

**THIS IS A CLAIMS MADE AND REPORTED POLICY WITH
DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

THE EMPLOYERS' FIRE INSURANCE COMPANY

MANAGED CARE ERRORS AND OMISSIONS LIABILITY POLICY

The Employers' Fire Insurance Company (the "Underwriter") and the Insureds, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

I. INSURING AGREEMENTS

(A) Managed Care Errors and Omissions Insurance

The Underwriter will pay on behalf of the **Insured** any **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** that is first made against the **Insured** during the **Policy Period** and reported to the Underwriter either during the **Policy Period** or in any event within ninety (90) days after the end of the **Policy Period**, in accordance with CONDITION (B) of this Policy. If an Extended Reporting Period is applicable, such coverage will apply only to any **Claim** that is first made against the **Insured** during the Extended Reporting Period and reported to the Underwriter either during the Extended Reporting Period or in any event within ninety (90) days after the date any such **Claim** is first made, in accordance with CONDITION (B) of this Policy. As part of and subject to the Limits of Liability stated in ITEM 3(a) of the Declarations, the Underwriter will have the right and duty to defend any **Claim** made against any **Insured** which is covered by this Policy, even if the allegations of such **Claim** are groundless, false or fraudulent.

(B) Personal Information Protection Event Expense Reimbursement Insurance

Upon satisfactory proof of payment by the **Named Insured**, the Underwriter will reimburse the **Named Insured**, up to the amount set forth in ITEM 3(b) of the Declarations, for **Personal Information Protection Event Expenses** actually paid by the **Named Insured** in connection with a **Personal Information Protection Event** occurring after the Policy Inception Date but prior to the Policy Expiration Date, provided, that the Underwriter will have no liability whatsoever for fines, penalties, assessments of costs or other financial awards associated with any such **Personal Information Protection Event** unless such fines, penalties, assessments of costs or other financial awards would have otherwise been covered under this Policy.

II. DEFINITIONS

(A) "Antitrust Activity" means any actual or alleged: price fixing; restraint of trade; monopolization; or violation of the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any rules or regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, rule or regulation or common law.

- (B) **“Application”** means the application attached to and forming part of this Policy, including any materials submitted and statements made in connection therewith, all of which are on file with the Underwriter and are a part of this Policy, as if physically attached. If the **Application** uses terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms, conditions and limitations of this Policy.
- (C) **“Benefits Payable Defense Claim”** means a **Claim** made by or on behalf of any federal or state (including the District of Columbia) governmental, regulatory or administrative agency, whether such **Claim** is brought in the name of such agency or by or on behalf of such agency in the name of any other individual or entity, that seeks modification of the amount of any benefits payable under any managed care plan or program, other than any **Claim** for which there is coverage under clause (a), (b), (c) or (d) of EXCLUSION (C)(4) of this Policy.
- (D) **“Claim”** means any written notice received by any **Insured** that a person or entity intends to hold an **Insured** responsible for a **Wrongful Act** which was committed or allegedly committed on or after the Retroactive Date listed in ITEM 7 of the Declarations. In clarification and not in limitation of the foregoing, such notice may be in the form of an arbitration, mediation, judicial, declaratory or injunctive proceeding. A **Claim** will be deemed to be made when such written notice is first received by any **Insured**.
- (E) **“Claim Services”** means the following services, but only if performed by or on behalf of an **Insured**: the submission, handling, investigation, adjudication, denial, payment or adjustment of claims for benefits or coverages under health care, consumer directed health care, behavioral health, prescription drug, dental, vision, long or short term disability, automobile medical payment, or workers’ compensation plans.
- (F) **“Defense Expenses”** means reasonable legal fees and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**; provided, that **Defense Expenses** shall not include remuneration, salaries, overhead, fees or benefit expenses of any **Insured**.
- (G) **“Employment Practices”** means: (1) any action taken with respect to hiring, promotion, demotion, or termination of employment of any employee or applicant for employment; (2) any sexual advances or harassment of any type related to employment; (3) any employment-related misrepresentation, defamation, or invasion of privacy; or (4) any matter involving laws or public policy relating to employment or the application of any employment contract, employee handbook, or personnel manual.
- (H) **“Injunctive Relief Defense Claim”** means a **Claim** made by or on behalf of any federal or state (including the District of Columbia) governmental, regulatory or administrative agency, whether such **Claim** is brought in the name of such agency or by or on behalf of such agency in the name of any other individual or entity, that seeks injunctive, declaratory or equitable relief, other than any **Claim** for which there is coverage under clause (a), (b), (c) or (d) of EXCLUSION (C)(4) of this Policy.
- (I) **“Insured”** means any **Insured Entity** and any **Insured Person**.
- (J) **“Insured Entity”** means the **Named Insured** and any other entity designated on SCHEDULE A.

