

## GENERAL TERMS AND CONDITIONS

### A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

Except for the General Terms and Conditions below or unless stated to the contrary in any Coverage Section, the terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

### B. DEFINITIONS

The following terms, whenever used in this Policy (including each Coverage Section) in boldface type, shall have the meanings indicated.

1. **Application** means:
  - a) the **Application** for this Policy or any policy of which this Policy is a renewal, and
  - b) any materials submitted therewith, which shall be retained on file by Underwriters and shall be deemed attached hereto, as if physically attached hereto.
2. **Insured Organization** means:
  - a) the **Named Insured**, and
  - b) any **Subsidiary**.
3. **Named Insured** means the entity named in Item A. of the Declarations.
4. **Optional Extension Period** means the period described in Clause H. below.
5. **Policy Period** means the period from the effective date and hour of the inception of this Policy to the Policy expiration date and hour as set forth in Item B. of the Declarations, or its earlier cancellation date and hour.
6. **Subsidiary** means any entity in which the **Named Insured** controls the right to elect or appoint more than 50% of such entity's governing body, including any entity in which more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors or managers are owned by the **Named Insured**, directly or indirectly, if such entity:
  - a) was so owned prior to the inception date of this Policy and was insured under a Policy issued by Underwriters of which this Policy is a renewal,
  - b) was so owned on the inception date of this Policy, or
  - c) was created or acquired after the inception date of this Policy, in accordance with General Terms and Conditions I.
7. **Takeover** means:
  - a) the acquisition by any person or entity of more than 50% of the outstanding securities of the **Named Insured** representing the present right to vote for the election of directors, and

- b) the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.

Other definitions particular to each Coverage Section are stated in the separate Definitions Clause in each Coverage Section.

### C. **LIMIT OF LIABILITY AND RETENTIONS**

1. The Limit of Liability for each Coverage Section is part of the aggregate Limit of Liability as stated in Item C. of the Declarations. The **Application** of a retention to **Loss** under one Coverage Section is separate from and shall not reduce the retention under any other Coverage Section.
2. In the event that any **Claim** shall be covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Limit of Liability shall not exceed the single largest applicable limit. Such largest applicable limit shall apply only once to such **Claim**.
3. In the event that any **Claim** shall be covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable retention shall not exceed the single largest applicable retention. Such largest applicable retention shall apply only once to such **Claim**.
4. The Underwriters shall be liable to pay **Loss** in excess of the applicable retention up to the Limit of Liability as stated in each Coverage Section and in no event to exceed the limit stated in Item C. of the Declarations
5. The amount shown in Item C. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under this Policy for all **Claims** under all Coverage Sections.
6. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
  - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
  - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to the Notification Clause in each Coverage Section.
7. Underwriters' payment of **Loss**, including **Costs, Charges and Expenses**, shall reduce the Limit of Liability under this Policy.

### D. **WARRANTY CLAUSE**

It is warranted that the particulars and statements contained in the **Application**, a copy of which is deemed attached hereto, are the basis of this Policy and are to be considered as incorporated into and constituting a part of the Policy and of each Coverage Section.

By acceptance of this Policy, the **Insureds** agree that Underwriters have relied upon the statements and representations contained in the **Application** for this Policy (including materials submitted thereto and, if this is a renewal **Application**, all such previous Policy **Applications** for which this Policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by Underwriters, are the basis of this Policy and are to be considered as incorporated into this Policy.

With respect to such statements and representations, no knowledge or information possessed by any **Insured Person**, except for the person or persons who executed the **Application**, shall be imputed to any other **Insured Person**. If any person who executed the **Application** knew that such statement or representation was inaccurate or incomplete, then this Policy will be void as to all **Insureds**.

#### E. CANCELLATION CLAUSE

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters and by mailing to Underwriters written notice stating when thereafter cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. This Policy may only be cancelled by Underwriters for non-payment of premium by mailing to the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. If payment is not received within the 10 day period then this Policy will be cancelled ab initio, meaning that coverage shall be null and void. The mailing of such notice shall be sufficient notice. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
3. If this Policy is cancelled by the **Named Insured**, Underwriters shall retain the short rate proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.

#### F. SPOUSAL EXTENSION

Underwriters agree to extend coverage under each Coverage Section to all persons who were, now are, or shall be the lawful spouse of any natural person who is one of the **Insureds**, but solely to the extent such spouse is the subject of any **Claim** because of marriage to any such natural person **Insured**.

#### G. INSURED ORGANIZATION AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving of all notice to Underwriters, the receiving of notice from Underwriters, the payment of the premium and the receipt of any return premium.

#### H. OPTIONAL EXTENSION PERIOD

1. If this Policy is cancelled or non-renewed by the **Named Insured** or if Underwriters refuse to renew this Policy for reasons other than non-payment of premium or noncompliance with the terms and conditions of this Policy, then the **Named Insured** shall have the right, upon payment of an additional premium, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time elected after the effective date of such cancellation or, in the event of such refusal to renew, after the Policy expiration date, but only with respect to any **Wrongful Act** committed before such date.  
Options:  
12 months for 100% of the premium for the **Policy Period**, or  
24 months for 160% of the premium for the **Policy Period**, or  
36 months for 190% of the premium for the **Policy Period**.

