass or Class Action** specified as the Coinsurance Percentage in Item 4(D) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **Mass or Class Action**.

- (i) If the Company or any of its subsidiaries or affiliated companies makes payment under another policy or another coverage section of this policy on account of any **Claim** also covered under this coverage section, the Limit of Liability for this coverage section with respect to such **Claim** shall be reduced by the amount of such payment.
- (j) All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Subsection 18(b) of this coverage section, regardless of whether such date is before or during the **Policy Period**. No coverage shall be available for such **Related Claims** except under the policy in effect at the time when the first such **Claim** was deemed made.
- (k) The Limits of Liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Period**.

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### ***Presumptive Indemnification***

- 17. If the **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on behalf of an **Insured Person**, with respect to any **D&O Claim** to the fullest extent permitted by statutory or common law, then, notwithstanding any other conditions, provisions or terms of this coverage section to the contrary, any payment by the Company of such **Defense Costs** or other **Loss** shall be subject to:
  - (a) the applicable Insuring Clause 2 Retention set forth in Item 5 of the Declarations for this coverage section; and
  - (b) the applicable Coinsurance Percentage set forth in Item 4 of the Declarations for this coverage section.

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### ***Reporting and Notice***

- 18. (a) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company written notice of any **Claim** as soon as practicable, but in no event later than the earliest of the following dates:
  - (i) if this coverage section expires (or is otherwise terminated) and if no Extended Reporting Period is purchased, sixty (60) days after the effective date of such expiration or termination; or
  - (ii) the expiration date of the Extended Reporting Period, if purchased;



provided that if the Company sends written notice to the **Parent Organization**, at any time before the date set forth in (i) above with respect to any **Claim**, stating that this coverage section is being terminated for nonpayment of premium, the **Insureds** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.

- (b) If during the **Policy Period** an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company as soon as practicable thereafter but before the expiration or termination of this coverage section, then any **Claim** subsequently arising from such circumstances shall be deemed to have been first made during the **Policy Period** in which such written notice was first given by an **Insured** to the Company, provided any such subsequent **Claim** is reported to the **Company** as set forth in Subsection 18(a) above. With respect to any such subsequent **Claim**, no coverage under this coverage section shall apply for loss incurred prior to the date such subsequent **Claim** is actually made.
- (c) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company every demand, notice, summons, complaint, or other process received by any **Insured** or **Insured** representative and shall give to the Company such information, assistance, and cooperation as the Company may reasonably require, and shall include in any notice under Subsection 18(a) or (b) a description of the **Claim**, circumstances, the nature of any alleged **Wrongful Acts**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which such **Insured** first became aware of the **Claim** or circumstances.

#### **Defense and Settlement**

- 19. (a) It shall be the duty of the **Insureds** and not the duty of the Company to defend **Claims** made against the **Insureds**; provided that, for any **Employment Claim** or **Third Party Claim** the **Insureds** shall select defense counsel from the Company's then current list of approved defense firms for the jurisdiction in which such **Employment Claim** or **Third Party Claim** is pending, unless otherwise agreed to, in writing, by the Company and the **Insureds**.
- (b) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Employment Claim** or **Third Party Claim** it deems expedient. If any **Insured** withholds consent to any settlement acceptable to the claimant and the Company (a "Proposed Settlement"), the Company's liability for all **Loss**, including **Defense Costs**, on account of such **Employment Claim** or **Third Party Claim** shall not exceed:
  - (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement of such **Employment Claim** or **Third Party Claim**; plus
  - (ii) fifty percent (50%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Employment Claim** or **Third Party Claim**; subject in all events to the applicable Retention and the available Limit of Liability for such **Employment Claim** or **Third Party Claim**. The remaining fifty percent (50%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i)





above shall be borne by the **Insured** uninsured and at its own risk, notwithstanding anything to the contrary contained in Subsection 20(a).

- (c) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent. The Company shall not be liable for any settlement made, for any element of **Loss** incurred, for any obligation assumed, or for any admission made by any **Insured** without the Company's prior written consent. Provided the **Insureds** comply with Subsections 19(d) and (e) below, the Company shall not unreasonably withhold any such consent.
- (d) With respect to any **Claim** that appears reasonably likely to be covered in whole or in part under this coverage section, the Company shall have the right and shall be given the opportunity to effectively associate with the **Insureds**, and shall be consulted in advance by the **Insureds**, regarding the investigation, defense and settlement of such **Claim**, including but not limited to selecting appropriate defense counsel and negotiating any settlement.
- (e) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.
- (f) Any advancement of **Defense Costs** shall be repaid to the Company by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured under this coverage section.

