

<OneBeacon Writing Company>
 <Address>
 <City, State, Zip Code>
 (hereinafter referred to as the "Underwriter")



Policy Number:
 Renewal of:

DECLARATIONS

**HEALTHCARE ORGANIZATION
 MANAGEMENT LIABILITY POLICY**

THE COVERAGE AFFORDED BY THIS POLICY DIFFERS IN SOME RESPECTS FROM THAT AFFORDED BY OTHER POLICIES. PLEASE READ THIS POLICY CAREFULLY.

ITEM 1. NAMED ORGANIZATION: Name and Principal Address: State of Incorporation/Formation:		ITEM 2. POLICY PERIOD: (a) Inception Date: (b) Expiration Date: Both dates at 12:01 a.m. at the Principal Address in ITEM 1.	
ITEM 3. COVERAGE SECTION(S) PURCHASED AND PENDING OR PRIOR DATE(S):			
<u>Coverage Section</u>	<u>Purchased</u>	<u>Pending or Prior Date</u>	
Directors, Officers & Organization Liability ("D&O")	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Additional Limit of Liability Dedicated for Executives	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Employment Practices Liability ("EPL")	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Fiduciary Liability ("FLI")	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Information Risk and Recovery ("IRR")	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Employed Lawyers Professional Liability ("ELPL")	<input type="checkbox"/> YES <input type="checkbox"/> NO		
Crime Coverage ("Crime")	<input type="checkbox"/> YES <input type="checkbox"/> NO		Not Applicable
ITEM 4. LIABILITY COVERAGE SECTION(S) – LIMITS OF LIABILITY:			
Coverage Section	Separate Limit of Liability	Shared Limit of Liability	Other Applicable Limit(s) of Liability
D&O	\$ _____	Shared: \$ _____ Shared with: _____	Additional Limit of Liability Dedicated for Executives: \$ _____ Antitrust Claim Sublimit: \$ _____ Regulatory Claim Defense Sublimit: \$ _____ HIPAA Claim Sublimit: \$ _____ Excess Benefit Transaction Excise Tax Sublimit: \$ _____

			Internal Revenue Code Violation Sublimit: \$ _____ EMTALA Claim Sublimit: \$ _____ Stakeholder Derivative Demand Sublimit: \$ _____ D&O Crisis Management Expenses Limit: \$ _____
EPL	\$ _____	Shared: \$ _____ Shared with: _____	Illegal Hiring or Harboring Sublimit: \$ _____ Employment Crisis Management Expenses Limit: \$ _____
FLI	\$ _____	Shared: \$ _____ Shared with: _____	HIPAA Penalties Sublimit: \$ _____ Section 502(c) Penalties Sublimit: \$ _____ Section 507 Penalties Sublimit: \$ _____ PPACA Penalties Sublimit: \$ _____ Section 4975 Tax Penalties Sublimit: \$ _____ Voluntary Settlement Program Coverage Sublimit: \$ _____ Pension Crisis Management Expenses Limit: \$ _____
IRR	\$ _____	Shared: \$ _____ Shared with: _____	Privacy Administrative Proceeding Aggregate Sublimit: \$ _____ Privacy Administrative Fines and Consumer Redress Fund Costs Sublimit: \$ _____ Combined First-Party Loss Limit: \$ _____ Breach Consultation Services Limit: \$ _____ Incident Management Expenses Limit: \$ _____ Information Restoration Expenses Limit: \$ _____ Hardware Replacement Expenses Limit: \$ _____ Extortion Payments and Rewards Limit: \$ _____ Forensic Expenses Limit: \$ _____

ELPL	\$ _____	Shared: \$ _____ Shared with: _____	Intra-Organization Claims Defense Sublimit: \$ _____
POLICY AGGREGATE SUBLIMIT FOR ALL E-DISCOVERY CONSULTANT SERVICES: \$ _____ (for all purchased Liability Coverage Sections combined)			
POLICY AGGREGATE LIMIT OF LIABILITY: \$ _____ (for all purchased Liability Coverage Sections combined)			
ITEM 5. LIABILITY COVERAGE SECTION(S) – RETENTIONS:			
Coverage Section	Retention		
D&O	\$ _____ each Claim under Insuring Agreement (A). \$ _____ each Claim under Insuring Agreement (B), other than an Antitrust Claim or a Regulatory Claim . \$ _____ each Claim under Insuring Agreement (C), other than an Antitrust Claim or a Regulatory Claim . \$ _____ each Antitrust Claim under Insuring Agreement (B) or (C). \$ _____ each Regulatory Claim under Insuring Agreement (B) or (C).		
EPL	\$ _____ each Employment Claim under Insuring Agreement (A). \$ _____ each Third Party Claim under Insuring Agreement (B).		
FLI	\$ _____ each Fiduciary Claim under Insuring Agreement (A).		
IRR	\$ _____ each Claim under Insuring Agreement (A)(1). \$ _____ each Claim under Insuring Agreement (A)(2). \$ _____ each Privacy Administrative Proceeding under Insuring Agreement (A)(3). \$ _____ each Information Risk Incident under Insuring Agreement (B)(1). \$ _____ each Information Risk Incident or Extortion under Insuring Agreement (B)(2). \$ _____ each Information Risk Incident under Insuring Agreement (B)(3). \$ _____ each Information Risk Incident under Insuring Agreement (B)(4). \$ _____ each Extortion under Insuring Agreement (B)(5). \$ _____ each Information Risk Incident under Insuring Agreement (B)(6).		

ELPL	\$ _____ each Claim under Insuring Agreement (A).
	\$ _____ each Claim under Insuring Agreement (B).

ITEM 6. **D&O COVERAGE SECTION - CO-INSURANCE PERCENTAGES (If purchased):**

(A) **Antitrust Claims:** _____%

(B) **Regulatory Claims:** _____%

ITEM 7. **IRR COVERAGE SECTION – RETROACTIVE DATE (If purchased):** _____

ITEM 8. **LIABILITY COVERAGE SECTION(S) - TYPE OF CLAIM DEFENSE:**

Duty to Defend

Reimbursement

ITEM 9. **CRIME COVERAGE SECTION – LIMITS OF LIABILITY AND DEDUCTIBLES (If purchased):**

Insuring Agreement	Per Occurrence Limit of Liability	Deductible
(A)(1) Employee Theft Coverage	\$ _____	\$ _____
(A)(2) Employee Theft of Client Property Coverage	\$ _____	\$ _____
(A)(3) Employee Benefit Plan Coverage	\$ _____	\$ _____
(B) Forgery or Alteration Coverage	\$ _____	\$ _____
(C) Premises Coverage– Theft of Money or Securities	\$ _____	\$ _____
(D) Premises Coverage– Robbery or Safe Burglary of Other Property	\$ _____	\$ _____
(E) Outside the Premises Coverage	\$ _____	\$ _____
(F)(1) Computer Fraud Coverage	\$ _____	\$ _____
(F)(2) Computer Data Restoration Expenses Coverage	\$ _____	\$ _____
(G) Funds Transfer Fraud Coverage	\$ _____	\$ _____
(H) Money Orders and Counterfeit Paper Currency Coverage	\$ _____	\$ _____
(I) Social Engineering Fraud Coverage	\$ _____	\$ _____
(J)(1) Personal Accounts Forgery or Alteration Coverage	\$ _____	\$ _____
(J)(2) Identity Fraud Expense Reimbursement Coverage	\$ _____	\$ _____
(K) Investigative Costs Coverage	\$ _____	As per the applicable Insuring Agreement

If "*Not Covered*" is inserted opposite any specified Insuring Agreement above as the Per Occurrence Limit of Liability, such Insuring Agreement and any other reference thereto is deemed to be deleted from this Policy.

ITEM 10. **TERMINATION OF PRIOR POLICIES:**

<POLICYNUMBER>

ITEM 11. **POLICY PREMIUM: \$_____**

Gross Premium: The Underwriter will pay a percentage of the Premium shown above as brokerage commission. The Underwriter does not pay contingent or deferred commissions. Consult your broker for information concerning commission.

Net Premium: The Premium shown above is net, and the Underwriter will pay no brokerage commission of any kind thereon.

This Policy provides coverage for acts of terrorism as defined in the Terrorism Risk Insurance Act in accordance with all of the terms and conditions of this Policy (including all endorsements attached hereto). The premium attributable to this coverage is \$_____

This Policy specifically excludes coverage for acts of terrorism in accordance with all of the terms and conditions of this Policy (including all endorsements attached hereto).

ITEM 12. **EXTENDED REPORTING PERIOD OPTION(S):**

<ERPLENGTH> AT <PERCENTAGE> of the full annual premium for the applicable **Liability Coverage Section**

ITEM 13. **NOTICE TO THE UNDERWRITER:**

(A) ALL NOTICES TO THE UNDERWRITER OF CLAIMS, CIRCUMSTANCES, EVENTS OR FIRST-PARTY INCIDENTS UNDER ANY LIABILITY COVERAGE SECTION, OR OF OCCURRENCES UNDER THE CRIME COVERAGE SECTION, MUST BE ADDRESSED TO:

<Claims>
<OneBeacon Insurance Group>
<199 Scott Swamp Road>
<Farmington, CT 06032>
-or-
<OBIClaims@onebeacon.com>

(B) ALL OTHER NOTICES REQUIRED TO BE GIVEN TO THE UNDERWRITER MUST BE ADDRESSED TO:

<OneBeacon Management Liability>
<199 Scott Swamp Road>
<Farmington, CT 06032>

ITEM 14. **POLICY FORM AND ENDORSEMENTS ATTACHED AT ISSUANCE:**

These Declarations, the completed signed Application, and the Policy (together with any and all endorsements thereto) shall constitute the entire agreement between the Underwriter and the Insured(s).

<ONEBEACON WRITING COMPANY>

By:



Its Authorized Representative

Date:

SAMPLE

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

General Terms and Conditions Section



PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD WITH DEFENSE EXPENSES INCLUDED IN THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to the Declarations and all of the terms, conditions and limitations of this Policy, the Underwriter and the **Insureds** agree as follows:

I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Section of this Policy, the terms, conditions and limitations of each Coverage Section shall apply only to that Coverage Section. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions and limitations of any Coverage Section, the terms, conditions and limitations of such Coverage Section shall control for purposes of that Coverage Section. Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under that Coverage Section, have the meaning set forth in that Coverage Section.

II. DEFINITIONS

- (A) **"Affiliate"** means any entity, other than a **Subsidiary**, during such time as the **Named Organization** or any **Subsidiary** has the authority to direct the financial or managerial decision making of such entity, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions.
- (B) **"Application"** means the application(s) 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; provided, that any such statements or filings submitted in connection with the application(s) were made within twelve (12) months of the Inception Date of this Policy. If any **Application** uses any 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 and conditions of this Policy.
- (C) **"Claim"** shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (D) **"Defense Expenses"** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim**,

- including the cost of **E-Discovery Consultant Services**, and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (E) **"Domestic Partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.
- (F) **"E-Consultant Firm"** means any e-discovery consulting firm selected by the Underwriter to perform **E-Discovery Consultant Services** in connection with a **Claim**.
- (G) **"E-Discovery Consultant Services"** means the following services performed by an **E-Consultant Firm**:
- (1) assisting the **Insured** with managing and minimizing the internal and external costs associated with the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information ("**E-Discovery**");
 - (2) assisting the **Insured** in developing or formulating an **E-Discovery** strategy which shall include interviewing qualified and cost effective **E-Discovery** vendors;
 - (3) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the Underwriter in executing and monitoring the **E-Discovery** strategy; and
 - (4) such other services provided by the **E-Consultant Firm** that the **Insured**, the Underwriter and **E-Consultant Firm** agree are reasonable and necessary given the circumstances of the **Claim**.
- (H) **"Executive"** shall have the meaning set forth in the applicable Coverage Section.
- (I) **"Financial Impairment"** means the status of an **Organization** resulting from:
- (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
 - (2) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.
- (J) **"First-Party Incident"** shall have the meaning set forth in the Information Risk and Recovery Coverage Section.
- (K) **"Foreign Jurisdiction"** means any jurisdiction, other than the United States of America or any of its territories or possessions.
- (L) **"Insured"** shall have the meaning set forth in the applicable Coverage Section.
- (M) **"Insured Person"** shall have the meaning set forth in the applicable **Liability Coverage Section**.

- (N) **"Liability Coverage Section"** means the Directors, Officers and Organization Liability, Employment Practices Liability, Fiduciary Liability, Information Risk and Recovery and Employed Lawyers Professional Liability Coverage Sections of this Policy, if purchased as stated in ITEM 3 of the Declarations.
- (O) **"Loss"** shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (P) **"Management Control"** shall mean: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation or organization, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation or organization, the management committee of a joint venture or partnership or the management board of a limited liability company.
- (Q) **"Named Organization"** means the entity designated as such in ITEM 1 of the Declarations.
- (R) **"Occurrence"** shall have the meaning set forth in the Crime Coverage Section.
- (S) **"Organization"** means: (1) the **Named Organization**; (2) subject to the provisions of Section XI of these General Terms and Conditions, any **Subsidiary** thereof; and (3) any **Affiliate** listed by written endorsement to this Policy, but solely with respect to the Coverage Section(s) indicated on such endorsement. **Organization** shall also mean the **Named Organization** or any such **Subsidiary** in its capacity as a debtor in possession.
- (T) **"Per Occurrence Limit of Liability"** means the applicable Per Occurrence Limit of Liability stated in ITEM 9 of the Declarations.
- (U) **"Policy Aggregate Limit of Liability"** means the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
- (V) **"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 of this Policy.
- (W) **"Related Claims"** means all **Claims** for **Wrongful Acts** based upon, 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.
- (X) **"Separate Limit of Liability"** means the applicable Separate Limit of Liability, if any, stated in ITEM 4 of the Declarations.
- (Y) **"Shared Limit of Liability"** means the applicable Shared Limit of Liability, if any, stated in ITEM 4 of the Declarations, which limit of liability shall be shared between all **Liability Coverage Sections** listed below such Shared Limit of Liability in the Declarations.