2. The quotation of a different premium, retention or Limit of Liability for renewal does not constitute a cancellation or refusal to renew for the purposes of this Clause.
3. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for the Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice, together with full payment of the premium for the **Optional Extension Period**, is received by Underwriters within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the Policy expiration date. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
4. If the **Named Insured** purchases the **Optional Extension Period**, the entire premium therefore shall be deemed earned at its commencement.
5. The exercise of the **Optional Extension Period** shall not in any way increase the limit of Underwriters' liability under this Policy.

#### I. **COVERAGE FOR CREATED, ACQUIRED OR SOLD SUBSIDIARIES**

1. If, after the inception of the **Policy Period**, an **Insured Organization** creates or acquires a **Subsidiary**, the **Subsidiary** shall be an **Insured Organization**, but only with respect to **Wrongful Acts** committed, attempted or allegedly committed or attempted, after the creation or acquisition of the **Subsidiary**. In the event that the fair market value of the assets of the new **Subsidiary** exceed 20% of the combined total assets of the **Insured Organization** as reflected in their most recent financial statement, written notice of such creation or acquisition shall be given to Underwriters within 45 days of the creation or acquisition, together with such information as Underwriters may require. There may be an additional premium charged, and the premium must be paid in order for coverage for the new **Subsidiary** to continue beyond the initial 45 day period.
2. If, after the inception of the **Policy Period**, an **Insured** sells a **Subsidiary**, that **Subsidiary** shall be an **Insured Organization**, but only with respect to **Wrongful Acts** committed, attempted or allegedly committed or attempted, before such date. Written notice of such sale shall be given to Underwriters within 45 days of the sale. There will be no return premium.

#### J. **CONVERSION OF COVERAGE IN THE EVENT OF BANKRUPTCY OR TAKEOVER**

1. In the event of bankruptcy or **Takeover** of the **Named Insured**, this Policy will continue until its natural expiration date as set forth in Item B. of the Declarations, but only with respect to any **Wrongful Act** committed before the date of the bankruptcy or the **Takeover**. After such event, the Policy may not be canceled, regardless of Condition E.1., and the entire premium for the Policy will be deemed fully earned
2. In the event of bankruptcy or **Takeover**, Clause H; above is deleted in its entirety. There is no **Optional Extension Period** available.
3. In the event of a **Takeover** of the **Named Insured**:
  - a) The **Named Insured** shall have the right and option, upon payment of an additional premium, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time elected after the effective date of the **Takeover**, but only with respect to any **Wrongful Act** committed before such date.  
Options:  
12 months for 100% of the premium for the **Policy Period**, or  
36 months for 150% of the premium for the **Policy Period**, or  
60 months for 200% of the premium for the **Policy Period**.

- b) If this extension of coverage is elected and purchased, then:
  - i) Clause E.1. above, is deleted in its entirety, and
  - ii) Clause H. above, is deleted in its entirety, and
  - iii) the maximum aggregate **Limit of Liability** of Underwriters under this Policy, including for this extension of coverage, shall be the amount shown in the Declarations for each Coverage Section, subject to Underwriter's maximum aggregate Limit of Liability as stated in Condition C.
- c) As a condition precedent to the right to purchase this extension, the total premium for the Policy must have been paid. The right to purchase this extension shall terminate unless written notice, together with full payment of the premium for the extension is received by Underwriters within 30 days after the effective date of the **Takeover**. If such notice and premium payment are not so given to Underwriters, there shall be no right to purchase this extension.

#### K. ALLOCATION

In the event any **Insured** incurs both **Loss** that is covered by the Policy and also **Loss** which is not covered by this Policy then coverage will be allocated as follows:

1. 100% of **Costs, Charges and Expenses** incurred by such **Insured** on account of such **Claim** will be allocated as covered **Loss**, and
2. any remaining **Loss** incurred by such **Insured** on account of such **Claim** will be allocated by the parties between covered **Loss** and uncovered **Loss** using all reasonable efforts based upon the legal liabilities of each of the parties to such matters.

#### L. ARBITRATION

Any dispute between the **Insureds** and Underwriters arising in connection with or relating to this Policy shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") then in effect, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators. The **Insured** and Underwriters shall share equally in the cost of arbitration.

#### M. SETTLEMENTS AND DEFENSE

1. No settlement shall be made or negotiated and no **Costs, Charges and Expenses** shall be incurred without Underwriters' consent, such consent not to be unreasonably withheld. Underwriters have the right to investigate and settle any **Claim** in the manner and to the extent that they believe is proper, however, Underwriters will not settle any **Claim** or pay any **Loss** without the **Named Insured's** consent. If the **Named Insured** refuses to consent to any settlement recommended by Underwriters or their representatives and the **Named Insured** elects to contest or continue any legal proceedings, then Underwriters' liability shall not exceed: a) the amount for which Underwriters could have settled the **Claim** plus **Costs, Charges and Expenses** incurred as of the date the **Named Insured** withheld consent to such settlement plus; b) 50% of **Costs, Charges and Expenses** and 50% of covered **Loss** excess of the proposed settlement; provided, however, that the remaining 50% of **Loss** and **Costs, Charges and Expenses** shall be borne by the **Named Insured** at its own risk and uninsured. This provision shall not apply unless the total **Loss** plus **Costs, Charges and Expenses**, including the proposed settlement, would exceed the Retention.