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**Allocation**

- 20. (a) If in any **Claim** the **Insureds** incur both **Loss** that is covered under this coverage section and loss that is not covered under this coverage section, either because such **Claim** includes both covered and non-covered matters or because such **Claim** is made against both **Insureds** and others (including the **Organization**), the **Insureds** and the Company shall allocate such amount between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to covered and non-covered matters and, in the event of a settlement in such **Claim**, based also on the relative benefits to the parties from such settlement. The Company shall not be liable under this coverage section for the portion of such amount allocated to non-covered loss.
- (b) If the **Insureds** and the Company agree on an allocation of **Defense Costs**, the Company shall advance on a current basis **Defense Costs** allocated to the covered **Loss**. If the **Insureds** and the Company cannot agree on an allocation:
  - (i) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
  - (ii) the Company shall advance on a current basis **Defense Costs** which the Company believes to be covered under this coverage section until a different allocation is negotiated, arbitrated or judicially determined.
- (c) Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or



advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

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**Arbitration**

21. Any dispute between any **Insured** and the Company based upon, arising from, or in consequence of any actual or alleged coverage under this coverage section, or the validity, termination or breach of this coverage section, including but not limited to any dispute sounding in contract or tort, shall be submitted to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

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**Other Insurance and Indemnity**

22. (a) If **Loss** arising from any **D&O Claim** or **Organization Claim** under Insuring Clauses 1, 2 or 3 is insured under any other valid insurance policy(ies), including but not limited to any policy(ies) maintained by any **Non-Profit Outside Entity** or otherwise, then this coverage section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the applicable retention or deductible and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise and regardless of whether this coverage section and the other insurance are deemed to provide concurrent coverage, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this coverage section. Any payment by **Insureds** of a retention or deductible under such other insurance shall not reduce, by the amount of such payment which would otherwise have been covered under this coverage section, the applicable Retention under this coverage section.

If **Loss** arising from any **D&O Claim** made against any **Insured Person** under Insuring Clauses 1 or 2 is indemnified by any **Non-Profit Outside Entity** or any other organization other than the **Organization**, then this coverage section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such indemnity. The **Insureds** agree that they will use their best efforts to promptly enforce any rights of the **Insured Persons** to indemnification by any **Non-Profit Outside Entity** or any other organization.

- (b) If **Loss** arising from any **Employment Claim** under Insuring Clause 4 is insured under any other valid insurance policy(ies), then this coverage section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the applicable retention or deductible and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise and regardless of whether this coverage section and the other insurance are deemed to provide concurrent coverage, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this coverage section. Any payment by **Insureds** of a retention or deductible under such other insurance shall not reduce, by the amount of such payment which would otherwise have been covered under this coverage section, the applicable Retention under this coverage section.



- (c) If **Loss** arising from any **Third Party Claim** under Insuring Clause 5 is insured under any other valid insurance policy(ies), then this coverage section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the applicable retention or deductible and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise and regardless of whether this coverage section and the other insurance are deemed to provide concurrent coverage, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this coverage section. Any payment by **Insureds** of a retention or deductible under such other insurance shall not reduce, by the amount of such payment which would otherwise have been covered under this coverage section, the applicable Retention under this coverage section.

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### **Payment of Loss**

23. In the event payment of **Loss** is due under this coverage section but the amount of such **Loss** in the aggregate exceeds the remaining available Limit of Liability for this coverage section, the Company shall:
- (a) first pay such **Loss** for which coverage is provided under Insuring Clause 1 of this coverage section; then
  - (b) to the extent of any remaining amount of the Limit of Liability available after payment under (a) above, pay such **Loss** for which coverage is provided under any other Insuring Clause of this coverage section.

Except as otherwise provided in this Subsection 23, the Company may pay covered **Loss** as it becomes due under this coverage section without regard to the potential for other future payment obligations under this coverage section.