(Z) **"Subsidiary"** means, subject to the provisions of Section XI of these General Terms and Conditions, any not-for-profit entity, and any for-profit entity whose securities are not publicly traded, during any time which the **Named Organization** has **Management Control** of such entity, either directly or through one or more **Subsidiaries**.

(AA) **"Wrongful Act"** shall have the meaning set forth in the applicable **Liability Coverage Section**.

III. LIMITS OF LIABILITY

(A) With respect to the **Liability Coverage Sections**, the following shall apply:

(1) **Policy Aggregate Limit of Liability**

The **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations is the maximum limit of the Underwriter's liability for all **Loss** under all **Liability Coverage Sections** combined resulting from all **Claims** or **Related Claims** and all **First-Party Incidents** (if the Information Risk and Recovery Coverage Section is purchased as stated in ITEM 3 of the Declarations) for which such **Liability Coverage Sections** provide coverage.

(2) **Separate Limits of Liability**

If a **Separate Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Section**, then such **Separate Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under such **Liability Coverage Section** resulting from all **Claims** or **Related Claims** and all **First-Party Incidents** (with respect to the Information Risk and Recovery Coverage Section) for which such **Liability Coverage Section** provides coverage. Any such **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(3) **Shared Limits of Liability**

If a **Shared Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Sections**, then such **Shared Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under all **Liability Coverage Sections** to which such **Shared Limit of Liability** is applicable, as indicated in ITEM 4 of the Declarations, resulting from all **Claims** or **Related Claims** and all **First-Party Incidents** (with respect to the Information Risk and Recovery Coverage Section) for which such **Liability Coverage Sections** provide coverage. Any such **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(4) **Policy Aggregate Sublimit for E-Discovery Consultant Services**

The Policy Aggregate Sublimit for E-Discovery Consultant Services stated in ITEM 4 of the Declarations shall be the maximum limit of the Underwriter's liability for all **E-Discovery Consultant Services** resulting from all **Claims** or **Related Claims** under all **Liability Coverage Sections** combined. Such Policy

Aggregate Sublimit for E-Discovery Consultant Services shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and the **Separate Limit of Liability** or **Shared Liability of Liability** applicable under such **Liability Coverage Sections**.

- (5) **Defense Expenses** are part of and not in addition to the applicable Limits of Liability stated in ITEM 4 of the Declarations, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, such applicable Limits of Liability.
 - (6) In the event that a **Claim** is covered under more than one **Liability Coverage Section**, then the maximum limit of the Underwriter's liability for all **Loss** resulting from such **Claim** shall not exceed the largest single applicable Limit of Liability available under any such **Liability Coverage Section**.
 - (7) If the **Separate Limit of Liability** or **Shared Limit of Liability** applicable to any **Liability Coverage Section** is exhausted by the Underwriter's payment of **Loss**, all obligations of the Underwriter under such **Liability Coverage Section(s)** will be completely fulfilled and exhausted, and the premium for such **Liability Coverage Section(s)** will be fully earned.
- (B) With respect to the Crime Coverage Section, the following shall apply:
- The applicable **Per Occurrence Limit of Liability** stated in ITEM 9 of the Declarations shall be the maximum limit of the Underwriter's liability for all loss resulting from an **Occurrence**, regardless of the number of **Insureds** sustaining such loss.

IV. RETENTIONS

- (A) The Retentions stated in ITEM 5 of the Declarations are separate Retentions pertaining only to the **Liability Coverage Section** for which they are stated in the Declarations, subject to paragraph (D) below.
- (B) No retention shall apply to the first \$25,000 of **E-Discovery Consultant Services** incurred by the **Insured** in connection with a **Claim**.
- (C) In the event that different Retentions apply to a **Claim** covered under one **Liability Coverage Section**, it is understood and agreed that only one Retention shall apply to such **Claim**, which shall be the single highest applicable Retention.
- (D) In the event a **Claim** is covered under more than one **Liability Coverage Section**, it is understood and agreed that only one Retention shall apply to such **Claim**, which shall be the single highest applicable Retention.

V. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES

- (A) Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of any applicable **Liability Coverage Section**, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
 - (1) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of

such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or

- (2) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

- (B) All provisions of these General Terms and Conditions and of any applicable **Liability Coverage Section**, including without limitation the Retention, that are applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage extended pursuant to this Section V shall not apply with respect to any loss resulting from an actual or alleged act, error or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

VI. CLAIM DEFENSE

- (A) If Duty to Defend coverage is provided with respect to the **Liability Coverage Sections**, as indicated in ITEM 8 of the Declarations, the Underwriter will have the right and duty to defend any **Claim** covered under a **Liability Coverage Section** through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Underwriter's obligation to defend any **Claim** covered under such **Liability Coverage Section** is subject to the applicable Retention and Coinsurance Percentage and the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations. The Underwriter will have no obligation to defend or continue to defend any **Claim** after the Underwriter's applicable Limits of Liability have been exhausted by the payment of **Loss**.
- (B) If Reimbursement coverage is provided with respect to the **Liability Coverage Sections**, as indicated in ITEM 8 of the Declarations:
 - (1) It shall be the duty of the **Insureds** and not the duty of the Underwriter to defend any **Claim** covered under a **Liability Coverage Section**. The Underwriter shall have the right to participate with the **Insureds** in the investigation, defense and settlement of any **Claim**, including but not limited to the selection of appropriate defense counsel and the negotiation of a settlement of any **Claim** that appears reasonably likely to be covered in whole or in part by such **Liability Coverage Section**.
 - (2) Upon written request, the Underwriter will pay **Defense Expenses** owed under a **Liability Coverage Section** on a current basis no later than sixty (60) days after receipt by the Underwriter of itemized bills for such **Defense Expenses**. Such advanced payments by the Underwriter shall be repaid to the Underwriter by the **Insureds** severally according to their respective interests in the event and to the extent that the **Insureds** shall not be entitled to payment of such **Defense Expenses** under such **Liability Coverage Section**. As a condition of any payment of **Defense Expenses** before the final disposition of a **Claim**, the Underwriter may require a written undertaking on terms and conditions satisfactory to the Underwriter guaranteeing the repayment of any **Defense Expenses** paid to or on behalf of any **Insured** if it is finally determined that any such **Claim** or portion of any **Claim** is not covered under such **Liability**

Coverage Section. Except for **Defense Expenses** paid in accordance with this paragraph (2), the Underwriter will have no obligation to pay any **Loss** before the final disposition of a **Claim**.

VII. ALLOCATION

- (A) If Duty to Defend coverage is provided with respect to the **Liability Coverage Sections**, as indicated in ITEM 8 of the Declarations, and there is a **Claim** under a **Liability Coverage Section** in which both **Loss** covered by such **Liability Coverage Section** and loss not covered by such **Liability Coverage Section** are incurred, either because such **Claim** made against the **Insureds** includes both covered and uncovered matters, or because such **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**," then such covered **Loss** and uncovered loss shall be allocated as follows:
- (1) one hundred percent (100%) of **Defense Expenses** incurred by the **Insureds** in connection with such **Claim** shall be allocated to covered **Loss**; and
 - (2) all loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.
- (B) If Reimbursement coverage is provided with respect to the **Liability Coverage Sections**, as indicated in ITEM 8 of the Declarations, and there is a **Claim** under a **Liability Coverage Section** in which both **Loss** covered by such **Liability Coverage Section** and loss not covered by such **Liability Coverage Section** are incurred, either because such **Claim** made against the **Insureds** includes both covered and uncovered matters, or because such **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**," the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. The Underwriter's obligation to pay **Loss** under such **Liability Coverage Section** shall relate only to those sums allocated to the **Insureds**. In making such determination, the parties shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VIII. NOTICE

- (A) Any notice to the Underwriter with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section(s) so designated.
- (B) Notice to the Underwriter shall be sent to the address designated in ITEM 13 of the Declarations. Any such notice to the Underwriter shall be effective on the date of receipt by the Underwriter at such address.
- (C) Notice to the **Insured** shall be sent to the **Named Organization** at the address designated in ITEM 1 of the Declarations.

IX. TERRITORY

Coverage shall extend anywhere in the world. Any payments under this Policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

X. EXTENDED REPORTING PERIOD

If any **Liability Coverage Section** is canceled for any reason other than non-payment of premium or is not renewed by the Underwriter or the **Named Organization**, then solely with respect to such **Liability Coverage Section** that was canceled or not renewed, 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 Section X, 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") or the effective date of any event described in Section XI (B) or (C) below, whichever is earlier. No Extended Reporting Period shall in any way increase the Underwriter's Limits of Liability stated in ITEM 4 of the Declarations, and the Underwriter's Limits of Liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the applicable Limits of Liability stated in ITEM 4 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 Section X.

The **Named Organization** may purchase an Extended Reporting Period for one of the periods of time stated in ITEM 12 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than sixty (60) days after the Termination Date. The additional premium for an Extended Reporting Period shall equal the applicable percentage, as stated in ITEM 12 of the Declarations, of the full annual premium (including any premium adjustments made during the **Policy Period**) for the applicable **Liability Coverage Section**, and must be paid no later than sixty (60) days after the Termination Date. The entire additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an Extended Reporting Period is made as described above, or if the additional premium for any such Extended Reporting Period is not paid within sixty (60) days after the Termination Date, there will be no right to purchase any Extended Reporting Period at any later time.

XI. CHANGES IN EXPOSURE

(A) Acquisition/Creation of Another Organization

(1) If before or during the **Policy Period** any **Organization**:

- (a) acquires **Management Control** in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- (b) acquires another organization by merger into or consolidation with the **Organization** such that the **Organization** is the surviving entity,

then with respect to:

- (i) any **Liability Coverage Section**, other than the Employed Lawyers Professional Liability Coverage Section: coverage shall be provided for such other organization and its **Insureds** solely for **Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation unless the Underwriter agrees, after presentation of a complete application and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** committed or allegedly committed by such **Insureds** before such acquisition or creation;
- (ii) the Information Risk and Recovery Coverage Section, if purchased as stated in ITEM 3 of the Declarations: coverage shall be provided for such organization and its **Insureds** for a **First-Party Incident** that occurred and was discovered (as required by Insuring Agreement (B) of such Information Risk and Recovery Coverage Section) after the effective date of such acquisition or creation;
- (iii) the Employed Lawyers Professional Liability Coverage Section, if purchased as stated in ITEM 3 of the Declarations: coverage shall be provided for natural persons who became **Insureds** as a result of such acquisition or creation solely for **Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation unless the Underwriter agrees, after presentation of a complete application and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** committed or allegedly committed by such **Insureds** before such acquisition or creation; or
- (iv) the Crime Coverage Section, if purchased as stated in ITEM 3 of the Declarations: coverage shall be provided for such other organization and its **Insureds** after the effective date of such event, pursuant to Section VI(E), Liability for Prior Losses, of such Crime Coverage Section.

(2) If, at the time of an acquisition or creation described in paragraph (A)(1) above:

- (a) the total assets of any such acquired or created organization exceed thirty-five percent (35%) of the total assets of the **Organization** (as reflected in the most recent audited consolidated financial statements of

such organization and the **Organization**, respectively, as of the date of such acquisition or creation); or

- (b) solely with respect to the Employment Practices Liability Coverage Section, if purchased as stated in ITEM 3 of the Declarations, the total number of employees of the acquired or created organization exceeds thirty-five percent (35%) of the total number of employees of the **Organization** immediately prior to the acquisition or creation,

then the **Organization** shall provide the Underwriter written notice of such acquisition or creation, containing full details thereof, as soon as practicable, but in no event later than ninety (90) days after the date of such acquisition or creation, and the Underwriter, in its sole discretion, may require additional terms, conditions and limitations of coverage and additional premium shall be paid. If the **Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Underwriter, then no coverage will be available for such acquired or created organization (if applicable) and its **Insureds**: (i) for any **Claim** first made more than ninety (90) days after such acquisition or creation; or (ii) with respect to the Information Risk and Recovery Coverage Section, if purchased as stated in ITEM 3 of the Declarations, for any **First-Party Incident** that occurred or is discovered more than ninety (90) days after such acquisition or creation. Provided, however, that the asset and employee count limitations set forth in this paragraph (A)(2) shall not apply to the **Organization's** acquisition or creation of a not-for-profit organization that is within the scope of paragraph (A)(1) above.

(B) **Acquisition by Another Organization**

If:

- (1) the **Named Organization** merges into or consolidates with another organization and the **Named Organization** is not the surviving entity; or
- (2) another organization or person or group of organizations and/or persons acting in concert acquires **Management Control** of the **Named Organization**,

then coverage under this Policy with respect to:

- (a) any **Liability Coverage Section**: shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition;
- (b) the Information Risk and Recovery Coverage Section, if purchased as stated in ITEM 3 of the Declarations: shall terminate with respect to any **First-Party Incident** that occurs after such merger, consolidation or acquisition; or
- (c) the Crime Coverage Section, if purchased as stated in ITEM 3 of the Declarations: shall terminate as of the date of such merger, consolidation or acquisition.

Upon the occurrence of any event described in paragraph (B)(1) or (2) above, the entire premium for this Policy shall be deemed fully earned. The **Named Organization** shall

give written notice of such merger, consolidation or acquisition to the Underwriter as soon as practicable, but in no event later than ninety (90) days after the date of such merger, consolidation or acquisition, together with such other information as the Underwriter may require. Upon receipt of such notice and information and at the request of the **Named Organization**, the Underwriter shall provide to the **Named Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Underwriter and the **Named Organization**) with respect to **Claims for Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium as the Underwriter, in its sole discretion, may require.

(C) **Cessation of Subsidiary**

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then with respect to:

- (1) any **Liability Coverage Section**, other than the Employed Lawyers Professional Liability Coverage Section: coverage with respect to such former **Subsidiary** and its **Insureds** shall continue until termination of such Coverage Section, but only with respect to **Claims for Wrongful Acts** committed or allegedly committed while such organization was a **Subsidiary**;
- (2) the Information Risk and Recovery Coverage Section, if purchased as stated in ITEM 3 of the Declarations: coverage with respect to such former **Subsidiary** and its **Insureds** shall terminate with respect to any **First-Party Incident** that occurs after such organization ceased to be a **Subsidiary**;
- (3) the Employed Lawyers Professional Liability Coverage Section, if purchased as stated in ITEM 3 of the Declarations: coverage with respect to the **Insureds** of such former **Subsidiary** shall continue until termination of such Coverage Section, but only with respect to **Claims for Wrongful Acts** committed or allegedly committed while such organization was a **Subsidiary**; or
- (4) the Crime Coverage Section, if purchased as stated in ITEM 3 of the Declarations: such former **Subsidiary** and its **Insureds** shall cease to be **Insureds** as of the effective date of such cessation, and coverage under such Crime Coverage Section shall thereafter apply only as provided in such Crime Coverage Section.