2. Underwriters shall have the right and duty to defend any **Claim** and such right and duty shall exist even if any of the allegations are groundless, false or fraudulent. Underwriters shall give consideration to the **Insured's** preference for defense counsel, but the final decision rests with Underwriters. The **Named Insured** shall have the right to assume the duty to defend any **Claim** provided Underwriters consent in writing to such assumption. **Costs, Charges and Expenses** incurred by Underwriters, or by the **Insured** when defending or investigating with the written consent of Underwriters, shall be paid by Underwriters as a part of, and not in addition to, Underwriters' Limits of Liability set forth in Item C. of the Declarations.
3. Underwriters will have no obligation to pay **Loss**, including **Costs, Charges and Expenses** or to defend, or continue to defend, any **Claim** after the Limits of Liability as set forth in the Declarations, has been exhausted by payment of **Loss**.
4. Underwriters shall pay **Costs, Charges and Expenses** no more than once every 90 days.

**N. TERRITORY**

This Policy applies to **Claims** brought anywhere in the world.

**O. ASSISTANCE, COOPERATION AND SUBROGATION**

The **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters reasonably may request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under the Policy.

In the event of any payments under this Policy, Underwriters shall be subrogated to each and every **Insured's** rights of recovery therefore against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

**P. ASSIGNMENTS AND ACTIONS AGAINST UNDERWRITERS**

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**. Assignment of interest under this Policy shall not bind Underwriters unless their consent is endorsed hereon.

**Q. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by Underwriters to form part of this Policy.

**R. SERVICE OF SUIT**

Notwithstanding anything contained herein to the contrary, it is understood and agreed by the parties hereto that Condition R. shall not be deemed to override Condition L. of this Policy, but shall solely provide consent to jurisdiction to enforce, where applicable, awards or payments granted in Arbitration

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be deemed to constitute a waiver of Underwriters' right to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court, as permitted by the laws of the United States or of any state, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon Kaufman, Borgeest and Ryan, attorneys, 99 Park Avenue, 19th Floor, New York, New York 10016.

The above-named party is authorized and directed to accept service on behalf of Underwriters in any such suit upon the request of any person or entity and to enter a general appearance on behalf of Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate Kaufman, Borgeest and Ryan as the party to whom such officer is authorized to mail such process.

## MANAGED CARE ERRORS AND OMISSIONS COVERAGE SECTION

In consideration of the payment of premium, in reliance on the statements in the **Application** and subject to all of the provisions of the Policy and this Coverage Section, Underwriters and the **Insureds** agree as follows:

### A. **INSURING CLAUSE**

Underwriters shall pay on behalf of the **Insureds** the **Loss** resulting from any **Claim** alleging a **Wrongful Act** which is first made against the **Insureds** during the **Policy Period** and reported as required by Section D, NOTIFICATION.

### B. **DEFINITIONS**

The following terms whenever used in this Coverage Section in boldface type, shall have the meaning indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B. of the General Terms and Conditions section of this Policy.

1. **Claim** means:
  - a) any written demand for damages or other relief against any of the **Insureds**, or
  - b) any judicial, administrative or arbitration proceeding initiated against any of the **Insureds** in which they may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom.
2. **Committee Persons** means individuals not otherwise covered by this Policy who are authorized in writing by the **Insured Organization** to conduct peer review or utilization review.
3. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:
  - a) salaries, wages, overhead or benefit expenses associated with officers or employees of the **Insured Organization**, or
  - b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
4. **Information Protection** means maintaining the confidentiality of information regarding **Medical Services** or information obtained in the provision of **Managed Care Services** and limiting the release or use of such information in conformance with requirements of law,
- 5.. **Insureds** means **Insured Organization** and the **Insured Persons**.
- 6.. **Insured Persons** means all persons who were, now are, or shall be:
  - a) duly elected or appointed directors, officers, trustees, members of the board of managers, Medical Directors, **Committee Persons** or employees of the **Insured Organization**,
  - b) the functional equivalent to directors or officers of the **Insured Organization** in the event the **Insured Organization** is incorporated or domiciled outside the United States, and
  - c) any person duly authorized by an **Insured** to conduct credentialing, peer review or utilization review, but only while that person is acting within the scope and capacity of their duties for the **Insured**,



including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

7.. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event or transaction or series of facts, circumstances, situations, events or transactions.