- (K) **“Insured Person”** means any past, present or future:
- (1) employee, director, officer, trustee, member of the board of managers, governor or medical director of, or volunteer for, any **Insured Entity**;
 - (2) member of, or provider of administrative support to, any review board or committee of any **Insured Entity**; and
 - (3) any individual duly authorized by an **Insured Entity** to conduct credentialing, peer review or **Utilization Review**;

but only while any such person is acting within the scope and capacity of his or her duties for the **Insured Entity**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** in his or her capacity as such will be deemed to be a **Claim** against such **Insured Person**.

- (L) **“Loss”** means **Personal Information Protection Event Expenses, Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a **Claim**.

Loss shall include:

- (1) a claimant’s attorney’s fees and court costs, but only in an amount equal to the percentage that the amount of monetary damages covered under this Policy for any settlement or judgment bears to the total amount of such settlement or judgment;
- (2) pre- and post-judgment interest awarded or imposed in any judgment, and premiums on appeal bonds required to be furnished with respect to any such judgment; and
- (3) punitive, exemplary or multiplied damages where insurable by law; provided, that the law of the jurisdiction most favorable to the insurability of punitive damages shall control the insurability of such punitive damages, so long as such jurisdiction:
 - (a) is where such punitive damages were awarded or imposed;
 - (b) is where the **Insured Entity** is incorporated or otherwise organized, or has a place of business;
 - (c) is where the Underwriter is incorporated or has its principal place of business; or
 - (d) is where the parent company of the Underwriter is incorporated.

Loss shall not include:

- (i) fines, penalties or taxes; provided, that (A) punitive damages shall not be deemed to constitute fines, penalties or taxes for any purpose herein, and (B) **Loss** shall

include fines and penalties imposed under the Health Insurance Portability and Accountability Act or in **Claims for Antitrust Activity**, but only if such fines and penalties are insurable under applicable law most favorable to the insurability of such fines and penalties;

- (ii) fees, amounts, benefits, coverage or obligations owed under any contract with any party (including providers of **Medical Services**), health care plan or trust, insurance or workers' compensation policy or plan or program of self-insurance;
 - (iii) non-monetary or equitable relief or redress in any form, including without limitation the cost of complying with any injunctive, declaratory or administrative relief, or restitution or disgorgement of funds; or
 - (iv) matters which are uninsurable under applicable law; provided, that with respect to punitive damages, "applicable law" shall be determined according to the standards set forth in clause (3) above.
- (M) "**Managed Care Activity**" means any of the following services or activities, whether provided on paper, in person, electronically, or in any other form and whether performed for or on behalf of the **Insured** or by the **Insured** for itself or on behalf of any other party for a fee: **Provider Selection**; **Utilization Review**; advertising, marketing, selling, or enrollment for health care, consumer directed health care, behavioral health, prescription drug, dental, vision, long or short term disability, automobile medical payment, or workers' compensation plans; **Claim Services**; establishing health care provider networks including tiered networks; provision of information with respect to tiered networks and/or consumer directed health care plans, including cost and quality information regarding specific providers, services and/or charges; reviewing the quality of **Medical Services** or providing quality assurance; design and/or implementation of financial incentive plans; design and/or implementation of **Pay for Performance Programs**; wellness or health promotion education; development or implementation of clinical guidelines, practice parameters or protocols; triage for payment of **Medical Services**; and services or activities performed in the administration or management of health care, consumer directed health care, behavioral health, prescription drug, dental, vision, long or short term disability, automobile medical payment, or workers' compensation plans.
- (N) "**Medical Services**" means: health care, medical care, or treatment provided to any individual, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing or other professional health care; the use, prescription, furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care; the furnishing of food or beverages in connection with such care; counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- (O) "**Named Insured**" means the entity designated in ITEM 1 of the Declarations.
- (P) "**Pay for Performance Programs**" means programs which compensate health care providers based on process measures, achievement of documented quality of care metrics, cost efficiencies, or patient outcomes.