XII. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in any Coverage Section, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

XIII. ASSISTANCE AND COOPERATION

In the event of a **Claim, First-Party Incident** or **Occurrence**, the **Insured** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: investigating, defending and settling **Claims, First-Party Incidents** or **Occurrences**; enforcing any right of contribution or indemnity against another who may be liable to any **Insured**; 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. The failure of any **Insured Person** to provide the Underwriter such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this Policy.

XIV. 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 its 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 Section XIV shall survive the expiration or termination of this Policy.

In no event, however, shall the Underwriter seek subrogation against any **Insured** under this Policy unless:

- (A) such **Insured** has been convicted of a criminal act;
- (B) it has been determined by a final and non-appealable adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** committed a deliberately fraudulent or dishonest act or omission, or willfully violated any statute, rule or law; or
- (C) it has been determined by a final and non-appealable adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** gained any profit, remuneration or advantage to which such **Insured** was not legally entitled.

XV. NO ACTION AGAINST UNDERWRITER

- (A) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Underwriter.
- (B) 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**.

XVI. NAMED ORGANIZATION RIGHTS AND OBLIGATIONS

The **Named Organization** will act on behalf of all **Insureds** with respect to: the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

XVII. 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 prevent or estop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

XVIII. ASSIGNMENT

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

XIX. CANCELLATION/NONRENEWAL

- (A) The Underwriter may not cancel this Policy except for the **Named Organization's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Named Organization** by the Underwriter. Notwithstanding the foregoing, if the Underwriter receives no premium whatsoever by the premium due date and no premium whatsoever is received by the last day of such twenty (20) day notice period, the Underwriter may cancel this Policy as of the Inception Date set forth in ITEM 2(a) of the Declarations.
- (B) This Policy may be cancelled by the **Named Organization** at any time by mailing written notice to the Underwriter stating when thereafter such cancellation will be effective. In such event, the earned premium will be computed *pro rata*. 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.
- (C) The Underwriter will not be required to renew this Policy upon its expiration. The Underwriter will provide the **Named Organization** with sixty (60) days' notice of any non-renewal.

XX. TERMINATION OF PRIOR BONDS OR POLICIES

Any bonds or policies issued by the Underwriter or its affiliates and stated in ITEM 10 of the Declarations shall terminate, if not already terminated, as of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations.

XXI. INSOLVENCY OF INSURED

The Underwriter will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or his/her/its estate.

XXII. RISK MANAGEMENT

The Underwriter directly or indirectly may make available risk management services in connection with this Policy for the purpose of managing and reducing the risks covered under this Policy. Such risk management services may cease or change in the Underwriter's sole discretion at any time.

XXIII. 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 its agents relating to this insurance.

XXIV. 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.

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

**Directors, Officers & Organization Liability
Coverage Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Insured Person Non-Indemnified Loss Coverage:

The Underwriter will pay, on behalf of an **Insured Person**, **Loss** for which an **Insured Person** is not indemnified by the **Organization** from any **Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(B) Insured Person Indemnified Liability Coverage:

The Underwriter will pay, on behalf of the **Organization**, **Loss** for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, from any **Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(C) Organization Liability Coverage:

The Underwriter will pay, on behalf of the **Organization**, **Loss** from any **Claim** first made against the **Organization** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(D) Stakeholder Derivative Demand Coverage:

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Stakeholder Derivative Demand Sublimit stated in ITEM 4 of the Declarations, for **Investigative Costs** actually paid by the **Organization** in connection with any **Stakeholder Derivative Demand** first made during the **Policy Period** or applicable Extended Reporting Period; provided, that such **Stakeholder Derivative Demand** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(E) Crisis Management Reimbursement Coverage:

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the D&O Crisis Management Expenses Limit stated in ITEM 4 of

the Declarations, for **Crisis Management Expenses** actually paid by the **Organization** in connection with a **Crisis Management Event** that first occurs during the **Policy Period**; provided, that such **Crisis Management Event** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(F) **Additional Limit of Liability Dedicated for Executives (Optional):**

- (1) The Additional Limit of Liability Dedicated for Executives, if purchased as stated in ITEM 3 of the Declarations, will be an additional limit of liability in the amount stated in ITEM 4 of the Declarations, which amount is in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.
- (2) The Additional Limit of Liability Dedicated for Executives is available solely for **Loss** resulting from any **Claim** made against any **Executive** covered under Insuring Agreement (A) of this Coverage Section.
- (3) The Additional Limit of Liability Dedicated for Executives shall be excess of any insurance available that is specifically excess to this Policy and such excess insurance must be completely exhausted by payment of loss, damages or defense expenses thereunder before the Underwriter shall have any obligation to make any payment on account of the Additional Limit of Liability Dedicated for Executives.

II. DEFINITIONS

- (A) "**Antitrust Claim**" means any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Antitrust Violation**.
- (B) "**Antitrust Violation**" means any actual or alleged: price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment); restraint of trade; monopolization; or violation of the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, ordinance, regulation or common law.
- (C) "**Claim**" means:
 - (1)(a) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation); or
 - (b) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (i) the service of a complaint or similar pleading;
 - (ii) the return of an indictment, information or similar document (in the case of a criminal proceeding); or

- (iii) the filing of a notice of charges, formal investigative order or similar document,

against an **Insured** for a **Wrongful Act**;

- (2) a civil, criminal, administrative or regulatory investigation of an **Insured Person** for a **Wrongful Act** commenced by the service upon or other receipt by such **Insured Person** of a written notice from the investigating authority (including any "Wells" notice) specifically identifying such **Insured Person** as a target individual against whom a civil, criminal, administrative or regulatory proceeding may be commenced;
- (3) an official request for **Extradition** against an **Insured Person** for a **Wrongful Act**;
- (4) a **Regulatory Claim**; and
- (5) for the purposes of coverage under Insuring Agreement (D) of this Coverage Section, a **Stakeholder Derivative Demand**;

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

- (D) "**Claim Services**" means 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.
- (E) "**Crisis Management Event**" means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:
 - (1) the death, incapacity or criminal indictment of any **Executive**, or any **Employee** on whom the **Organization** maintains key person life insurance;
 - (2) the public announcement of layoffs of **Employees**;
 - (3) the public announcement that the **Organization** has defaulted or intends to default on its debt;
 - (4) the public announcement that the **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Organization**, or the imminence of bankruptcy proceedings, whether voluntary or involuntary;
 - (5) the public announcement or accusation that the **Organization** has caused bodily injury, sickness, disease, or death to a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof;
 - (6) the public announcement of the commencement or threat of commencement of governmental or regulatory proceedings against the **Organization** including, but not limited to, any such proceeding alleging violation of the Federal False Claims

Act, or any anti-kickback, illegal remuneration, self-referral or healthcare fraud and abuse law; or

- (7) the public announcement of the termination, suspension or limitation of an **Organization's** right to participate in any program of a federal, state or local governmental, regulatory or administrative agency.
- (F) "**Crisis Management Expenses**" means reasonable costs, charges, fees and expenses incurred by the **Organization** for **Crisis Management Services**. **Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (G) "**Crisis Management Firm**" means any public relations, crisis management firm or law firm retained by the **Organization** or its **Executives** with the consent of the Underwriter to perform **Crisis Management Services**.
- (H) "**Crisis Management Services**" means those services performed by a **Crisis Management Firm** in advising the **Organization** or any of its **Executives** on minimizing potential public harm to the **Organization** resulting from a **Crisis Management Event**.
- (I) "**Disqualified Person**" means a "disqualified person" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
- (J) "**Employee**" means any employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee. **Employee** also includes:
- (1) any volunteer working for the **Organization**;
 - (2) any individual who is leased to, and working for, the **Organization**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization's** employees;
 - (3) any independent contractor working for the **Organization**, but only if the **Organization** provides indemnification to such independent contractor, pursuant to a written contract, in the same manner as that provided to the **Organization's** employees; and
 - (4) any intern working for, and under the supervision of, the **Organization**.
- (K) "**Excess Benefit Transaction**" means an "excess benefit transaction" as that term is defined in Section 4958(c) of the Internal Revenue Code of 1986, as amended.
- (L) "**Excess Benefit Transaction Excise Tax**" means any excise tax imposed by the Internal Revenue Service on an **Insured Person** who is an **Organization Manager** as a result of such **Insured Person's** participation in an **Excess Benefit Transaction**.
- (M) "**Executive**" means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee

member, member of an Advisory Board, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or

- (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (N) "**Extradition**" means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to answer to a criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where the execution of such warrant is an element of the formal process of extradition.
- (O) "**Insured**" means the **Organization** and any **Insured Person**.
- (P) "**Insured Person**" means any natural person who was, now is or becomes:
- (1) an **Executive**;
 - (2) an **Employee**; or
 - (3) a staff physician or faculty member of the **Organization**, or a member of, or provider of administrative support to, any duly constituted review board or committee of the **Organization**, regardless of whether or not such person is directly employed by the **Organization** or is considered to be an independent contractor.
- (Q) "**Internal Revenue Code Violation**" means any actual or alleged violation by an **Insured** of any of the following sections of the Internal Revenue Code of 1986, as amended, involving any **Organization** that is exempt from taxation under the Internal Revenue Code of 1986, as amended:
- Section 4911 (Taxes on Excess Expenditures to Influence Legislation);
 - Section 4941 (a) and (b) (Taxes on Self-Dealing);
 - Section 4942 (Taxes on Failure to Distribute Income);
 - Section 4943 (Taxes on Excess Business Holdings);
 - Section 4944 (Taxes on Investments which Jeopardize Charitable Purpose);
 - Section 4945 (Taxes on Taxable Expenditures);
 - Section 6652 (c) (1) (A)(B) (Penalties for Failure to File Certain Information Returns or Registration Statements);
 - Section 6655 (a)(1) (Penalties for Failure to Pay Estimated Income Taxes); or
 - Section 6656(a) and (b) (Penalties for Failure to Make Deposit of Taxes).
- (R) "**Investigative Costs**" means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred by the **Organization**, including its board of directors, Board of Managers or any committee thereof, in connection with such **Organization's** investigation or evaluation of any **Stakeholder Derivative Demand**. **Investigative Costs** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (S) "**Loss**" means:
- (1) for purposes of coverage under Insuring Agreements (A), (B) and (C) of this Coverage Section, **Defense Expenses** and any monetary amount which an

Insured is legally obligated to pay as a result of a covered **Claim**, including but not limited to:

- (a) monetary damages (including punitive or exemplary damages or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);
 - (b) judgments;
 - (c) settlements;
 - (d) pre- and post-judgment interest;
 - (e) **Excess Benefit Transaction Excise Taxes** that an **Insured Person** is obligated to pay as a result of a **Claim**; provided that **Loss** shall not include the twenty-five percent (25%) excise tax assessed against any **Disqualified Person** or the 200% tax assessed for failure to correct an **Excess Benefit Transaction**;
 - (f) civil fines and penalties levied against an **Insured**:
 - (i) for an **Internal Revenue Code Violation**;
 - (ii) for violation of the Emergency Medical Treatment and Active Labor Act, as amended ("EMTALA"); or
 - (iii) for violation of Title II of the Health Insurance Portability and Accountability Act of 1996; and
 - (g) civil penalties levied against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act;
- (2) for purposes of coverage under Insuring Agreement (D) of this Coverage Section, **Investigative Costs**.

Loss does not include:

- (aa) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award;
- (bb) civil or criminal fines or penalties, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award and as provided in paragraphs (1)(f) and (1)(g) above with respect to the specified civil fines and penalties;
- (cc) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority), except as provided in paragraph (1)(e) above with respect to any **Excess Benefit Transaction Excise Tax**;

- (dd) any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief; or
- (ee) any fees, profits, or other revenue lost, or any costs incurred, by an **Insured** in connection with the termination, suspension or limitation of such **Insured's** right to participate in any program of a federal, state or local governmental, regulatory or administrative agency.
- (T) **"Managed Care Activities"** 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 **Organization** or by the **Organization** for itself or on behalf of any other party for a fee: **Provider Selection; Utilization Review; Quality Improvement Organization Programs**; 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 or charges; reviewing the quality of **Medical Services** or providing quality assurance; design 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**; calculation of medical loss ratio and related distribution; 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.
- (U) **"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.
- (V) **"Organization Manager"** means an "organization manager" as that term is defined in Section 4958(f) of the Internal Revenue Code, 26 U.S.C. § 4958(f).
- (W) **"Outside Capacity"** means service by an **Executive** in the position of director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the specific request or direction of the **Organization**.
- (X) **"Outside Entity"** means: (1) any not-for-profit entity that is not included in the definition of **Organization**; and (2) any for-profit entity specifically added as an **Outside Entity** by written endorsement to this Coverage Section.
- (Y) **"Personal Injury Wrongful Act"** means false arrest, wrongful detention or imprisonment, malicious prosecution, libel, slander, defamation of character, wrongful entry or eviction or other invasion of the right of occupancy.