8.. **Loss** means damages (whether awarded or paid as part of an approved settlement), punitive damages and **Costs, Charges and Expenses** incurred by any of the **Insureds**.

a) **Loss** shall not include:

- (i) that portion of any multiplied damages awarded that exceeds the amount multiplied,
- (ii) taxes, criminal or civil fines or penalties imposed by law; provided that (A) punitive damages shall not be deemed to constitute taxes, fines or penalties for any purpose herein, and (B) **Loss** shall include fines and penalties imposed in **Claims** for any alleged violation of any state or federal law that prohibits the unlawful restraint of trade, business or profession,
- (iii) fees, amounts, benefits or coverage owed under any contract, health care plan or trust, insurance or workers' compensation policy or plan or program of self insurance or other payments for medical services,
- (iv) restitution,
- (v) non-monetary relief of any kind, including the cost of complying with any injunctive, declaratory or other non-monetary relief, or
- (vi) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

b) With respect to punitive damages, the applicable law for purposes of insurability under this Coverage Section will be the law most favorable to the **Insured** provided the most favorable law has a reasonable relationship to the **Claim**.

Law which will be deemed reasonably related includes the law:

- (i) of the state where the **Insured** is incorporated or has a place of business;
- (ii) of the state where the **Claim** is pending; or
- (iii) of the state where any **Wrongful Act** happened.

- 9.. **Managed Care Services** means:
- a) the following professional services performed for a third party for consideration:
    - (i) claims handling and adjusting of benefits or coverages under health care plans or workers' compensation plans;
    - (ii) marketing or enrollment for health care plans or workers' compensation plans; and
    - (iii) administration and management services for health care or workers' compensation plans;
  - b) selecting, credentialing, evaluating and peer review of health care providers;
  - c) contracting with health care providers and the establishment of health care provider networks;
  - d) wellness or health promotion education;
  - e) development or implementation of clinical guidelines, practice parameters or protocols;
  - f) case management, quality assurance, quality review, quality improvement and utilization review;
  - g) triage for payment of **Medical Services**;and
  - h) design or implementation of financial incentive or pay for performance plans.
- 10.. **Medical Services** means health care, medical care, or treatment provided to any individual, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products or any other medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such care, counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on human bodies.
11. **Pending and Prior Date** means the date set forth in Item D. of the Declarations related to this Coverage Section.
12. **Sexual Activity** means any conduct, physical acts, gestures or spoken or written words of a sexual nature, including without limitation sexual intimacy (even if consensual), sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation or any sexual act.
13. **Wrongful Act** means:
- a) any actual or alleged act, error or omission by any **Insured** in the performance of **Managed Care Services**;
  - b) any actual or alleged act, error or omission by any **Insured** in the performance of **Information Protection**;

- c) any vicarious liability attributed to any **Insured** for the acts of a person or entity other than an **Insured** via a theory of ostensible agency, apparent agency or respondeat superior for:
  - (i) the performance or failure to perform **Managed Care Services**;
  - (ii) the performance or failure to perform **Medical Services**; or
  - (iii) the performance or failure to perform **Information Protection**.
- d) any actual or alleged **Sexual Activity**; provided, that a **Wrongful Act** shall not include any **Insured's** actual or alleged direct liability for any **Sexual Activity**.

## C. EXCLUSIONS

- 1. Underwriters shall not be liable to make any payment for Loss under this Coverage Section in connection with any **Claim**:
  - a) for actual or alleged false arrest, false imprisonment, assault, battery, wrongful entry, wrongful eviction, malicious prosecution, or damage to or destruction of tangible property, including loss of use thereof;
  - b) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
    - (i) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other similar insurance policy, or
    - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
  - c) to the extent it is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the Limit of Liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
  - d) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving actual or alleged seepage, pollution or contamination of any kind;
  - e) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law as respects the **Insured's** own employee benefit or other health and welfare plans;
  - f) brought about or contributed to by any willful violation of statute, dishonest, fraudulent, malicious or criminal act or omission by any of the **Insureds**, as determined by a judgment or other final adjudication;
  - g) against any of the **Insured Persons** of any **Subsidiary** or against any **Subsidiary** based upon, arising out of, directly or indirectly from, in consequence of, or in any way involving:

- (i) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
  - (ii) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- h) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (i) any prior and/or pending judicial, administrative or arbitration proceeding as of the **Pending and Prior Date**, or
  - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such judicial, administrative or arbitration proceeding,
 regardless of the legal theory upon which such **Claim** is predicated;
- i) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover** or bankruptcy;
- j) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** about which any of the directors, officers, managers or supervisory employees had knowledge prior to the inception date of this Policy or prior to the inception date of any prior Policy issued by Underwriters hereof, of which this Policy is a continuous renewal thereof, which **Wrongful Act** could reasonably have been expected to give rise to a **Claim**;
- k) for that portion of **Loss** which is covered under, or which would be covered under any other Coverage Section of this Policy, whether that Coverage Section is purchased or not,
- l) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any obligation under or arising out of any workers' compensation or disability benefits law or any similar law;
- m) for actual or alleged rendering or failing to render by an **Insured** of **Medical Services**, provided that this exclusion shall not apply to any portion of a **Claim** alleging under statute, rule or regulation that the performance of any **Managed Care Services** by an **Insured** constitutes the rendering of **Medical Services**;
- n) for any actual or alleged express or assumed liability of any **Insured** under any contract or agreement, including without limitation any indemnification agreement; provided, that this exclusion shall not apply to any tort liability that would have attached to the **Insured** in the absence of such contract or agreement and is otherwise insured under this Policy;
- o) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the insolvency, receivership, bankruptcy, liquidation or financial inability of an **Insured** to perform **Managed Care Services** or to honor any contractual commitments;
- p) discrimination of any kind, including but not limited to: race, color, creed, sex, religion, age, national origin, handicap or sexual preference whether or not for alleged violation of any federal, state or local governmental law or regulation prohibiting such discrimination; however, this exclusion shall not apply to **Claims** arising out of or attributable to credentialing or utilization review; or