- (Q) **“Personal Information Protection”** means maintaining the confidentiality of information regarding **Medical Services** or information obtained in the provision of **Managed Care Activities** and limiting the release or use of such information in conformance with requirements of law.
- (R) **“Personal Information Protection Event”** means failure to maintain the confidentiality of information regarding **Medical Services** or information obtained in the provision of **Managed Care Activities** or unauthorized release or use of such information.
- (S) **“Personal Information Protection Event Expenses”** means reasonable fees and costs of attorneys, experts and consultants, including third-party media consultants, incurred in the management or investigation of an actual or alleged **Personal Information Protection Event**. **Personal Information Protection Event Expenses** include costs incurred in the management of public relations with respect to such **Personal Information Protection Event**, but does not include any remuneration, salaries or benefit expenses of the **Named Insured** or costs incurred in connection with a **Claim** for **Personal Information Protection**.
- (T) **“Policy Period”** means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations, or to any earlier cancellation date of this Policy.
- (U) **“Provider Selection”** means any of the following, but only if performed by or on behalf of an **Insured**: evaluating, selecting, credentialing, contracting with or performing peer review of any provider of **Medical Services**.
- (V) **“Related Claims”** means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.
- (W) **“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.
- (X) **“Subsidiary”** means any entity during any time in which the **Named Insured** owns or controls, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity’s directors or members of the board of managers.
- (Y) **“Utilization Review”** means the process of evaluating the appropriateness, necessity or cost of **Medical Services** for purposes of determining whether payment or coverage for such **Medical Services** will be authorized or paid for under any health care, consumer directed health care, behavioral health, prescription drug, dental, vision, long or short term disability, automobile medical payment, or workers’ compensation plans, but only if performed by or on behalf of an **Insured**. In clarification and not in limitation of the foregoing, **Utilization Review** shall include prospective review of proposed payment or coverage for **Medical Services**; concurrent review of ongoing **Medical Services**; retrospective review of already rendered **Medical Services** or already incurred costs;

disease management; case management; and the use of predictive modeling to identify individuals and/or populations for disease management or case management programs.

(Z) “**Vicarious Liability**” means 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*.

(AA) “**Wrongful Act**” means:

(1) any actual or alleged act, error or omission in the performance of, or any failure to perform, a **Managed Care Activity** by any **Insured Entity** or by any **Insured Person** acting within the scope of his or her duties or capacity as such;

(2) any actual or alleged act, error or omission in the performance of, or any failure to perform, **Personal Information Protection** by any **Insured Entity** or by any **Insured Person** acting within the scope of his or her duties or capacity as such; and

(3) any **Vicarious Liability** for:

(a) the performance of, or any failure to perform:

(i) a **Managed Care Activity**;

(ii) **Personal Information Protection**;

(b) the rendering of, or failure to render, **Medical Services**; provided, that **Wrongful Act** shall not include any **Insured's** actual direct liability for the rendering of, or failure to render, **Medical Services**; or

(c) any actual or alleged **Sexual Activity**; provided, that **Wrongful Act** shall not include any **Insured's** actual or alleged direct liability for any **Sexual Activity**.

III. EXCLUSIONS

(A) Except for **Defense Expenses**, the Underwriter shall not pay **Loss** from any **Claim** brought about or contributed to by:

(1) any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by any **Insured**;

(2) any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; or

(3) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled.

For the purposes of determining the applicability of this EXCLUSION (A), no **Wrongful Act** of any **Insured** shall be imputed to any other **Insured**. Determination of the applicability of this EXCLUSION (A) may be made by an admission or by a final

adjudication in a proceeding constituting the **Claim**, or in a proceeding separate from or collateral to any proceeding constituting the **Claim**.