- (Z) **"Pollutant"** means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (AA) **"Provider Selection"** means the evaluation, selection, credentialing, contracting with or performing peer review of any provider of **Medical Services**.
- (BB) **"Publisher Liability Wrongful Act"** means infringement of copyright or trademark, unauthorized use of title, plagiarism or misappropriation of ideas.
- (CC) **"Quality Improvement Organization Programs"** means services and activities to improve the effectiveness, efficiency, economy, and quality of care for beneficiaries under any government sponsored health care plan.
- (DD) **"Regulatory Claim"** means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation);
 - (2) a search warrant, subpoena, notice of investigation or contact letter (including but not limited to any notice or letter received from a Recovery Audit Contractor (RAC)); or
 - (3) a civil, criminal, administrative, regulatory or arbitration proceeding (including but not limited to any qui tam action or relator lawsuit) for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a notice of charges, formal investigative order or similar document,brought by or on behalf of a federal, state or local governmental, regulatory or administrative agency or entity against an **Insured** for a **Regulatory Wrongful Act**; provided, that **Regulatory Claim** does not include any customary or routine audit or reconciliation involving an **Insured** by any federal, state or local governmental, regulatory or administrative agency or entity.
- (EE) **"Regulatory Wrongful Act"** means any actual or alleged violation of: the Federal False Claims Act or any similar federal, state or local statute or common law; any federal, state or local anti-kickback, illegal remuneration, self-referral or healthcare fraud and abuse law; or amendments to or regulations promulgated under any such law.

- (FF) **"Stakeholder"** means:
- (1) with respect to any not-for-profit **Organization**, any natural person member of such **Organization** who has an active interest that such **Organization** fulfill its mission;
 - (2) with respect to any for-profit **Organization**, any securityholder of such **Organization**.
- (GG) **"Stakeholder Derivative Demand"** means any written demand, by one or more **Stakeholders** of the **Organization** without the solicitation, assistance, active participation or intervention of any **Executive**, upon the board of directors or Board of Managers of such **Organization** to bring a civil proceeding in a court of law against any **Executive** for a **Wrongful Act** by such **Executive**.
- (HH) **"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. **Utilization Review** shall include prospective review of proposed **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 or populations for disease management or case management programs.
- (II) **"Wrongful Act"** means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured Person** in his or her capacity as such, or any matter asserted against any **Insured Person** solely by reason of his or her status as such;
 - (2) for the purposes of Insuring Agreement (C) of this Coverage Section, any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Organization**;
 - (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Executive** in his or her **Outside Capacity**; or
 - (4) with respect to both **Insured Persons** and the **Organization**, and subject to paragraphs (1), (2) and (3) above, any:
 - (a) **Antitrust Violation**;
 - (b) **Regulatory Wrongful Act**;
 - (c) act, error or omission in connection with the performance of, or failure to perform, **Provider Selection**;
 - (d) **Personal Injury Wrongful Act**; and
 - (e) **Publisher Liability Wrongful Act**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any directors and officers liability or other similar management liability policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - (3) brought by or on behalf of the **Organization** or any **Insured Person**; provided, that this EXCLUSION (A)(3) shall not apply to:
 - (a) any **Stakeholder Derivative Demand**;
 - (b) any **Claim** brought or maintained derivatively on behalf of the **Organization** by a member, an attorney general, a securityholder or any other such representative party, provided such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, any **Executive**, the **Organization** or any **Affiliate**;
 - (c) any **Claim** in the form of a cross-claim, third party claim or other claim for contribution or indemnity by any **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Section;
 - (d) in any bankruptcy proceeding by or against the **Organization**, any **Claim** brought by the examiner, creditors' committee, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Organization**;
 - (e) any **Claim** brought or maintained by an **Executive** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) of, or consultant for, the **Organization** for at least two (2) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently of, and without the solicitation, assistance, active participation or intervention of, the **Organization** or any other **Executive** who is serving or has served in any of the listed capacities within such two (2) year period;

- (f) any **Claim** brought or maintained by an **Employee** who is not a past or present **Executive** if such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, any **Executive**;
 - (g) any **Claim** brought or maintained by any provider of **Medical Services** relating to any **Provider Selection**;
 - (h) any **Claim** brought or maintained by any **Executive** of an **Organization** formed and operating in a **Foreign Jurisdiction** against such **Organization** or any other **Executive** thereof, provided such **Claim** is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof); or
 - (i) any **Claim** brought or maintained as a result of the solicitation, assistance, active participation or intervention of an **Insured Person** where such solicitation, assistance, active participation or intervention is protected under 18 U.S.C. 1514A ("whistleblower" protection provided under the Sarbanes-Oxley Act of 2002) or any similar "whistleblower" protection provision of any federal, state or local statute, ordinance, regulation or common law;
- (4) for any **Wrongful Act** of an **Executive** in his or her **Outside Capacity**, if such **Claim** is brought by or on behalf of (a) the **Outside Entity** with which such **Executive** is serving or has served in an **Outside Capacity** or (b) any director, officer, trustee, governor or equivalent executive of such **Outside Entity**; provided, that this EXCLUSION (A)(4) shall not apply to:
- (i) any **Claim** brought or maintained derivatively on behalf of the **Outside Entity** by one or more securityholders or members of the **Outside Entity** who are not **Insured Persons** and are not directors, officers, trustees, governors or equivalent executives of the **Outside Entity** and who bring and maintain such **Claim** independently of, and without the solicitation, assistance or active participation of any **Insured Person** or of any director, officer, trustee, governor or equivalent executive of the **Outside Entity**;
 - (ii) any **Claim** in the form of a cross-claim, third party claim or other claim for contribution or indemnity by a director, officer, trustee, governor or equivalent executive of the **Outside Entity** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Section;
 - (iii) in any bankruptcy proceeding by or against the **Outside Entity**, any **Claim** brought by the examiner, creditors' committee, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Outside Entity**;
 - (iv) any **Claim** brought or maintained by a director, officer, trustee, governor or equivalent executive of the **Outside Entity** who has not served as a duly elected or appointed director, officer, trustee, governor,

management committee member, member of the management board, general counsel or risk manager (or equivalent position) of, or consultant for, the **Outside Entity** for at least two (2) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently of, and without the solicitation, assistance or active participation of, any **Insured Person**, the **Outside Entity** or any other director, officer, trustee, governor or equivalent executive of the **Outside Entity** who is serving or has served in any of the listed capacities within such two (2) year period;

- (v) any **Claim** brought or maintained by any director, officer, trustee, governor or equivalent executive of an **Outside Entity** formed and operating in a **Foreign Jurisdiction**, provided such **Claim** is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof); or
 - (vi) any **Claim** brought or maintained as a result of the solicitation, assistance, active participation or intervention of any director, officer, trustee, governor or equivalent executive of the **Outside Entity** where such solicitation, assistance, active participation or intervention is protected under 18 U.S.C. 1514A ("whistleblower" protection provided under the Sarbanes-Oxley Act of 2002) or any similar "whistleblower" protection provision of any federal, state or local statute, ordinance, regulation or common law;
- (5) for: (a) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(5) shall not apply to any **Claim** to which Insuring Agreement (A) of this Coverage Section solely applies;
- (6) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination or radioactive substance;
- (7) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided, that this EXCLUSION (A)(7) shall not apply to allegations of emotional distress or mental anguish to the extent that such allegations are made as part of a **Claim** brought or maintained by a provider of **Medical Services** relating to **Provider Selection**;
- (8) for any actual or alleged violation of the responsibilities, duties or obligations imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;

- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** of any **Insured Person** serving in any capacity, other than as an **Executive** or **Employee** or in an **Outside Capacity**;
- (10) made against a **Subsidiary** or listed **Affiliate** or any **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary** or **Affiliate**;
- (11) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or
 - (b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(11) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final and non-appealable adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;

- (12) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state "blue sky" securities law, or any other federal, state or local securities law, or any amendments thereto or regulations promulgated under any such laws; provided, that this EXCLUSION (A)(12) shall not apply to matters involving tax exempt bonds and tax exempt bond holders;
- (13) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
- (14) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the National Labor Relations Act (NLRA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
- (15) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any federal, state or local wage and hour law, including, without limitation, the Fair Labor Standards Act (FLSA);

- (16) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- (a) unauthorized, unlawful, or unintentional taking, obtaining, accessing, using, disclosing, distributing, disseminating, transmitting, gathering, collecting, acquiring, corrupting, damaging, destroying, deleting, or impairing of any non-public personally identifiable information; or
 - (b) failure or inability of any computer, computer component (including but not limited to any hardware, network, terminal device, data storage device, input and output device, or back up facility), application, program, software, code, or script of any kind (a "System") to perform or function as planned or intended, including but not limited to any failure or inability of any System to prevent any hack, virus, contaminant, worm, trojan horse, logic bomb, or unauthorized or unintended accessing or use involving any System;

provided, that this EXCLUSION (A)(16) shall not apply to any **Claim**:

- (i) brought directly or derivatively by one or more securityholders of the **Organization** in their capacity as such; or
 - (ii) brought by a federal or state governmental or regulatory agency or entity for violation of Title II of the Health Insurance Portability and Accountability Act of 1996, as amended;
- (17) for any actual or alleged liability of any **Insured** under any express contract or agreement; provided, that this EXCLUSION (A)(17) shall not apply to liability which would have attached in the absence of such express contract or agreement;
- (18) 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 the performance of, or failure to perform, **Managed Care Activities** by any **Insured** or by any individual or entity for whose acts, errors or omissions any **Insured** is legally responsible; provided, that this EXCLUSION (A)(18) shall not apply to any **Claim** for an actual or alleged act, error or omission in connection with the performance of, or failure to perform, **Provider Selection** otherwise covered by this Coverage Section;
- (19) for any actual or alleged sexual abuse, sexual assault or sexual battery;
- (20) for any employment-related **Wrongful Act**;
- (21) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged discrimination against, or harassment (whether sexual or non-sexual in nature) of, any person or entity that is not an **Insured**; provided, that this EXCLUSION (A)(21) shall not apply to any **Claim** brought or maintained by any provider of **Medical Services** relating to any **Provider Selection**; or
- (22) with respect to Insuring Agreement (C) of this Coverage Section only, for any actual or alleged infringement, misappropriation or violation of any patent, trade

secret or any other intellectual property right; provided, that this EXCLUSION (A)(22) shall not apply to any **Claim** for a **Publisher Liability Wrongful Act**.

- (B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss**, other than **Defense Expenses**, from any **Regulatory Claim**.

IV. SEVERABILITY OF EXCLUSIONS

- (A) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of EXCLUSION (A)(11) of this Coverage Section.
- (B) Only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer of the **Organization** (or equivalent positions thereof) shall be imputed to such **Organization** to determine the application of EXCLUSION (A)(11) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY, RETENTIONS AND COINSURANCE

- (A) Antitrust Claim Sublimit:

The Underwriter's maximum limit of liability for all **Loss** resulting from all **Antitrust Claims** shall be the amount stated in ITEM 4 of the Declarations as the Antitrust Claim Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (B) Regulatory Claim Defense Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses** resulting from all **Regulatory Claims** shall be the amount stated in ITEM 4 of the Declarations as the Regulatory Claim Defense Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (C) HIPAA Claim Sublimit:

The Underwriter's maximum limit of liability for all **Loss**, other than **Defense Expenses**, resulting from all **Claims** for violations of Title II of the Health Insurance Portability and Accountability Act of 1996, as amended, shall be the amount stated in ITEM 4 of the Declarations as the HIPAA Claim Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (D) Excess Benefit Transaction Excise Tax Sublimit:

The Underwriter's maximum limit of liability for all **Excess Benefit Transaction Excise Taxes** resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the Excess Benefit Transaction Excise Tax Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any

Separate Limit of Liability or **Shared Limit of Liability** applicable to this Coverage Section.

(E) Internal Revenue Code Violation Sublimit:

The Underwriter's maximum limit of liability for all civil fines and penalties resulting from all **Claims** for **Internal Revenue Code Violations** shall be the amount stated in ITEM 4 of the Declarations as the Internal Revenue Code Violation Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(F) EMTALA Claim Sublimit:

The Underwriter's maximum limit of liability for all civil fines and penalties resulting from all **Claims** for violations of EMTALA shall be the amount stated in ITEM 4 of the Declarations as the EMTALA Claim Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(G) Stakeholder Derivative Demand Sublimit:

The Underwriter's maximum limit of liability for all **Investigative Costs** resulting from all **Stakeholder Derivative Demands** shall be the amount stated in ITEM 4 of the Declarations as the Stakeholder Derivative Demand Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(H) D&O Crisis Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Crisis Management Expenses** resulting from all **Crisis Management Events** shall be the amount stated in ITEM 4 of the Declarations as the D&O Crisis Management Expenses Limit, which amount shall be in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(I) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid. If the Underwriter and the **Insured** agree to use voluntary mediation as a

dispute resolution approach with respect to a **Claim** and the Underwriter and the **Insured** consent to a full and final settlement of such **Claim** during such voluntary mediation (as evidenced by a full and final settlement agreement with respect to such **Claim**), the **Insured's** obligation to pay the applicable Retention stated in ITEM 5 of the Declarations for such **Claim** will be reduced by ten percent (10%), subject to a maximum reduction of \$25,000 of the Retention for such **Claim**.

(2) If the **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify any **Insured Person** for **Loss**, or to advance **Defense Expenses** on behalf of any **Insured Person**, to the fullest extent permitted by statutory or common law, then, notwithstanding any other terms, conditions or limitations of this Coverage Section to the contrary, any payment by the Underwriter of such **Defense Expenses** or other **Loss** shall be subject to the applicable Insuring Agreement (B) Retention stated in ITEM 5 of the Declarations.

(3) No Retention shall apply under Insuring Agreement (D) of this Coverage Section.

(J) Coinsurance:

To the extent that **Loss** resulting from any **Claim** covered under this Coverage Section is subject to a Coinsurance Percentage as stated in ITEM 6 of the Declarations and is in excess of the applicable Retention, the **Insureds** shall bear uninsured and at their own risk that percentage of such **Loss** specified as the applicable Coinsurance Percentage in ITEM 6 of the Declarations, and the Underwriter's liability shall apply only to the remaining percentage of such **Loss**.

VI. CLAIM SETTLEMENT

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. 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.

VII. REPORTING OF CLAIMS AND CIRCUMSTANCES

(A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:

(1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or

(2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full

particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:
- (1) 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
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) 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 **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) As a condition precedent to any right to reimbursement under Insuring Agreement (E) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **Crisis Management Event** no later than thirty (30) days after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Crisis Management Event**. Within sixty (60) days of making any payment of **Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Crisis Management Event Expenses** for which the **Organization** seeks reimbursement under Insuring Agreement (E) of this Coverage Section, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VIII. OTHER INSURANCE

This Coverage Section is specifically excess of and will not contribute with:

- (A) any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy; or
- (B) any indemnification to which any **Insured Person** is entitled from any entity other than the **Organization**.