- q) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
  - i) failure to obtain, implement, effect, comply with, provide notice under or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship or bond;
  - ii) commingling or mishandling of funds;
  - iii) failure to collect or pay premiums, commissions, brokerage charges, fees or taxes; or
  - iv) acts, errors, or omissions in the brokering or underwriting of insurance policies or risks.
- r) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters brought by or on behalf of a current, prospective, or former director, officer or employee of the **Insured Organization** or applicant for employment with the **Insured Organization**;
- s) based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (i) any **Wrongful Act** actually or allegedly occurring prior to the retroactive date as set forth on the Declarations Page, or;
  - (ii) any other **Wrongful Act** occurring on or subsequent to the retroactive date as set forth on the Declarations Page which, together with a **Wrongful Act** occurring prior to such date would constitute **Interrelated Wrongful Acts**.
- t) brought about or contributed to by the gaining of any profit or advantage by any **Insured** to which they were not in fact legally entitled as determined by a judgment or other final adjudication

No **Wrongful Act** of one or more of the **Insureds** shall be imputed to any other **Insured** for the purpose of determining the applicability of any of the above Exclusions.

#### D. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give Underwriters notice in writing of any **Claim** as soon as practicable, but in no event later than 60 days after the end of the **Policy Period**.
2. If, during the **Policy Period**, any of the **Insureds** first becomes aware of a specific **Wrongful Act** and if the **Insureds**, during the **Policy Period**, give written notice to Underwriters as soon as practicable of:
  - a) the specific **Wrongful Act**, and
  - b) the consequences which have resulted or may result therefrom, and
  - c) the circumstances by which the **Insureds** first become aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was first given to Underwriters.

3. Notice to Underwriters shall be given to the firm shown under Item F. of the Declarations for this Policy.

SPECIMEN

## DIRECTORS AND OFFICERS AND INSURED ORGANIZATION COVERAGE SECTION

In consideration of the payment of premium, in reliance on the statements in the **Application** and subject to all of the provisions of the Policy and this Coverage Section, Underwriters and the **Insureds** agree as follows:

### A. INSURING CLAUSES

1. Underwriters shall pay on behalf of the **Directors and Officers** the **Loss** resulting from any **Claim** first made against the **Directors and Officers** during the **Policy Period** and reported as required by Section D, NOTIFICATION for a **Wrongful Act**.
2. Underwriters shall pay on behalf of the **Insured Organization** the **Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Directors and Officers** resulting from any **Claim** first made against the **Directors and Officers** during the **Policy Period** and reported as required by Section D, NOTIFICATION for a **Wrongful Act**.
3. Underwriters shall pay on behalf of the **Insured Organization** the **Loss** resulting from any **Claim** first made against the **Insured Organization** during the **Policy Period** and reported as required by Section D, NOTIFICATION for a **Wrongful Act**.

### B. DEFINITIONS

The following terms whenever used in this Coverage Section in boldface type, shall have the meaning indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B. of the General Terms and Conditions section of this Policy.

1. **Claim** means:
  - a) any written demand for damages or other relief against any of the **Insureds**, or
  - b) any judicial, administrative or arbitration proceeding initiated against any of the **Insureds** in which they may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom.
2. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:
  - a) salaries, wages, overhead or benefit expenses associated with officers or employees of the **Insured Organization**, or
  - b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
3. **Directors and Officers** means all persons who were, now are, or shall be:
  - a) duly elected or appointed directors, officers, members of the board of managers or employees of the **Insured Organization**, and
  - b) the functional equivalent to directors or officers of the **Insured Organization** in the event the **Insured Organization** is incorporated or domiciled outside the United States, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

4. **Insureds** means **Insured Organization** and the **Directors and Officers**.
5. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event or transaction or series of facts, circumstances, situations, events or transactions.
6. **Loss** means damages (whether awarded or paid in an approved settlement), punitive damages and **Costs, Charges and Expenses** incurred by any of the **Directors and Officers** under Insuring Clauses 1. or 2., and the **Insured Organization** under Clause 3.
- a) **Loss** shall not include:
- (i) that portion of any multiplied damages awarded which exceeds the amount multiplied,
  - (ii) taxes, criminal or civil fines or penalties imposed by law,
  - (iii) fees, amounts, benefits or coverage owed under any contract, health care plan or trust, insurance or workers' compensation policy or plan or program of self insurance, or other payments for medical services,
  - (iv) restitution,
  - (v) non-monetary relief of any kind, including the cost of complying with any injunctive, declaratory or other non-monetary relief,
  - (vi) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- b) With respect to punitive damages, the applicable law for purposes of insurability under this Coverage Section will be the law most favorable to the **Insured** provided the most favorable law has a reasonable relationship to the **Claim**.
- Law which will be deemed reasonably related includes the law:
- (i) of the state where the **Insured** is incorporated or has a place of business;
  - (ii) of the state where the **Claim** is pending; or
  - (iii) of the state where any **Wrongful Act** happened.
7. **Outside Entity** means:
- a) any non-profit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (as amended), and
  - b) for-profit organization specifically identified by endorsement to this Policy.
8. **Pending and Prior Date** means the date set forth in Item D. of the Declarations relating to this Coverage Section.