- (B) The Underwriter shall not pay **Loss**, including **Defense Expenses**, from any **Claim** for any actual or alleged act, error or omission by an **Insured** in the rendering of, or failure to render, **Medical Services**; provided, that this EXCLUSION (B) shall not apply to any portion of a **Claim** alleging, under statute, rule, regulation or common law tort, that the performance of any **Managed Care Activity** by an **Insured** constitutes the rendering of **Medical Services**.
- (C) The Underwriter shall not pay **Loss**, including **Defense Expenses**, from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
 - (a) damage to, destruction of or loss of use of, any tangible property; or
 - (b) ownership, operation, use, maintenance, loading or unloading of any motor vehicle, trailer, watercraft, aircraft or helipad;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged bodily injury, sickness, disease or death of any employee of any **Insured** arising out of or in the course of employment by the **Insured**;
 - (3) made by, on behalf of, or in the name or right of, or for the benefit of, any prospective, current or former owner of any legal or equitable interest in an **Insured Entity** in any form, including, but not limited to, stocks, shares, bonds, debentures, options, derivatives, partnership interests, limited liability company interests, any other form of debt or equity instruments or any other form of ownership interests, in connection with such owner's interest therein;
 - (4) made by or on behalf of any federal or state (including the District of Columbia) governmental, regulatory or administrative agency, whether such **Claim** is brought in the name of such agency or by or on behalf of such agency in the name of any other individual or entity; provided, that this EXCLUSION (C)(4) shall not apply to:
 - (a) any **Claim** for **Antitrust Activity**;
 - (b) any **Claim** for an individual enrollee benefit dispute in a Medicare, Medicaid, or other health plan sponsored by the federal or state (including the District of Columbia) government;
 - (c) any **Claim** brought under the Health Insurance Portability and Accountability Act (HIPAA);
 - (d) **Defense Expenses** incurred in connection with any **Claim** for any disciplinary proceedings initiated against a medical director, who is an **Insured Person**, in connection with **Utilization Review**;
 - (e) **Defense Expenses**, up to the amount shown in ITEM 3(a)(iv) of the

Declarations, incurred in connection with any **Benefits Payable Defense Claim**;

- (f) **Defense Expenses**, up to the amount shown in ITEM 3(a)(iv) of the Declarations, incurred in connection with any **Injunctive Relief Defense Claim**; or
 - (g) any **Claim** made by or on behalf of any city, county or municipal governmental, regulatory or administrative agency, provided that such **Claim** is not made at the direction of, on behalf of, or with the assistance of, any federal or state (including the District of Columbia) governmental, regulatory or administrative agency;
- (5) made by, on behalf of, or in the name or right of, or for the benefit of, any **Insured**; provided, that this EXCLUSION (C)(5) shall not apply to any **Claim** for **Provider Selection, Utilization Review** or **Claim Services** or to any **Claim** brought and maintained independently by an **Insured** in such **Insured's** capacity as a participant in a health care or workers' compensation plan administered or managed by the **Insured Entity**;
- (6) for any actual or alleged express or assumed liability of any **Insured** under an indemnification agreement; provided, that this EXCLUSION (C)(6) shall not apply to any tort liability, including but not limited to liability arising out of a fiduciary relationship, that would have attached to the **Insured** in the absence of such agreement and is otherwise insured under this Policy;
- (7) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged act, error or omission in:
- (a) obtaining, implementing, designing, consulting about, effecting, complying with, providing notice under or maintaining;
 - (b) commingling or mishandling of funds with dishonest intent with respect to;
 - (c) collecting or paying premiums, commissions, brokerage charges, fees or taxes with respect to; or
 - (d) brokering or underwriting with respect to;
- any form, policy, plan or program of insurance, self-funded plan, claim fund, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship or bond, regardless of whether any of the above activities are performed by or on behalf of an **Insured** or on behalf of any third party that is not an **Insured**;
- (8) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:
- (a) underlying or alleged in any litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date stated

in ITEM 2(a) of the Declarations:

- (i) to which any **Insured** is or was a party; or
 - (ii) with respect to which any **Insured**, as of the Inception Date, knew or should reasonably have known (based on a “reasonable person” standard) that an **Insured** might be made a party thereto; or
- (b) which was the subject of any notice given prior to the Inception Date under any other policy of insurance or plan or program of self-insurance.