This Coverage Section will not be subject to the terms of any other insurance.

IX. PAYMENT OF LOSS

In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section, the Underwriter shall:

- (A) first pay such **Loss** for which coverage is provided under Insuring Agreement (A) of this Coverage Section; then
- (B) to the extent of any remaining amount of such **Separate Limit of Liability** or **Shared Limit of Liability** after payment under paragraph (A) above, pay such **Loss** for which coverage is provided under any other Insuring Agreement of this Coverage Section.

Except as otherwise provided in this Section IX, the Underwriter may pay covered **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

X. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) 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 Coverage Section 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 the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
 - (1) no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

Notwithstanding the foregoing, the Underwriter shall not be entitled under any circumstances to void, whether by rescission or otherwise, Insuring Agreement (A) of this Coverage Section.

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

**Employment Practices Liability Coverage
Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Employment Practices Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Employment Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Wrongful Act**; provided, that such **Employment Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(B) Third Party Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Third Party Wrongful Act**; provided, that such **Third Party Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(C) Employment Crisis Management Reimbursement Coverage:

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Employment Crisis Management Expenses Limit stated in ITEM 4 of the Declarations, for **Employment Crisis Management Expenses** actually paid by the **Organization** in connection with an **Employment Crisis Management Event** that first occurs during the **Policy Period**; provided, that such **Employment Crisis Management Event** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

II. DEFINITIONS

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

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

- (C) **"Claim"** means any **Employment Claim** and any **Third Party Claim**.
- (D) **"Employee"** means any employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee. **Employee** also includes:
- (1) any volunteer working for the **Organization**;
 - (2) any individual who is leased to, and working for, the **Organization**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization's** employees;
 - (3) any **Independent Contractor**, but only if the **Organization** provides indemnification to such **Independent Contractor**, pursuant to a written contract, in the same manner as that provided to the **Organization's** employees; and
 - (4) any intern working for, and under the supervision of, the **Organization**.
- (E) **"Employment Claim"** means:
- (1)(a) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation);
 - (b) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (i) the service of a complaint or similar pleading;
 - (ii) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) the filing of a formal notice of charges;
 - (c) an administrative or regulatory proceeding commenced by the receipt by an **Insured** of a notice of charges, formal investigative order, service of a complaint or similar document, including any such proceeding brought by or in association with the Equal Employment Opportunity Commission ("EEOC") or any similar governmental agency; or
 - (d) in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause commenced by the receipt by an **Insured** of such Notice or Order,

brought by or on behalf of any past, present or prospective **Employee** against an **Insured**, or by or on behalf of any past, present or prospective **Outside Entity Employee** against an **Executive** in his or her **Outside Capacity**, for an **Employment Practices Wrongful Act**; or
- (2)(a) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation);

- (b) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (i) the service of a complaint or similar pleading;
 - (ii) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) the filing of a formal notice of charges; or
- (c) an administrative or regulatory proceeding commenced by the receipt by an **Insured** of a notice of charges, formal investigative order, service of a complaint or similar document,

brought by or on behalf of a governmental agency or entity against an **Insured** for an **Illegal Hiring or Harboring Wrongful Act**;

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

- (F) **"Employment Crisis Management Event"** means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:
 - (1) a past, present or prospective **Employee** alleging **Employment Discrimination** by an **Insured**;
 - (2) a past or present **Employee** alleging **Breach of Employment Contract, Employment Harassment, Retaliation, Wrongful Employment Decision, Wrongful Termination** or a **Workplace Tort** by an **Insured**; or
 - (3) a **Third Party** alleging a **Third Party Wrongful Act** by an **Insured**.

For the purposes of this definition, "alleging" means lodging a written complaint or written charge with a manager within the **Organization** or the **Organization's** legal or human resources department.

- (G) **"Employment Crisis Management Expenses"** means reasonable costs, charges, fees and expenses incurred by the **Organization** for **Employment Crisis Management Services**. **Employment Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (H) **"Employment Crisis Management Firm"** means any public relations, crisis management firm or law firm hired by the **Organization** or its **Executives** with the consent of the Underwriter to perform **Employment Crisis Management Services**.
- (I) **"Employment Crisis Management Services"** means those services performed by an **Employment Crisis Management Firm** in advising the **Organization** or any of its **Executives** on minimizing potential public harm to the **Organization** resulting from an **Employment Crisis Management Event**.
- (J) **"Employment Discrimination"** means any violation of employment discrimination laws, including any failure or refusal to hire or promote an **Employee**, **Outside Entity**

Employee or applicant for employment, any modification of any term or condition of employment, or any limitation, segregation or classification of any **Employee, Outside Entity Employee** or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an **Employee** or **Outside Entity Employee** because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, gender identity, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law.

- (K) **"Employment Harassment"** means:
- (1) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, is used as a basis for employment decisions by, interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**; or
 - (2) workplace harassment (i.e., harassment of a non-sexual nature) that interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**.
- (L) **"Employment Practices Wrongful Act"** means any actual or alleged:
- (1) **Breach of Employment Contract**;
 - (2) **Employment Discrimination**;
 - (3) **Employment Harassment**;
 - (4) **Retaliation**;
 - (5) **Workplace Tort**;
 - (6) **Wrongful Employment Decision**; or
 - (7) **Wrongful Termination**.
- (M) **"Executive"** means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (N) **"Illegal Hiring or Harboring Wrongful Act"** means any actual or alleged:
- (1) hiring of any illegal alien as an **Employee**; or
 - (2) harboring of any illegal alien who is an **Employee**,

in violation of any state or federal law of the United States of America by the **Organization** or any **Insured Person** acting within the scope of his or her duties for the **Organization**.

For the purposes of this definition, the term "**Employee**" shall not include any volunteer or leased employee working for the **Organization** or any **Independent Contractor**.

- (O) "**Independent Contractor**" means any natural person working for the **Organization** in the capacity of an independent contractor pursuant to an **Independent Contractor Services Agreement**.
- (P) "**Independent Contractor Services Agreement**" means any express contract or agreement between an **Independent Contractor** and the **Organization**.
- (Q) "**Insured**" means the **Organization** and any **Insured Person**.
- (R) "**Insured Person**" means any natural person who was, now is or becomes:
 - (1) an **Executive**;
 - (2) an **Employee**; or
 - (3) a staff physician or faculty member of the **Organization**, or a member of, or provider of administrative support to, any duly constituted review board or committee of the **Organization**, regardless of whether or not such person is directly employed by the **Organization** or is considered to be an independent contractor.
- (S) "**Loss**" means **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to, damages (including punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, or the multiple portion of any multiplied damage award, to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages), back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to in writing by the Underwriter in connection with a settlement, judgments, settlements, pre-judgment interest and post-judgment interest.

Loss does not include:

- (1) the future salary, wages, commissions or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;
- (2) taxes, fines, or penalties, except as provided above with respect to punitive, exemplary or liquidated damages or the multiple portion of any multiplied damage award;

- (3) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive, exemplary or liquidated damages or the multiple portion of any multiplied damage award; or
- (4) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period.
- (T) "**Outside Capacity**" means service by an **Executive** in the position of director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the specific request or direction of the **Organization**.
- (U) "**Outside Entity**" means: (1) any not-for-profit entity that is not included in the definition of **Organization**; and (2) any for-profit entity specifically added as an **Outside Entity** by written endorsement to this Coverage Section.
- (V) "**Outside Entity Employee**" means any employee of the **Outside Entity**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee.
- (W) "**Pollutant**" means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (X) "**Provider Selection**" means the evaluation, selection, credentialing, contracting with or performing peer review of any provider of **Medical Services**.
- (Y) "**Retaliation**" means retaliatory treatment against any **Employee** or **Outside Entity Employee** on account of such individual:
 - (1) exercising his or her rights under law;
 - (2) refusing to violate any law;
 - (3) opposing any unlawful practice;
 - (4) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
 - (5) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by any **Insured**.
- (Z) "**Third Party**" means any natural person who is not an **Insured Person** or an applicant for employment with the **Organization** or an **Outside Entity**, including but not limited to customers, patients, vendors and suppliers.
- (AA) "**Third Party Claim**" means:
 - (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation); or

- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
- (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a formal notice of charges, formal investigative order or similar document,

brought by or on behalf of any **Third Party** against an **Insured** for a **Third Party Wrongful Act**.

(BB) "**Third Party Services Agreement**" means any express contract between a **Third Party** and the **Organization**.

(CC) "**Third Party Wrongful Act**" means:

- (1) discrimination against a **Third Party** based on such **Third Party's** race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law;
- (2) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, against a **Third Party**; or
- (3) unlawful harassment of a non-sexual nature against a **Third Party**.

(DD) "**Workplace Tort**" means:

- (1) any employment-related: defamation, libel, slander, humiliation, invasion of privacy, negligent evaluation, wrongful discipline or workplace bullying; or
- (2) any of the following:
 - (a) employment-related negligent retention;
 - (b) employment-related negligent supervision;
 - (c) employment-related negligent hiring;
 - (d) employment-related negligent training;
 - (e) employment-related negligent or intentional misrepresentation;
 - (f) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or

- (g) failure to provide or consistently enforce employment-related corporate policies and procedures;

but only when alleged as part of an **Employment Claim** for any actual or alleged **Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination, Wrongful Employment Decision** or act set forth in paragraph (1) above.

(EE) **"Wrongful Act"** means:

- (1) with respect to any past, present or prospective **Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such;
- (2) with respect to any past, present or prospective **Outside Entity Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by any **Executive** in his or her **Outside Capacity**;
- (3) with respect to any **Third Party**, a **Third Party Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such;
- (4) an **Illegal Hiring or Harboring Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such; or
- (5) a **Wrongful Internet Act**.

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

(GG) **"Wrongful Internet Act"** means an **Employment Practices Wrongful Act**: (1) alleged by an **Employee**; and (2) committed by an **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises.

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

III. EXCLUSIONS

(A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:

- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any employment practices liability or other similar management liability policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;

- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding, including any audit by the Office of Federal Contract Compliance Programs, against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (3) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974 (ERISA) (except section 510 thereof), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Worker Adjustment and Retraining Notification Act (WARN), the Occupational Safety and Health Act (OHSA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(3) shall not apply to any **Employment Claim** for **Retaliation**;
- (4) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any federal, state or local wage and hour law, including, without limitation, the Fair Labor Standards Act (FLSA) (except the Equal Pay Act); provided, that this EXCLUSION (A)(4) shall not apply to any **Employment Claim** for **Retaliation**;
- (5) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the National Labor Relations Act (NLRA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(5) shall not apply to any **Employment Claim** for **Retaliation** if such **Employment Claim** is brought and maintained by or on behalf of one to four natural persons, whether such natural persons are represented by one or more legal counsel, who are not seeking relief on behalf of a class or group of complainants in order to resolve such **Employment Claim**;
- (6) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations;
- (7) for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (8) 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 **Insured** pursuant to any workers' compensation, unemployment insurance, Social Security or disability benefits law, or any similar provisions of any federal, state, or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(8) shall not apply to any **Employment Claim** for **Retaliation**;

- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(9) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (10) made against a **Subsidiary** or listed **Affiliate** or any **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary** or **Affiliate**;
- (11) for any actual or alleged breach of any **Independent Contractor Services Agreement** or **Third Party Services Agreement**;
- (12) for any actual or alleged sexual abuse, sexual assault or sexual battery;
- (13) 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, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(13) shall not apply to any **Employment Claim** for **Retaliation**; or
- (14) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Provider Selection**.
- (B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, that part of **Loss**, other than **Defense Expenses**:
- (1) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided, that this EXCLUSION (B)(1) shall not apply to any **Employment Claim** for **Wrongful Termination**;
- (2) which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state or local statute, ordinance, regulation or common law, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or any amendments thereto or regulations promulgated under any such law; or
- (3) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
- (C) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss**, other than **Defense Expenses**, from any **Claim** for any actual or alleged breach of any written employment contract; provided, that this EXCLUSION (C) shall not apply to the extent that an **Insured** would have been liable in the absence of such written employment contract.

IV. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

- (A) Illegal Hiring or Harboring Sublimit:

The Underwriter's maximum limit of liability for all **Loss** resulting from all **Employment Claims** for **Illegal Hiring or Harboring Wrongful Acts** shall be the amount stated in ITEM 4 of the Declarations as the Illegal Hiring or Harboring Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to the Coverage Section identified above.

(B) Employment Crisis Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Employment Crisis Management Expenses** resulting from all **Employment Crisis Management Events** shall be the amount stated in ITEM 4 of the Declarations as the Employment Crisis Management Expenses Limit, which amount shall be in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Retentions:

The following provision shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid. If the Underwriter and the **Insured** agree to use voluntary mediation as a dispute resolution approach with respect to a **Claim** and the Underwriter and the **Insured** consent to a full and final settlement of such **Claim** during such voluntary mediation (as evidenced by a full and final settlement agreement with respect to such **Claim**), the **Insured's** obligation to pay the applicable Retention stated in ITEM 5 of the Declarations for such **Claim** will be reduced by ten percent (10%), subject to a maximum reduction of \$25,000 of the Retention for such **Claim**.

V. **CLAIM SETTLEMENT**

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. 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 applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- (A) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus

- (B) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

VI. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:
- (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:
- (1) 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
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) 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 **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) As a condition precedent to any right to reimbursement under Insuring Agreement (C) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **Employment Crisis Management Event** no later than thirty (30) days after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Employment Crisis Management Event**. Within sixty (60)

days of making any payment of **Employment Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Employment Crisis Management Event Expenses** for which the **Organization** seeks reimbursement under Insuring Agreement (C) of this Coverage Section, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.

- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VII. OTHER INSURANCE

The coverage afforded under this Coverage Section shall be primary; provided, that with respect to that portion of any **Claim** made against any temporary or leased **Employee, Independent Contractor, or Executive** in his or her **Outside Capacity, Loss** payable on behalf of such temporary or leased **Employee, Independent Contractor or Executive** shall be specifically excess of, and will not contribute with: (A) any other valid and collectible insurance available to such temporary or leased **Employee, Independent Contractor or Executive**, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically in excess of this Coverage Section; or (B) any indemnification available to such **Executive** from the **Outside Entity**.