9. **Wrongful Act** means any actual or alleged error, omission, misleading statement, neglect, breach of duty or act by:
- a) any of the **Directors and Officers**, while acting in their capacity as:
    - (i) a director or officer of the **Insured Organization** or the functional equivalent to a director or officer of the **Insured Organization** in the event the **Insured Organization** is incorporated or domiciled outside the United States; and
    - (ii) a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the written consent and at the direction of the **Insured Organization**;
  - b) with respect to Insuring Clause 3. of this Coverage Section only, the **Insured Organization**.

### C. EXCLUSIONS

1. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim**:
- a) for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property, including loss of use thereof;
  - b) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
    - (i) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other similar insurance policy, or
    - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
  - c) to the extent it is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the Limit of Liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
  - d) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving actual or alleged seepage, pollution or contamination of any kind;
  - e) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law;

- f) by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
- (i) is brought derivatively by a security holder of the **Insured Organization** who, when such **Claim** is first made, is acting independently of all of the **Insureds**, or
  - (ii) is brought by any of the **Insureds** in the form of a cross-claim, third party claim or other proceeding for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Coverage Section;
- g) brought about or contributed to by any willful violation of statute, dishonest, fraudulent or criminal act or omission by any of the **Insured**, as determined by a judgment or other final adjudication;
- h) for the return by any of the **Directors and Officers** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization** or **Outside Entity**, which payment without such previous approval shall be held by a court to be in violation of law;
- i) against any of the **Directors and Officers** of any **Subsidiary** or against any **Subsidiary** based upon, arising out of, directly or indirectly from, in consequence of, or in any way involving:
- (i) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
  - (ii) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- j) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover** or bankruptcy;
- k) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) any prior and/or pending judicial, administrative or arbitration proceeding, as of the **Pending and Prior Date**, or
  - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such judicial, administrative or arbitration proceeding,
- regardless of the legal theory upon which such **Claim** is predicated;

- l) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the service of any of the **Directors and Officers** in any position or capacity in any entity other than the **Insured Organization**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
- (i) such **Claim** is based on the service of any of the **Directors and Officers** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the written consent and at the direction of the **Insured Organization**, and
  - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Directors and Officers**, and
  - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurers;
- m) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** about which any of the directors, officers, managers or supervisory employees had knowledge prior to the inception date of this Policy or prior to the inception date of any prior Policy issued by Underwriters hereof, of which this Policy is a continuous renewal thereof, which **Wrongful Act** could reasonably have been expected to give rise to a **Claim**;
- n) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters brought by or on behalf of a current, prospective, or former director, officer or employee of the **Insured Organization** or applicant for employment with the **Insured Organization**;
- o) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) any initial public offering undertaken and transacted by the **Insured Organization**, including all activities in connection therewith,
  - (ii) the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission promulgated thereunder, any other federal, state, local or provincial statute relating to securities, or any rules or regulations promulgated thereunder, all as amended, for any **Wrongful Act** actually or allegedly committed subsequent to such initial public offering, or;
  - (iii) any equity or debt offering in excess of \$50 million which is exempt from the registration requirements of the U.S. Securities and Exchange Commission; provided, however, that this subparagraph (iii) shall not apply if Underwriters have agreed in writing to extend coverage for **Wrongful Acts** in connection with such offering, and the **Insureds** have paid the premium required by Underwriters for such coverage extension;
- p) for any actual or alleged express or assumed liability of any **Insured Organization** under any contract or agreement, including without limitation any indemnification agreement; provided, that this exclusion shall not apply to any tort liability that would have attached to the **Insured Organization** in the absence of such contract or agreement and is otherwise insured under this Policy;

- q) for that portion of **Loss** which is covered under, or which would be covered under any other Coverage Section of this Policy, whether that Coverage Section is purchased or not;
  - r) brought about or contributed to by the gaining of any profit or advantage by any **Insured** to which they were not in fact legally entitled,
  - s) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the solvency, receivership, bankruptcy, liquidation or financial inability of an **Insured**; or
  - t) discrimination of any kind, including but not limited to: race, color, creed, sex, religion, age, national origin, handicap or sexual preference whether or not for alleged violation of any federal, state or local governmental law or regulation prohibiting such discrimination; however, this exclusion shall not apply to **Claims** arising out of or attributable to credentialing or utilization review.
  - u) brought by or on behalf of any individual or entity that owns or controls (whether beneficially, directly or indirectly) 5% or more of the securities of the **Insured Organization**;
  - v) based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
    - (i) any **Wrongful Act** actually or allegedly occurring prior to the retroactive date as set forth on the Declarations Page, or;
    - (ii) any other **Wrongful Act** occurring on or subsequent to the retroactive date as set forth on the Declarations Page which, together with a **Wrongful Act** occurring prior to such date would constitute **Interrelated Wrongful Acts**.
2. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim** made against the **Insured Organization** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trade marks, trade secrets, trade names, trade dress, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or
  - b) any goods or products  
manufactured produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Insured Organization**.