If, however, this Policy is a renewal of one or more policies previously issued by the Underwriter to the **Insured Entity**, and the coverage provided by the Underwriter to the **Insured Entity** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (C)(8) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the Underwriter began to provide the **Insured Entity** with the continuous and uninterrupted coverage of which this Policy is a renewal;

(9) against the **Insured** or:

- (a) any **Subsidiary**,
- (b) any other entity acquired by the **Insured Entity**, whether by merger, consolidation, asset acquisition or otherwise; or
- (c) any **Insured Person** of any entity in (a) or (b) above;

for any **Wrongful Act** committed or allegedly committed by any entity or person described in clause (a), (b) or (c) above during any time in which such entity is not a **Subsidiary**, or at any time before any such acquisition by the **Insured Entity**;

(10) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Employment Practices**; provided, that this EXCLUSION (C)(10) shall not apply to any **Claim for Provider Selection, Claim Services or Utilization Review**;

(11) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (a) the design, manufacture, assembly, installation, modification or sale of any computer hardware, software or peripheral equipment or device, in whole or in part, by the **Insured** or by any entity owned by, controlled by or affiliated with the **Insured** through any common ownership;
- (b) any electronic funds transfer, automated bank transaction or automated securities quotation or transaction, including any authentication or other services ancillary thereto;

- (c) any breakdown or failure to perform, in whole or in part, of any computer hardware, software or peripheral equipment or device, including any breakdown, interruption or failure of any utility, telephone line, data transmission line or other infrastructure necessary for the operation of any computer hardware, software or peripheral equipment or device;
- (d) the analysis, design, development, programming or any other aspect of providing electronic data processing, computer time-sharing or computer back-up services or facilities to third parties, including the rendering of advice, training or opinions to third parties with respect to electronic data processing, computer time-sharing or computer back-up services or facilities or any aspect thereof; or
- (e) any introduction or alteration of any code, program or data causing any loss of access to or corruption or malfunction of any computer hardware, software, peripheral equipment or device or data, in whole or in part;

provided, that this EXCLUSION (C)(11) shall not apply to any **Claim for Personal Information Protection, Provider Selection, Utilization Review or Claims Services** if performed by or on behalf of an **Insured**; or

(12) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (a) any actual, alleged, or threatened, exposure to, generation, storage, transportation, discharge, emission, dispersal, escape, release, seepage, treatment, removal, disposal, processing, or handling of any solid, liquid, gaseous, or thermal irritant, pollutant, or contaminant, including without limitation smoke, vapors, soot, fumes, acids, alkalis, chemicals (toxic or otherwise), waste (infectious or otherwise), and medical and pharmaceutical supplies; or any regulation, order, direction, or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing; or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (b) any actual or alleged property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish, or mental injury at any time arising out of or resulting from the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust;
- (c) any obligation of the **Insured** to indemnify any party for any actual or alleged property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish, or mental injury at any time arising out of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
- (d) any obligation of the **Insured** to defend any claim seeking damages for any actual or alleged property damage, bodily injury, sickness, disease,

occupational disease, disability, shock, death, mental anguish, or mental injury at any time arising out of the manufacture of, mining of, use of, sales of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or

- (e) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance.