VIII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) 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 Coverage Section 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 the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and

- (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

SAMPLE

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

Fiduciary Liability Coverage Section



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Fiduciary Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Wrongful Act** committed or allegedly committed by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible; provided, that such **Fiduciary Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(B) Voluntary Settlement Program Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defense Expenses** with respect to a **Settlement Program Notice** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period; provided, that such **Settlement Fees** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the Underwriter.

(C) Pension Crisis Management Reimbursement Coverage:

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Pension Crisis Management Expenses Limit stated in ITEM 4 of the Declarations, for **Pension Crisis Management Expenses** actually paid by the **Organization** in connection with a **Pension Crisis Management Event** that first occurs during the **Policy Period**; provided, that such **Pension Crisis Management Event** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

II. DEFINITIONS

(A) "Administration" means:

- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
- (2) providing interpretations with respect to any **Plan**; or

- (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under any **Plan**.
- (B) **"Claim"** means for the purposes of coverage under:
- (1) Insuring Agreement (A) of this Coverage Section: any **Fiduciary Claim**; or
 - (2) Insuring Agreement (B) of this Coverage Section: any **Settlement Program Notice**.
- (C) **"Employee"** means any employee of the **Organization** or any **Plan**, including any part-time, seasonal and temporary employee, and any volunteer working for the **Organization** or any **Plan**. **Employee** does not include any independent contractor.
- (D) **"ERISA"** means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar statute or common law, and any regulations promulgated under any such Acts or law.
- (E) **"Executive"** means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member or in-house general counsel of any **Plan** or any **Organization** chartered in the United States of America; or
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (F) **"Fiduciary Claim"** means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation);
 - (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) service of a complaint or similar pleading;
 - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) filing of a notice of charges or similar document;
 - (3) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
 - (4) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Pensions Regulatory Authority,

against an **Insured** for a **Wrongful Act**.

- (G) **"HIPAA Penalties"** means any civil fines and penalties levied against an **Insured** for violation of Title II of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- (H) **"Insured"** means the **Organization**, any **Plan** and any **Insured Person**.
- (I) **"Insured Person"** means any natural person who was, now is or becomes:
- (1) an **Executive** or **Employee**, but only in his or her capacity as a fiduciary, administrator or trustee of any **Plan**; or
 - (2) a fiduciary, administrator or trustee of a multi-employer plan, if such person in such capacity is specifically added as an **Insured Person** by written endorsement to this Coverage Section.
- (J) **"Loss"** means **Defense Expenses** any monetary amount that an **Insured** is legally obligated to pay as a result of a covered **Fiduciary Claim**, including but not limited to damages (including punitive or exemplary damages or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Fiduciary Claim** giving rise to such damages and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment, post-judgment interest and, solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**.

Loss does not include:

- (1) any costs incurred by an **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (2) civil or criminal fines or penalties; provided, that **Loss** shall include:
 - (a) punitive or exemplary damages or the multiple portion of any multiplied damage award as provided above;
 - (b) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
 - (c) civil penalties imposed upon an **Insured** by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or any regulations promulgated thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section;

- (d) solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**;
 - (e) **HIPAA Penalties**;
 - (f) civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of the Employee Retirement Income Security Act of 1974, as amended ("Section 502(c) Penalties"). Section 502(c) Penalties shall not include any civil penalties imposed under the Pension Protection Act of 2006;
 - (g) civil penalties imposed upon an **Insured** for violation of Section 507 of Title V of the Pension Protection Act of 2006 ("Section 507 Penalties"); and
 - (h) civil penalties imposed upon an **Insured** for an inadvertent violation of the Patient Protection and Affordable Care Act, as amended, and any rules or regulations promulgated thereunder ("PPACA Penalties");
- (3) taxes or tax penalties; provided, that, solely with respect to covered judgments, **Loss** shall include the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986 ("Section 4975 Tax Penalties"); or
 - (4) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award.
- (K) **"Pension Crisis Management Event"** means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:
- (1) a loss in the total assets of a **Plan** of twenty-five percent (25%) or more in a thirty (30) day period caused by investment loss, or a loss in a specific **Plan** investment of seventy-five percent (75%) or more in a thirty (30) day period; or
 - (2) the public announcement of (a) a **Plan's** third party service provider's fraud, arrest, indictment, bankruptcy or layoff of employees, or (b) a governmental or regulatory agency's investigation into, or litigation against, a **Plan's** third party service provider.
- (L) **"Pension Crisis Management Expenses"** means reasonable costs, charges, fees and expenses incurred by the **Organization** for **Pension Crisis Management Services**. **Pension Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (M) **"Pension Crisis Management Firm"** means any public relations, crisis management firm or law firm hired by the **Organization** or its **Executives** with the consent of the Underwriter to perform **Pension Crisis Management Services**.
- (N) **"Pension Crisis Management Services"** means those services performed by a **Pension Crisis Management Firm** in advising the **Organization** or any of its

Executives on minimizing potential public harm to the **Organization** resulting from a **Pension Crisis Management Event**.

- (O) **"Plan"** means:
- (1) any **Sponsored Plan**; and
 - (2) any government-mandated insurance program for workers' compensation, unemployment, Social Security or disability benefits for **Employees**.
- (P) **"Pollutant"** means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (Q) **"Settlement Fees"** means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. **Settlement Fees** does not include: (1) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (2) any fees, fines, penalties or sanctions relating to a **Plan**, which, as of the earlier of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or the inception of the first policy in an uninterrupted series of policies issued by the Underwriter of which this Coverage Section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.
- (R) **"Settlement Program"** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.
- (S) **"Settlement Program Notice"** means prior written notice to the Underwriter by an **Insured** of the **Insured's** intent to enter into a **Settlement Program**.
- (T) **"Sponsored Plan"** means:
- (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** and which existed on or before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or which is created or acquired after such Inception Date; provided (a) any coverage with respect to any such **Plan** created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed or allegedly committed after the effective date of such creation or acquisition and shall be subject to Section XI of

the General Terms and Conditions Section, and (b) any coverage with respect to an employee stock ownership plan created or acquired during the **Policy Period** shall be further subject to Section XI of this Coverage Section;

- (2) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of its **Employees** or **Executives**, including any fringe benefit, deferred compensation, supplemental executive retirement plan, top-hat plan or excess benefit plan;
- (3) any other plan or program otherwise described in paragraphs (1) or (2) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; and
- (4) any other plan, fund or program specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

Sponsored Plan does not include: any employee stock ownership plan created or acquired by the **Organization** during the **Policy Period**, except as otherwise provided in Section XI of this Coverage Section; or any multi-employer plan created before or during the **Policy Period** unless specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

(U) "**Wrongful Act**" means with respect to any **Plan**:

- (1) any breach of the responsibilities, duties or obligations imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed or allegedly committed by an **Insured** in the **Insured's** capacity as such;
- (2) any negligent act, error or omission in the **Administration** of any **Plan** committed or allegedly committed by an **Insured** in the **Insured's** capacity as such;
- (3) any act, error or omission by an **Insured** in his/her/its settlor capacity with respect to the creation, termination or amendment of a **Plan**; or
- (4) any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable

Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;

- (3) 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, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(3) shall not apply to:
- (i) any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the diminution in value of any securities owned by the **Sponsored Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this EXCLUSION (A)(3); or
 - (ii) **Loss** (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**) incurred by an **Insured Person** for which the **Organization** is not permitted by statutory or common law to indemnify or for which the **Organization** is not able to indemnify by reason of **Financial Impairment**;
- (4) for any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided, that this EXCLUSION (A)(4) shall not apply to **Defense Expenses** incurred in connection with an otherwise-covered **Claim** for breach of any fiduciary duties imposed by **ERISA** with respect to any **Plan**;
- (5) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(5) shall not apply to the extent that:
- (a) an **Insured** would have been liable in the absence of the contract or agreement; or
 - (b) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- (6) for the failure of any **Insured** to comply with any workers' compensation, unemployment insurance, Social Security or disability benefits law or any amendments thereto or any regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law, except (a) the Consolidated Omnibus Budget Reconciliation Act of 1985, (b) the Health Insurance Portability and Accountability Act of 1996, or (c) any amendments to or any regulations promulgated under such Acts;

(7) made against a **Subsidiary** or listed **Affiliate** or any **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary** or **Affiliate**;

(8) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or

(b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(8) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final and non-appealable adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy; or

(9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment-related act, error, omission, misstatement, misleading statement, breach of duty, policy or practice by or on behalf of any **Insured**; provided, that this EXCLUSION (A)(9) shall not apply to any **Fiduciary Claim** for any actual or alleged discrimination in violation of **ERISA**.

(B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, that part of **Loss**, other than **Defense Expenses**:

(1) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;

(2) which constitutes (a) benefits due or to become due under any **Plan**, or (b) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:

(i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and

(ii) recovery for the benefits is based upon a covered **Wrongful Act**; or

(3) which is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the failure to collect an employer's contributions owed to any **Plan** unless the failure is because of the negligence of any **Insured**.

IV. SEVERABILITY OF EXCLUSIONS

- (A) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of EXCLUSION (A)(8) of this Coverage Section.
- (B) Only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer of the **Organization** (or equivalent positions thereof) shall be imputed to such **Organization** to determine the application of EXCLUSION (A)(8) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

- (A) HIPAA Penalties Sublimit:

The Underwriter's maximum limit of liability for all **HIPAA Penalties** resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the HIPAA Penalties Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (B) Section 502(c) Penalties Sublimit:

The Underwriter's maximum limit of liability for all Section 502(c) Penalties resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the Section 502(c) Penalties Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (C) Section 507 Penalties Sublimit:

The Underwriter's maximum limit of liability for all Section 507 Penalties resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the Section 507 Penalties Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (D) PPACA Penalties Sublimit:

The Underwriter's maximum limit of liability for all PPACA Penalties resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the PPACA Penalties Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (E) Section 4975 Tax Penalties Sublimit:

The Underwriter's maximum limit of liability for all Section 4975 Tax Penalties resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the Section 4975 Tax Penalties Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(F) Voluntary Settlement Program Coverage Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses** and all **Settlement Fees** resulting from all **Settlement Program Notices** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period and covered under Insuring Agreement (B) of this Coverage Section shall be the amount stated in ITEM 4 of the Declarations as the Voluntary Settlement Program Coverage Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(G) Pension Crisis Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Pension Crisis Management Expenses** resulting from all **Pension Crisis Management Events** shall be the amount stated in ITEM 4 of the Declarations as the Pension Crisis Management Expenses Limit, which amount shall be in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(H) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid. If the Underwriter and the **Insured** agree to use voluntary mediation as a dispute resolution approach with respect to a **Claim** and the Underwriter and the **Insured** consent to a full and final settlement of such **Claim** during such voluntary mediation (as evidenced by a full and final settlement agreement with respect to such **Claim**), the **Insured's** obligation to pay the applicable Retention stated in ITEM 5 of the Declarations for such **Claim** will be reduced by ten percent (10%), subject to a maximum reduction of \$25,000 of the Retention for such **Claim**.
- (2) No Retention shall apply to any **Loss** resulting from any **Fiduciary Claim** incurred by an **Insured Person** if such **Loss** cannot be indemnified by the **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify, such **Insured Person** by reason of **Financial Impairment**.
- (3) No Retention shall apply under Insuring Agreement (B) of this Coverage Section.

VI. CLAIM SETTLEMENT

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. 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

VII. REPORTING OF CLAIMS AND CIRCUMSTANCES

(A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:

- (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
- (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

(B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:

- (1) 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
- (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) 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 **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

(C) As a condition precedent to any right to reimbursement under Insuring Agreement (C) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **Pension Crisis Management Event** no later than thirty (30) days after the

Organization's risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Pension Crisis Management Event**. Within sixty (60) days of making any payment of **Pension Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Pension Crisis Management Event Expenses** for which the **Organization** seeks reimbursement under Insuring Agreement (C) of this Coverage Section, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.

- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VIII. OTHER INSURANCE

This Coverage Section is specifically excess of, and will not contribute with, any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy. This Coverage Section will not be subject to the terms of any other insurance.

IX. PAYMENT OF LOSS

In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section, the Underwriter shall:

- (A) first pay such **Loss** for which coverage is provided to **Insured Persons** for which an **Organization** has neither indemnified nor is permitted or required to indemnify pursuant to law, contract or charter or by-laws of the **Organization**; then
- (B) to the extent of any remaining amount of such **Separate Limit of Liability** or **Shared Limit of Liability** after payment under paragraph (A) above, pay such **Loss** for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, contract or charter or by-laws of the **Organization**; then
- (C) to the extent of any remaining amount of such **Separate Limit of Liability** or **Shared Limit of Liability** after payment under paragraphs (A) and (B) above, pay such **Loss** for which coverage is provided to the **Organization** or **Plan**.

Except as otherwise provided in this Section IX, the Underwriter may pay covered **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

X. TERMINATION OF A PLAN

If the **Organization** terminates a **Plan** before or after the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, coverage under this Coverage Section with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this Coverage Section for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this

Coverage Section had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed or allegedly committed prior to or after the date the **Plan** was terminated.

XI. CREATION OR ACQUISITION OF AN ESOP

Notwithstanding anything in this Coverage Section to the contrary, if during the **Policy Period** the **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Underwriter written notice thereof together with such other information requested by the Underwriter. The Underwriter shall, at the request of the **Organization**, provide to the **Organization** a quotation for coverage for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP, subject to such terms, conditions and limitations of coverage and such additional premium as the Underwriter in its sole discretion may require. Unless the **Insureds** accept such quotation and pay such additional premium within thirty (30) days after receipt of the quotation, no coverage will be available under this Coverage Section for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP.

XII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) 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 Coverage Section 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 the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization** and its **Plans**.