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### **Changes in Exposure**

#### *Acquisition /Creation of Another Organization*

24. If before or during the **Policy Period** any **Organization**:
- (a) acquires securities or rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
  - (b) acquires another organization by merger into or consolidation with an **Organization** such that the **Organization** is the surviving entity,

such other organization and its **Insured Persons** shall be **Insureds** under this coverage section, but only with respect to **Wrongful Acts** committed, attempted, or allegedly committed or attempted after such acquisition or creation unless the Company agrees, after presentation of a complete application and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such **Insureds** before such acquisition or creation.

If, at the time of any such acquisition or creation described above:



- (i) with respect to Insuring Clauses 1, 2 and 3, the total assets of any such acquired organization or new **Subsidiary** exceed ten percent (10%) of the total assets of the **Parent Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Parent Organization**, respectively, as of the date of such acquisition or creation); or
- (ii) with respect to Insuring Clauses 4 and 5, the total number of employees of any such acquired organization or new **Subsidiary** exceed ten percent (10%) of the total number of employees of the **Organization** as of the date of such acquisition or creation;

then the **Parent Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such other information as the Company may require and shall pay any reasonable additional premium required by the Company. If the **Parent Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Company, coverage for such acquired or created organization and its **Insured Persons** shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for the **Insured Persons** of such organization, shall be subject to such additional or different terms, conditions and limitations of coverage as the Company in its sole discretion may require.

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*Acquisition by Another Organization/Financial Impairment*

25. If:

- (a) the **Parent Organization** merges into or consolidates with another organization and the **Parent Organization** is not the surviving entity;
- (b) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors, trustees or **Managers**, or acquires the right to control or direct the managerial decisions of the **Parent Organization**; or
- (c) **Financial Impairment** of the **Parent Organization** occurs,

coverage under this coverage section shall continue until termination of this coverage section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition or **Financial Impairment**. Upon the occurrence of any event described in (a), (b) or (c) of this Subsection 25, the entire premium for this coverage section shall be deemed fully earned.

The **Parent Organization** shall give written notice of such merger, consolidation, acquisition or **Financial Impairment** to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such merger, consolidation, acquisition or **Financial Impairment**, together with such other information as the Company may require. Upon receipt of such notice and information and at the request of the **Parent Organization**, the Company may provide to the **Parent Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Company and the **Parent Organization**) with respect to **Claims** for **Wrongful Acts** committed, attempted, or



allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition or **Financial Impairment**. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage, and payment of such additional premium, as the Company in its sole discretion may require. If the Company in its sole discretion agrees to provide coverage for such **Claims**, the additional premium specified by the Company must be paid to the Company in full before such coverage becomes effective.

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#### **Cessation of Subsidiary**

26. In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this coverage section, but only with respect to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted while such organization was a **Subsidiary**.
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#### **Representations and Severability**

27. In issuing this coverage section the Company has relied upon the statements, representations and information in the **Application**. All of the **Insureds** acknowledge and agree that all such statements, representations and information (a) are true and accurate, (b) were made or provided in order to induce the Company to issue this coverage section, and (c) are material to the Company's acceptance of the risk to which this coverage section applies.

In the event that any of the statements, representations or information in the **Application** are not true and accurate, this coverage section shall be void with respect to (i) any **Insured** who knew the facts in the **Application** that were not truthfully and accurately disclosed (whether or not the **Insured** knew of such untruthful disclosure in the **Application**) or to whom knowledge of such facts is imputed, and (ii) any **Organization** to the extent it indemnifies an **Insured Person** who had knowledge of such facts or to whom knowledge of such facts is imputed, whether or not knowledge of such facts is also imputed to that **Organization**. For purposes of the preceding sentence, knowledge shall be imputed as follows:

- (A) the knowledge of any **Insured Person** who is a past, present or future chief financial officer, in-house general counsel, chief executive officer, president or chairperson, chief compliance officer, director of human resources or medical director of an **Organization** shall be imputed to such **Organization** and its **Subsidiaries**;
  - (B) the knowledge of the person(s) who signed the **Application** for this coverage section shall be imputed to all of the **Insureds**; and
  - (C) except as provided in (A) above, the knowledge of an **Insured Person** who did not sign the **Application** shall not be imputed to any other **Insured**.
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***Compliance With Applicable Trade Sanction Laws***

28. This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the Company from providing insurance.
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**SPECIMEN**