No **Wrongful Act** of one or more of the **Insureds** shall be imputed to any other **Insured** for the purpose of determining the applicability of any of the above Exclusions

#### D. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give Underwriters notice in writing of any written **Claim** as soon as practicable, but in no event later than 60 days after the end of the **Policy Period**.

2. If, during the **Policy Period**, any of the **Insureds** first becomes aware of a specific **Wrongful Act** and if the **Insureds**, during the **Policy Period**, give written notice to Underwriters as soon as practicable of:
  - a) the specific **Wrongful Act**, and
  - b) the consequences which have resulted or may result therefrom, and
  - c) the circumstances by which the **Insureds** first become aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was first given to Underwriters.
3. Notice to Underwriters shall be given to the firm shown under Item F. of the Declarations for this Policy.

SPECIMEN

## EMPLOYMENT PRACTICES COVERAGE SECTION

In consideration of the payment of premium, in reliance on the statements in the **Application** and subject to all of the provisions of the Policy and this Coverage Section, Underwriters and the **Insureds** agree as follows:

### A. **INSURING CLAUSE**

Underwriters shall pay on behalf of the **Insureds** the **Loss** resulting from any **Claim** first made during the **Policy Period** for a **Wrongful Act**.

### B. **DEFINITIONS**

The following terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B. of the General Terms and Conditions section of this Policy.

1. **Claim** means:

- a) any written demand for damages or other relief against any of the **Insureds** by or on behalf of an **Employee**, or
- b) any judicial, administrative or arbitration proceeding initiated against any of the **Insureds** by or on behalf of an **Employee** in which they may be subjected to a binding adjudication of liability for damages or other relief, including:
  - (i) any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, or
  - (ii) any appeal therefrom.

2. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:

- a) salaries, wages, overhead or benefit expenses associated with officers or **Employees** of the **Insured Organization**, or
- b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

3. **Discrimination** means termination of the employment relationship, a demotion or failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment position because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, genetic makeup or national origin, or any other basis prohibited by federal, state or local law.

4. **Employees** means all persons who were, now are or shall be:

- a) individuals whose labor or service is engaged by and directed by the **Insured Organization**. This includes volunteers, part-time, seasonal, temporary and leased employees,
- b) applicants for employment with the **Insured Organization**, and

- c) independent contractors for the **Insured Organization**, provided such individuals perform work or services solely for or on behalf of the **Insured Organization**. Persons who are leased to another employer are not **Employees**.
- 5. **Harassment** means unwelcome advances, requests for favors or other verbal or physical conduct of either a sexual or non-sexual nature that (a) are explicitly or implicitly made a condition of employment, (b) are used as a basis for employment decisions, or (c) create a work environment that interferes with performance. **Harassment** includes allegations of assault and battery only if related to a **Claim** of sexual harassment.
- 6. **Insureds** means the **Insured Organization** and any **Insured Persons**.
- 7. **Insured Persons** means all persons who were, now are or shall be:
  - a) the duly elected or appointed directors and officers of the **Insured Organization**,
  - b) any **Employees**, and
  - c) the functional equivalent of directors, officers and **Employees** in the event the **Insured Organization** is incorporated or domiciled outside the United States.

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- 8. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
- 9. **Loss** means damages, including compensatory damages, back pay and front pay, punitive, multiplied and exemplary damages where insurable; judgments (including prejudgment and post-judgment interest awarded against an **Insured** on that part of any judgment paid or to be paid by Underwriters); settlements; statutory attorney fees; and **Costs, Charges and Expenses** excess of the Retention. **Loss** shall not include civil or criminal fines or penalties or taxes imposed by law or any other matters deemed uninsurable under the law pursuant to which this Policy shall be construed; stock options or amounts reflecting the value of stock options; amounts owed under employment contracts, partnership, stock, or other ownership agreements or any other contracts; severance pay; disability, social security, workers' compensation, medical, insurance, retirement benefits or other benefits; and the **Insured's** costs to modify any premises to make the premises more accessible to any disabled person.

With respect to punitive and exemplary damages, the applicable law for purposes of insurability will be the law most favorable to the **Insured** provided the most favorable law has a reasonable relationship to the **Claim**.

Law which will be deemed reasonably related includes the law:

- a) of the state where the **Insured** is incorporated or has a place of business;
- b) of the state where the **Claim** is pending; or
- c) of the state where any **Wrongful Employment Act** happened.