**HEALTHCARE ORGANIZATION MANAGEMENT
LIABILITY POLICY**

**Information Risk and Recovery Coverage
Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Liability Coverages:

(1) Information Risk Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for an **Information Risk Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 7 of the Declarations; provided, that such **Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(2) Communication Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for a **Communication Incident Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 7 of the Declarations; provided, that such **Claim** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(3) Privacy Administrative Proceeding, Fines and Consumer Redress Liability Coverage:

The Underwriter shall pay, on behalf of the **Insureds**, **Defense Expenses**, **Privacy Administrative Fines** and **Consumer Redress Fund Costs** from any **Privacy Administrative Proceeding** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period for a **Privacy Violation Wrongful Act** committed or allegedly committed on or after the Retroactive Date stated in ITEM 7 of the Declarations; provided, that such **Privacy Administrative Proceeding** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(B) First-Party Coverages:

(1) Breach Consultation Services Coverage:

The Underwriter will provide the **Insured** with **Breach Consultation Services** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(2) **Incident Management Expense Coverage:**

The Underwriter will pay **Incident Management Expenses** incurred by or on behalf of the **Insured** because of an **Information Risk Incident** or **Extortion** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** or **Extortion** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(3) **Information Restoration Expense Coverage:**

The Underwriter will pay **Information Restoration Expenses** to the **Insured** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(4) **Hardware Replacement Expense Coverage:**

The Underwriter will pay **Hardware Replacement Expenses** to the **Insured** for seizure or destruction of hardware by a civil authority of the federal or state government because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(5) **Extortion Payments and Rewards Coverage:**

The Underwriter will pay **Extortion Payments and Rewards** incurred by or on behalf of the **Insured** because of an **Extortion** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Extortion** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

(6) **Forensic Expense Coverage:**

The Underwriter will pay **Forensic Expenses** incurred by or on behalf of the **Insured** because of an **Information Risk Incident** that is first discovered by a member of the **Control Group** during the **Policy Period**; provided, that such **Information Risk Incident** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

II. DEFINITIONS

- (A) **"Bodily Injury"** means any bodily or physical injury, sickness or disease sustained by any person, including but not limited to death resulting from any of these at any time. **Bodily Injury** shall include pain and suffering, shock, and mental or emotional distress, anguish or injury.
- (B) **"Breach Consultation Services"** means reasonable fees and costs for the following consulting services provided by a **Designated Vendor**, with the Underwriter's written consent, for assistance in:
- (1) determining the severity of an **Information Risk Incident**;
 - (2) preparing an initial press release or similar public relations response in connection with a media or other inquiry, when requested in writing by the **Insured**;
 - (3) preparing any notification required by a **Privacy Regulation** to any applicable:

- (a) state department of consumer affairs;
 - (b) state attorneys general; or
 - (c) federal or state governmental authority or entity; or
- (4) developing a customized incident response plan.
- (C) **"Claim"** means:
 - (1) for the purposes of coverage under Insuring Agreements (A)(1) and (A)(2) of this Coverage Section:
 - (a) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
 - (b) a civil or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by the service of a complaint or similar pleading;
 - (2) for the purposes of coverage under Insuring Agreement (A)(3) of this Coverage Section: any **Privacy Administrative Proceeding**.
- (D) **"Communication Incident Wrongful Act"** means an actual or alleged act, error or omission by an **Insured** in the public display of:
 - (1) **Media Content** on an **Organization's** website or printed material; or
 - (2) **Media Content** posted by or on behalf of the **Organization** on any social media site or anywhere on the Internet,which directly results in:
 - (a) libel, slander, defamation or product disparagement;
 - (b) false arrest, detention or imprisonment;
 - (c) invasion of, or interference with, the right of privacy;
 - (d) plagiarism, piracy or misappropriation of name or idea;
 - (e) trespass or wrongful entry or eviction; or
 - (f) infringement or dilution of any copyright, trademark, trade name, service mark, service name, trade dress, title, slogan or logo.
- (E) **"Consumer Redress Fund Costs"** means amounts, other than **Privacy Administrative Fines**, forfeitures, sanctions, taxes or fees, that the **Insured** is legally obligated to pay into a fund as equitable relief for consumers as a result of a **Privacy Administrative Proceeding**.
- (F) **"Control Group"** means the **Organization's** chief executive officer, chief financial officer, chief security officer, chief technology officer, chief information officer, risk manager or general counsel (or equivalent positions thereof).

- (G) **"Corporate Information"** means confidential and proprietary information of others in the **Organization's** or **Service Provider's** care, custody or control.
- (H) **"Credit Monitoring Services"** means services for monitoring credit, including related remediation services or identity restoration services, provided by a **Designated Vendor** to any individual who is, or is reasonably believed to be, a victim of an **Information Loss**. **Credit Monitoring Services** does not include any services for:
- (1) any individual who does not have a Social Security Number; or
 - (2) any individual notified under any foreign law, statute, ordinance or regulation.
- (I) **"Data Breach Expenses"** means reasonable fees and costs for:
- (1) public relations efforts within the first six (6) months following an **Extortion** or discovery of an **Information Risk Incident** that are provided by a **Designated Vendor** for the purpose of restoring the **Insured's** reputation to the extent it has been harmed by such **Extortion** or **Information Risk Incident**; and
 - (2) legal counsel regarding how to respond to the **Information Risk Incident**, other than remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

Data Breach Expenses does not include **Forensic Expenses**.

- (J) **"Defense Expenses"** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any: (1) remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**; or (2) **First-Party Loss**.
- (K) **"Denial of Service Attack"** means any unauthorized attack on the **Organization's** operating system or the **Organization's** website that successfully corrupts, damages, destroys, deletes, or impairs the **Organization's Network**.
- (L) **"Designated Vendor"** means a vendor selected and approved in writing by the Underwriter to provide services to the **Insured**.
- (M) **"Employee"** means:
- (1) any employee of the **Organization**, including any full-time and part-time employee and intern; and
 - (2) any leased and temporary worker provided by an employment contractor or agency under an agreement with the **Organization** to perform work related to the **Organization's** business;
- but only for acts, errors or omissions within the scope and capacity of their employment by the **Organization**.
- (N) **"Executive"** means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or

- (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**;

but only for acts, errors or omissions within the scope and capacity as their duties as such for the **Organization**.

- (O) "**Extortion**" means the actual or attempted obtaining of money or other property from an **Organization** or **Service Provider** through an actual or threatened **Information Risk Incident**.

- (P) "**Extortion Payments and Rewards**" means payment:

- (1) to someone who commits **Extortion** if:

- (a) the **Insured** previously reported the **Extortion** to applicable law enforcement or regulatory agencies;
- (b) the **Insured** did not notify any person or entity of the existence of the coverage for **Extortion**; and
- (c) the person who commits the **Extortion** is not an **Insured**; or

- (2) as a reward, to someone who provides information that leads to the identification and arrest of one who commits **Extortion** if:

- (a) the reward is not paid to an **Insured** or anyone engaged by the **Insured** in connection with the **Extortion**; and
- (b) the amount of the reward does not exceed the demand by, or the amount paid to, the person who commits the **Extortion**.

- (Q) "**First-Party Incident**" means:

- (1) an **Information Risk Incident** for which the following are available under this Coverage Section:

- (a) **Breach Consultation Services**;
- (b) **Incident Management Expense**;
- (c) **Information Restoration Expense**;
- (d) **Hardware Replacement Expense**;
- (e) **Forensic Expense**; or

- (2) an **Extortion** for which **Extortion Payments and Rewards** are available under this Coverage Section.

- (R) "**First-Party Loss**" means the following losses, expenses or payments:

- (1) **Breach Consultation Services** for an **Information Risk Incident** under Insuring Agreement (B)(1) of this Coverage Section;

- (2) **Incident Management Expense** for an **Extortion** or an **Information Risk Incident** under Insuring Agreement (B)(2) of this Coverage Section;
 - (3) **Information Restoration Expense** for an **Information Risk Incident** under Insuring Agreement (B)(3) of this Coverage Section;
 - (4) **Hardware Replacement Expense** for seizure or destruction of hardware by a civil authority of the federal or state government for an **Information Risk Incident** under Insuring Agreement (B)(4) of this Coverage Section;
 - (5) **Extortion Payments and Rewards** for an **Extortion** under Insuring Agreement (B)(5) of this Coverage Section; and
 - (6) **Forensic Expense** for an **Information Risk Incident** under Insuring Agreement (B)(6) of this Coverage Section.
- (S) **"Forensic Expenses"** means reasonable expenses for forensic analysis of the nature, extent and severity of an **Information Risk Incident** and the number and identities of persons affected. **Forensic Expenses** does not include **Defense Expenses** or any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (T) **"Hardware Replacement Expenses"** means reasonable expenses to replace computer hardware with available property that most closely duplicates the function of the seized or destroyed computer hardware at the time of loss. **Hardware Replacement Expenses** does not include media or data of any type.
- (U) **"Impaired Property"** means tangible property, other than **Insured Product** or **Insured Services**, that cannot be used or is less useful because:
- (1) it incorporates **Insured Product** that is, or **Insured Services** that are, known or thought to be defective, deficient, inadequate or dangerous; or
 - (2) the **Insured** has failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of **Insured Product** or **Insured Services** or the **Insured** fulfilling the terms of the contract or agreement.
- (V) **"Incident Management Expenses"** means the following expenses incurred by the Underwriter to pay professionals it chooses and directs or, in the Underwriter's sole discretion, expenses it authorizes in advance:
- (1) **Data Breach Expenses**;
 - (2) **Information Risk Expenses**; and
 - (3) **Notification Expenses**.
- Incident Management Expenses** does not include **Defense Expenses** or any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (W) **"Information Loss"** means an unauthorized or accidental disclosure or loss of:
- (1) **Corporate Information**; or

(2) **Personally Identifiable Information,**

in the **Organization's** or a **Service Provider's** care, custody or control.

(X) **"Information Restoration Expenses"** means:

- (1) reasonable expenses to replace, restore, repair, reproduce, correct, research, complete, adjust, functionally replace, re-collect or re-create data; or
- (2) reasonable expenses incurred to determine that data cannot reasonably be replaced, restored, repaired, reproduced, corrected, researched, completed, adjusted, functionally replaced, re-collected or re-created.

Information Restoration Expenses does not include:

- (a) the expense of computer hardware, applications, programs or software;
- (b) the cost of updating, upgrading, enhancing, replacing or otherwise improving the **Organization's** data, computer system or any other system to a level beyond that which existed prior to the **Information Risk Incident**;
- (c) the cost of identifying, removing or remediating computer program errors or vulnerabilities;
- (d) any economic, monetary or market value or any diminution in value of any data, including any trade secret, patent, copyright, trademark, trade dress or other intellectual property;
- (e) the expense of researching or developing any intellectual property; or
- (f) the cost of funds, currency, securities, accounts, bills, evidences of debt, money, valuable papers, records, abstracts, deeds, manuscripts or other financial, debt, credit, bond or equity instruments or documents.

(Y) **"Information Risk Expenses"** means:

- (1) **Credit Monitoring Services** provided with the Underwriter's consent, but only for one (1) year after the discovery of an **Information Loss**; and
- (2) when a **Designated Vendor** reasonably recommends, reasonable expenses for the creation of a toll-free response line for persons notified of an **Information Loss**.

(Z) **"Information Risk Incident"** means:

- (1) an **Information Loss**; or
- (2) a **Network Security Incident**.

(AA) **"Information Risk Wrongful Act"** means an actual or alleged act, error or omission by an **Insured** that directly results in:

- (1) an **Information Loss**; or
- (2) a **Network Security Incident**.

- (BB) “**Insured**” means the **Organization** and any **Insured Person**.
- (CC) “**Insured Person**” means any natural person who was, now is or becomes:
- (1) an **Executive**; or
 - (2) an **Employee**.
- (DD) “**Insured Product**” means:
- (1) any goods or products, including technology products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) the **Organization**;
 - (b) others trading under the **Organization’s** name; or
 - (c) a person or organization whose business or assets the **Organization** has acquired; and
 - (2) containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Insured Product includes:

- (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Insured Product**; and
- (ii) the providing of or failure to provide warnings or instructions for the use of **Insured Product**.

(EE) “**Insured Services**” means:

- (1) services or activities performed by the **Organization** or on its behalf; and
- (2) materials, parts or equipment furnished in connection with such work or operations.

Insured Services includes:

- (a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Insured Services**; and
- (b) the providing of or failure to provide warnings or instructions for the use of **Insured Services**.

(FF) “**Loss**” means:

- (1) for purposes of coverage under Insuring Agreements (A)(1) and (A)(2) of this Coverage Section, **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to:
 - (a) monetary damages (including punitive or exemplary damages to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the

Insureds, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);

- (b) judgments;
 - (c) settlements; and
 - (d) pre- and post-judgment interest;
- (2) for purposes of coverage under Insuring Agreement (A)(3) of this Coverage Section, **Defense Expenses, Privacy Administrative Fines and Consumer Redress Fund Costs**;
- (3) for the purposes of coverage under Insuring Agreements (B)(2), (B)(3), (B)(4), (B)(5) and (B)(6), **First-Party Loss**.

Loss does not include:

- (i) **Breach Consultation Services**;
- (ii) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages;
- (iii) civil or criminal fines or penalties or the multiple portion of any multiplied damage award, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages and as provided in paragraph (2) above with respect to **Privacy Administrative Fines and Consumer Redress Fund Costs**;
- (iv) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority);
- (v) any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (vi) any amounts awarded as liquidated damages under a contract or agreement that exceeds the amount of **Loss** for which the **Insured** would have liability in the absence of such contract or agreement;
- (vii) any amounts owed to the **Organization** by a customer;
- (viii) any amounts paid to the **Organization** by a customer in exchange for **Insured Product** or **Insured Services**;
- (ix) license, fees or royalties of any kind;
- (x) loss, cost, or expense incurred by or on behalf of the **Insured** or others to provide, correct, perform, re-perform, reproduce or complete for **Insured Products, Insured Services or Media Content**;
- (xi) an **Insured's** economic loss, including loss of purchase or sale price, income, profits, share value, good will or damage to reputation; or
- (xii) payment, restitution, return or disgorgement of any fees, profits, commissions, charges, or any funds allegedly wrongfully or unjustly held or obtained.