IV. CONDITIONS

(A) Limit of Liability, Retention:

(1) The amount stated in:

- (a) (i) ITEM 3(a)(i) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Loss**, including **Defense Expenses**, resulting from all **Claims** or **Related Claims** for which this Policy provides coverage.
- (ii) ITEM 3(a)(ii)(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Loss**, including **Defense Expenses**, resulting from each **Claim** or **Related Claim** for **Antitrust Activity** for which this Policy provides coverage;
- (iii) ITEM 3(a)(ii)(B) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Loss**, including **Defense Expenses**, resulting from all **Claims** or **Related Claims** for **Antitrust Activity** for which this Policy provides coverage;
- (iv) ITEM 3(a)(iii) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all **Loss**, including **Defense Expenses**, resulting from each **Claim** or **Related Claim**, other than **Claims** for **Antitrust Activity**, **Benefits Payable Defense Claims** or **Injunctive Relief Defense Claims**, for which this Policy provides coverage; and
- (v) ITEM 3(a)(iv) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Defense Expenses** resulting from all **Benefits Payable Defense Claims** or **Related Claims** and all **Injunctive Relief Defense Claims** or **Related Claims** for which this Policy provides coverage;

provided, that the Limits of Liability described in clauses (ii) through (v) above shall be part of, and not in addition to, the amount set forth in ITEM 3(a)(i) of the Declarations; and

- (b) ITEM 3(b) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all **Personal Information Protection Event Expenses** for which this Policy provides coverage; provided, that

the Limit of Liability set forth in ITEM 3(b) shall be in addition to, and not part of, the amount set forth in ITEM 3(a)(i) of the Declarations.

- (2) Each Limit of Liability described in paragraph (1) above shall apply regardless of the time of payment by the Underwriter, the number of persons or entities included within the definition of **Insured**, or the number of claimants, and regardless of whether such **Claim** or **Related Claims** is/are first made during the **Policy Period** or during any Extended Reporting Period.
- (3) **Defense Expenses** are part of and not in addition to the Underwriter's Limits of Liability, and payment of **Defense Expenses** by the Underwriter will reduce its Limits of Liability.
- (4) The obligation of the Underwriter to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention set forth in ITEM 4 of the Declarations. The Underwriter will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the Underwriter will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Underwriter any amounts so paid.

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

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

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

the reasons why the **Insured** believes the **Wrongful Act** is likely to result in a **Claim** being made.

(C) **Related Claims Deemed Single Claim; Date Claim Made:**

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

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

(D) **Defense and Settlement:**

- (1) No **Insured** may incur any **Defense Expenses** or admit liability for or settle any **Claim** without the Underwriter's written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's maximum aggregate Limit of Liability set forth in ITEM 3(a)(i) of the Declarations, the Underwriter's liability for such **Claim** will not exceed:
 - (a) the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
 - (b) fifty percent (50%) of any **Loss** and/or **Defense Expenses** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining fifty percent (50%) of **Loss** and/or **Defense Expenses** in excess of the Settlement Amount will be carried by the **Insured** at its own risk and will be uninsured.
- (2) The Underwriter will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** after the Underwriter's maximum aggregate Limit of Liability, as set forth in ITEM 3(a)(i) of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the Underwriter's maximum aggregate Limit of Liability, as set forth in ITEM 3(a)(i) of the Declarations, is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

(E) **Assistance and Cooperation:**

In the event of a **Claim**, the **Insureds** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insureds** shall assist in investigating, defending and settling **Claims** and in the

conduct of actions, suits, appeals or other proceedings, including but not limited to attending trials, hearings and depositions, securing and giving evidence, and obtaining the attendance of witnesses.

(F) **Subrogation:**

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

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

(1) This Policy shall be excess of and shall not contribute with:

- (a) any other existing insurance or self-insurance (whether collectible or not), unless such other insurance or self-insurance is specifically stated to be in excess of this Policy; and
- (b) any indemnification to which an **Insured** is entitled from any entity other than another **Insured**.

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

(2) If any other policy or policies, including but not limited to a Directors and Officers Liability policy, issued by the Underwriter or any of its affiliated companies, or by any predecessors or successors of the Underwriter or its affiliated companies, shall apply to any **Claim**, then:

- (a) the maximum aggregate Limit of Liability under all policies, including this Policy, for all **Loss**, including **Defense Expenses**, in respect of such **Claim** shall not exceed the largest single available Limit of Liability under any such policy, including this Policy. Notwithstanding the foregoing, nothing herein is intended, nor shall it be construed, to obligate or require any payment of **Loss**, including **Defense Expenses**, under this Policy in respect of such **Claim** in any amount exceeding the available Limit of Liability under this Policy; and
- (b) the retention and terms applicable to such **Claim** shall be the applicable retention and terms under the policy having the largest available Limit of Liability.