10. **Pending and Prior Date** means the date set forth in Item D. of the Declarations relating to this Coverage Section.
11. **Retaliation** means any actual or alleged wrongful response of any of the **Insureds** to:
- a) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Insureds** where such act is alleged to be a violation of any federal, state, local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder, or
  - b) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any workers' compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights, or
  - c) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistleblower" law, or
  - d) any **Employee** work stoppage or slowdown.
12. **Wrongful Act** means any of the below, whether actual or alleged, but only if employment-related and claimed by or on behalf of an **Employee**, and only if committed or allegedly committed by any of the **Insureds** in their capacity as such:
- a) termination, actual or constructive, of an employment relationship in any manner which is against the law and wrongful;
  - b) wrongful demotion, misrepresentation, promissory estoppel and intentional interference with contract; which arise from an employment decision to employ, terminate, evaluate, discipline, promote or demote;
  - c) defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy and other personal injury allegations which arise from the terminating, disciplining, promoting or demoting of an **Employee**;
  - d) breach of an implied employment contract and breach of the covenant of good faith and fair dealing in the employment contract;
  - e) **Discrimination**;
  - f) **Harassment**;
  - g) employment terminations, disciplinary actions, demotions or other employment decisions which violate public policy or the Family Medical Leave Act or similar state law;
  - h) violations of the Uniformed Services Employment and Reemployment Rights Act;
  - i) breach of an **Employee's** federal, state or local civil rights including but not limited to any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983;
  - j) **Retaliation** against any **Insured**;
  - k) wrongful deprivation of career opportunity or failure to grant tenure; or
  - l) improper disclosure of confidential **Employee** information resulting in identity theft.



## C. EXCLUSIONS

1. Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim**:
  - a) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
    - (i) any **Wrongful Act** or any fact, circumstance or situation which has been the subject to any notice given prior to the **Policy Period** under any other similar insurance policy, or
    - (ii) any other **Wrongful Act**, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
  - b) to the extent it is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the Limit of Liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
  - c) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law; provided, however, this exclusion does not apply to any such **Claim** alleging violations of (i) the Equal Pay Act, or (ii) Section 510 of the Employee Retirement Income Security Act, or (iii) **Retaliation**;
  - d) arising out of a strike, lockout, picket line, replacement, or other similar actions arising from labor disputes or negotiation;
  - e) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged obligation of any of the **Insureds** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or similar law; provided, however, this exclusion shall not apply to any such **Claim** for **Retaliation**;
  - f) against any **Subsidiary** or any of the **Insured Persons** of a **Subsidiary** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
    - (i) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
    - (ii) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** would constitute **Interrelated Wrongful Acts**;

- g) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover** or bankruptcy;
- h) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving;
  - (i) any prior and/or pending judicial, administrative or arbitration proceeding, or litigation as of the **Pending and Prior Date**, or
  - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such judicial administrative or arbitration proceeding or litigation,
 

regardless of the legal theory upon which such **Claim** is predicated;
- i) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** about which any of the directors, officers, managers or supervisory **Employees** had knowledge prior to the inception date of this Policy or prior to the inception date of any prior Policy issued by Underwriters hereof, of which this Policy is a continuous renewal thereof, which **Wrongful Act** could reasonably have been expected to give rise to a **Claim**; or
- j) for that portion of **Loss** which is covered under, or which would be covered under any other Coverage Section of this Policy, whether that Coverage Section is purchased or not;
- k) brought by or on behalf of any current or former stockholder or partner, or any alleged stockholder or partner;
- l) based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (i) any **Wrongful Act** actually or allegedly occurring prior to the retroactive date as set forth on the Declarations Page, or;
  - (ii) any other **Wrongful Act** occurring on or subsequent to the retroactive date as set forth on the Declarations Page which, together with a **Wrongful Act** occurring prior to such date would constitute **Interrelated Wrongful Acts**.

2. Underwriters shall not be liable to make any payment under this Coverage Section, other than **Costs, Charges and Expenses**, in connection with any **Claim**:

- a) which constitutes insurance plan benefits claimed by or on behalf of retired **Employees**, or that a former **Employee** would have been entitled to had the **Insured** provided a continuation of insurance, except as damages representing lost insurance benefits;
- b) related to costs incurred by the **Insured Organization** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person;
- c) based upon, arising out of, or in any way relating to, directly or indirectly, any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any of the **Insureds**, as determined by a judgment or other final adjudication; or

- d) for commissions, bonuses, stock options, profit sharing or benefits; severance payments; or any amounts owed under any written or express contract or agreement of employment.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insured** for the purpose of determining the applicability of the above Exclusions.

**D. NOTIFICATION**

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to Underwriters notice in writing of any written **Claim** as soon as practicable but in no event later than sixty (60) days after the end of the **Policy Period**.
2. If, during the **Policy Period**, any of the **Insureds** first becomes aware of a specific **Wrongful Act** and if the **Insureds**, during the **Policy Period**, give written notice to Underwriters as soon as practicable of:
  - a) the specific **Wrongful Act**, and
  - b) the consequences which have resulted or may result therefrom, and
  - c) the circumstances by which the **Insureds** first become aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was first given to Underwriters.
3. Notice to Underwriters shall be given to the firm shown under Item F. of the Declarations for this Policy.

**NAS Insurance Services, Inc.**

By: \_\_\_\_\_  
**On behalf of the Underwriters  
providing this insurance.**