This CONDITION (G)(2) shall not apply with respect to any other policy which is written only as specific excess insurance over the Limit of Liability of this Policy.

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

If, during the **Policy Period**, the **Named Insured** or any **Insured Entity** acquires or creates another entity or **Subsidiary** or becomes a member of a joint venture or general partner in a general partnership which is not designated on SCHEDULE A, or if the **Named Insured** or any **Insured Entity** merges or consolidates with another entity which is not designated on SCHEDULE A such that the **Named Insured** or **Insured Entity** is the surviving entity (any such acquired, created, merged or consolidated entity an "Acquired Entity"), then for a period of ninety (90) days after the effective date of the transaction, such Acquired Entity shall be included within the term "**Insured Entity**" with respect to **Wrongful Acts** committed or allegedly committed by the Acquired Entity or its **Insured Persons** after the effective date of the transaction. Upon the expiration of the ninety (90) day period, there will be no coverage under this Policy for **Wrongful Acts** committed or allegedly committed by the Acquired Entity or its **Insured Persons** unless within the ninety (90) day period:

- (1) the **Named Insured** gives the Underwriter such information regarding the transaction as the Underwriter requests; and
- (2) the Underwriter has specifically agreed by written endorsement to this Policy to provide coverage with respect to such Acquired Entity and its **Insured Persons**, and the **Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the Underwriter, in its sole discretion, imposes in connection with the transaction.

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

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

then in any such event (any of which events is referred to in this CONDITION (I) as a "Material Event"), coverage under this Policy for all **Insureds** shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall apply only to **Wrongful Acts** committed or allegedly committed before such Material Event. There will be no coverage under this Policy with respect to any **Claim** against any **Insured** based upon, arising out of, directly or indirectly

resulting from, in consequence of, or in any way involving any **Wrongful Act** committed or allegedly committed on or after the date of such Material Event.

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

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

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

(K) **Extended Reporting Periods:**

If this Policy is canceled for any reason other than non-payment of premium or is not renewed by the Underwriter or the **Named Insured**, an additional period of time during which **Claims** may be reported under this Policy (an "Extended Reporting Period") shall be made available as described in this CONDITION (K), but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such cancellation or non-renewal ("Termination Date"). No Extended Reporting Period shall in any way increase the Underwriter's Limit of Liability as stated in ITEM 3(a)(i) of the Declarations, and the Underwriter's maximum aggregate Limit of Liability for all **Loss** from all **Claims** first made during the **Policy Period** or any Extended Reporting Period shall not exceed the Limit of Liability stated in ITEM 3(a)(i) of the Declarations. The offer of renewal terms, conditions, limits of liability, retentions or premium different from those in effect prior to renewal shall not constitute cancellation or refusal to renew for purposes of this CONDITION (K). The Extended Reporting Period will apply as follows:

- (1) An Extended Reporting Period of ninety (90) days, beginning as of the Termination Date, will apply automatically and requires no additional premium; provided, that such Extended Reporting Period will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such Extended Reporting Period.
- (2) The **Named Insured** may purchase an additional Extended Reporting Period for one of the periods of time stated in ITEM 6 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than thirty (30) days after the Termination Date. The additional premium for this additional Extended Reporting Period shall be equal to the applicable amount stated in ITEM 6 of the Declarations and must be paid no later than thirty (30) days after the Termination Date.

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

(L) **Representation; Incorporation of Application:**

The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:

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

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured** for the purposes of this CONDITION (L), except for material facts or information known to the person or persons who signed the **Application**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission, or to whom such knowledge is imputed.

(M) **Action against Underwriter:**

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

(N) **Insolvency of Insured:**

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

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

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

(2) Notice to the Underwriter shall be sent to the address designated in ITEM 8 of the Declarations.

(P) **Changes:**

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

(Q) **Assignment:**

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

(R) **Entire Agreement:**

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

(S) **Headings:**

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

In witness whereof, the Underwriter has caused this Policy to be executed by its authorized representative.