- (GG) **"Media Content"** means any data, text, sounds, images, graphics, music, photographs or advertisements, and shall include video, streaming content, webcasts, podcasts, blogs, online forums and chat rooms. **Media Content** shall not include computer software, software technology, or the actual goods, products or services described, illustrated or displayed in such **Media Content**.
- (HH) **"Network Security Incident"** means:
- (1) the inability of authorized persons or organizations to access or use the **Organization's Network**, including a **Denial of Service Attack**;
 - (2) access or use of the **Organization's Network** by unauthorized persons, including access or use by persons in a manner that exceeds their authority; or
 - (3) transmission of a virus or malware by the **Insured** or a **Service Provider**.
- (II) **"Notification Expenses"** means reasonable and necessary costs or expenses of notification to those whose **Personally Identifiable Information** was affected by an **Information Loss**.
- (JJ) **"Organization's Network"** means any network of computers owned, leased or operated by the **Organization** in support of **Insured Product** or **Insured Services** or any network of computers owned, leased or operated by a **Service Provider**.
- (KK) **"Personally Identifiable Information"** means:
- (1) an individual's first name or first initial and last name in combination with one or more of the following data elements for such individual, but only when neither the name nor data element is encrypted:
 - (a) Social Security Number;
 - (b) driver's license number or non-driver identification card number;
 - (c) account number, credit card number or debit card number in combination with any required security code, access code or password that would permit access to the individual's financial account;
 - (d) information regarding medical history, mental or physical condition, medical treatment or diagnosis by a health care professional;
 - (e) health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in the individual's application and claims history, including any appeals records; or
 - (f) biometric identifiers, including finger prints or retina scan;
 - (2) a user name or email address in combination with a password or security question and answer that would permit access to an online account; or
 - (3) any other non-public personally identifiable information protected under any federal, state, local or foreign law, statute, ordinance or regulation.

Personally Identifiable Information does not include publicly available information that is lawfully made available to the general public from federal, state, local or foreign government records.

- (LL) **"Pollutant"** means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (MM) **Privacy Administrative Fines** means civil fines or penalties imposed by a governmental agency or governmental authority in a **Privacy Administrative Proceeding**.
- (NN) **Privacy Administrative Proceeding** means any civil investigative demand or administrative or regulatory proceeding by a governmental agency or governmental authority for a **Privacy Regulation Wrongful Act**.
- (OO) **"Privacy Regulation"** means any law, statute, ordinance or regulation applying to an **Information Loss** involving **Personally Identifiable Information**, including the following:
- (1) Gramm-Leach Bliley Act;
 - (2) Health Information Technology for Economic and Clinical Health Act (HITECH);
 - (3) Health Insurance Portability and Accountability Act (HIPAA);
 - (4) state security breach notification laws; and
 - (5) Section 5(a) of the Federal Trade Commission Act, but solely for alleged unfair or deceptive acts or practices in or affecting commerce in the use of **Personally Identifiable Information**.
- (PP) **"Privacy Regulation Wrongful Act"** means an actual or alleged violation by the **Insured** of a **Privacy Regulation**.
- (QQ) **"Service Provider"** means any entity approved by the Underwriter with whom the **Organization** has entered into a written contract or agreement to provide a service to support **Insured Product** or **Insured Services**, but only for activities within the scope of that contract or agreement that are performed on the **Organization's** behalf. **Service Provider** does not include any entity that provides power, communication services, water or other utility services.
- (RR) **"Wrongful Act"** means:
- (1) with respect to Insuring Agreement (A)(1) of this Coverage Section, any **Information Risk Wrongful Act**;
 - (2) with respect to Insuring Agreement (A)(2) of this Coverage Section, any **Communication Incident Wrongful Act**;
 - (3) with respect to Insuring Agreement (A)(3) of this Coverage Section, any **Privacy Regulation Wrongful Act**.

III. EXCLUSIONS

This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, any **Claim, Loss, First-Party Incident** or **First-Party Loss**:

- (A) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (C) for any **Bodily Injury**, or physical injury to tangible property, including all resulting loss of use of that property. Tangible property does not include data or other information that is in electronic form. Provided, that this EXCLUSION (C) shall not apply to allegations of mental or emotional distress, anguish or injury sustained by a natural person to the extent such allegations are made as part of an otherwise-covered **Claim** for (1) an **Information Risk Wrongful Act** that directly resulted in an **Information Loss**, or (2) a **Communication Incident Wrongful Act** that directly resulted in an offense described in subparagraphs (a), (b) or (c) of the definition of **Communication Incident Wrongful Act**;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged liability assumed by the **Organization** under any contract or agreement; provided, that this EXCLUSION (D) shall not apply to liability which would have attached in the absence of the contract or agreement;
- (E) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any loss, cost or expense incurred by the **Insured** or others:
 - (1) to comply with any warranty for **Insured Product** or **Insured Services**;
 - (2) to correct, repair, replace, reproduce, reprint, restore, upgrade, supplement or otherwise improve **Insured Product**, **Insured Services** or **Impaired Property**, or to perform or complete **Insured Services**;
 - (3) for the recall, removal or withdrawal of **Insured Product**, **Insured Services** or **Impaired Property** from the market or from use by any person or organization for any reason; or
 - (4) for the adjustment, inspection or disposal of **Insured Product**, **Insured Services** or **Impaired Property**;
- (F) brought by or on behalf of any securityholder of the **Organization**, including any derivative action. This EXCLUSION (F) applies regardless of whether any part a **Claim** would otherwise be covered by this Coverage Section;
- (G) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974, or any amendments thereto or regulations

promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;

- (H) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God;
- (I) brought by or on behalf of any governmental agency or governmental authority for any administrative, judicial or regulatory action or order; provided, that this EXCLUSION (I) shall not apply to: (1) any **Claim** brought by or on behalf of a federal, state, local or foreign government, agency or entity in its capacity as a customer of the **Organization**; (2) any **Privacy Administrative Proceeding**; or (3) covered **Hardware Replacement Expenses**;
- (J) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged misuse, infringement, inducement to infringe or other misuse or violation of:
 - (1) any patent or trade secret, including any part of a **Claim** that would otherwise be covered by this Coverage Section;
 - (2) any of the following rights or laws:
 - (a) copyright;
 - (b) trademark;
 - (c) trade name;
 - (d) service mark;
 - (e) service name;
 - (f) trade dress;
 - (g) likeness; or
 - (h) other intellectual property rights or laws; or
 - (3) any intellectual property rights in computer software, including its source code or any other content of a software program;

provided, that paragraph (2) of this EXCLUSION (J) shall not apply to any **Claim** for a **Communication Incident Wrongful Act**;

- (K) brought by or on behalf of:
 - (1) any **Insured**;
 - (2) any business entity or venture at any time owned, controlled, managed or operated by any **Insured**; or
 - (3) any parent, affiliate, subsidiary, predecessor, successor or assign of any:

- (a) **Insured**; or
- (b) business entity or venture at any time owned, controlled, managed or operated by any **Insured**;

provided, that this EXCLUSION (K) shall not apply to any **Claim** for an **Information Risk Wrongful Act** involving the **Personally Identifiable Information** of an **Employee**, former **Employee** or any member of a current or former **Employee's** immediate family;

- (L) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any intentional, dishonest, fraudulent, malicious or criminal act or omission by any **Insured**; provided, that this EXCLUSION (L) shall not apply:
 - (1) unless an admission, final adjudication, arbitration, finding of fact, judgment or plea, including a plea of no contest or *nolo contendere*, establishes that such intentional, dishonest, fraudulent, malicious or criminal act or omission was committed by the **Insured**; or
 - (2) to an **Insured** that did not participate in or know about the intentional, dishonest, fraudulent, malicious or criminal act or omission unless such act or omission was committed with the **Organization's** consent or knowledge or the consent or knowledge of any member of the **Control Group**;
- (M) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the furnishing by an **Insured** of services, products, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
- (N) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the hazardous properties of nuclear, biological or chemical material, electromagnetic field or radiation, electromagnetism, or radio frequency;
- (O) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged obligation to make or pay any fee, profit, royalty, commission, charge, cost or expense incurred to obtain a license or right to use or promote the use of any good, product, service, property, data or information of any type, nature or kind, including any electronic data or **Media Content**;
- (P) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any adjustment, inspection, repair, correction, completion, development, performance, replacement, reproduction, reprinting, restoration, withdrawal, recall, removal, disposal, updating, upgrading, enhancing or researching **Media Content**;
- (Q) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: (1) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (2) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**;
- (R) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged power interruption, surge, brownout, blackout or other failure, including any failure, malfunction, or defect of telephone, telecommunications, wireless communications or data transmission lines, equipment, facilities, infrastructure, systems or services; provided, that this EXCLUSION (R) shall not apply to a failure if the infrastructure responsible for such failure was under the **Organization's** operational control at the time of such failure;

- (S) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the responsibilities, duties or obligations imposed under:
- (1) the Telephone Consumer Protection Act (TCPA), the CAN-SPAM Act of 2003, the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transaction Act (FACTA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
 - (2) any other federal, state or local statute, ordinance or regulation that addresses, prohibits or limits the printing, dissemination, disposal, collection, recording, sending, transmitting, communication or distribution of material or information; or
 - (3) any federal, state or local statute, ordinance or regulation providing a right to, or requiring the ability to allow, any person or organization to assent, consent, opt-in, opt-out or withhold or withdraw assent or consent to gather, collect, acquire, use, obtain or take any information, including **Personally Identifiable Information**;
- (T) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of any right held by any trade or licensing association, entity or society, including the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, the Recording Industry Association of America or Broadcast Music, Inc.;
- (U) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- (1) violation of the responsibilities, duties or obligations imposed under any unfair competition statutory or common law, including antitrust statutes;
 - (2) tortious or intentional interference with contract, business relations or prospective economic advantage;
 - (3) violation of the responsibilities, duties or obligations imposed under any law addressing consumer protection, other than a violation of a **Privacy Regulation**; or
 - (4) violation of the responsibilities, duties or obligations imposed under of any law addressing trade practices or anti-deceptive practices, statutes prohibiting false advertising, the Lanham Act, 15 U.S.C. § 1051, et seq. or any state statutes prohibiting unfair business practices;
- (V) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation or breach of any law relating to the offer, sale, purchase, trading or valuation of securities;
- (W) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any:
- (1) war, including undeclared war or civil war;
 - (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - (3) insurrection, rebellion, revolution or usurped power;

- (X) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or attempted redemption or over-redemption of tickets, coupons, prizes or other goods or property in any contest, lottery, sweepstakes, promotion or game of chance, or actual or alleged violation of any laws regulating these activities; or
- (Y) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged employment practice, discrimination, humiliation, harassment or misconduct, including but not limited to discrimination, humiliation or harassment of a sexual nature or based upon an individual's race, creed, color, age, gender, national origin, religion, physical or mental disability or condition, marital status, sexual preference or other classification of any type, nature or kind.

IV. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

- (A) Privacy Administrative Proceeding Aggregate Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses, Privacy Administrative Fines and Consumer Redress Fund Costs** resulting from all **Privacy Administrative Proceedings** shall be the amount stated in ITEM 4 of the Declarations as the Privacy Administrative Proceeding Aggregate Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (B) Privacy Administrative Fines and Consumer Redress Fund Costs Sublimit:

The Underwriter's maximum limit of liability for all **Privacy Administrative Fines and Consumer Redress Fund Costs** resulting from all **Privacy Administrative Proceedings** shall be the amount stated in ITEM 4 of the Declarations as the Privacy Administrative Fines and Consumer Redress Fund Costs Sublimit, which amount shall be part of, and not in addition to, the Privacy Administrative Proceeding Aggregate Sublimit stated in ITEM 4 of the Declarations.

- (C) Combined First-Party Loss Limit:

The Underwriter's maximum limit of liability for all **First-Party Loss** for all **First-Party Incidents**, other than **Breach Consultation Services** for **Information Risk Incidents**, shall be the amount stated in ITEM 4 of the Declarations as the Combined First-Party Loss Limit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (D) Individual First-Party Coverage Limits:

- (1) Breach Consultation Services Limit:

The Underwriter's maximum limit of liability for all **Breach Consultation Services** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Breach Consultation Services Limit.

- (2) Incident Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Incident Management Expenses** for all **Information Risk Incidents** and **Extortions** shall be the amount stated in ITEM 4 of the

Declarations as the Incident Management Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(3) Information Restoration Expenses Limit:

The Underwriter's maximum limit of liability for all **Information Restoration Expenses** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Information Restoration Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(4) Hardware Replacement Expenses Limit:

The Underwriter's maximum limit of liability for all **Hardware Replacement Expenses** for all seizures or destructions of hardware by a civil authority of the federal or state government for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Hardware Replacement Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(5) Extortion Payments and Rewards Limit:

The Underwriter's maximum limit of liability for all **Extortion Payments and Rewards** for all **Extortions** shall be the amount stated in ITEM 4 of the Declarations as the Extortion Payments and Rewards Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(6) Forensic Expenses Limit:

The Underwriter's maximum limit of liability for all **Forensic Expenses** for all **Information Risk Incidents** shall be the amount stated in ITEM 4 of the Declarations as the Forensic Expenses Limit, which amount shall be part of, and not in addition to, the Combined First-Party Loss Limit stated in ITEM 4 of the Declarations.

(E) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under Insuring Agreements (A)(1), (A)(2) or (A)(3) of this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.
- (2) The Underwriter's obligation to pay **First-Party Loss** under Insuring Agreements (B)(1), (B)(2), (B)(3), (B)(4), (B)(5) or (B)(6) of this Coverage Section shall only be excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **First-Party Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. Each such Retention applies to all **First-Party Loss** caused by the same **First-Party Incident**. If

more than one Retention applies to any **First-Party Loss**, then the largest applicable Retention shall apply to such **First-Party Loss**. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.

V. CLAIM SETTLEMENT

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. 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 applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- (A) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
- (B) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

VI. REPORTING OF CLAIMS, CIRCUMSTANCES AND FIRST-PARTY INCIDENTS

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after any member of the **Control Group** first becomes aware of such **Claim**, and in no event later than:
 - (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, any member of the **Control Group** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and the **Insured**:
 - (1) 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
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) 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 **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

It is understood and agreed that written notice of any **First-Party Incident** provided to the Underwriter in accordance with paragraph (C) below shall constitute notice of a specific **Wrongful Act** which may subsequently give rise to a **Claim** pursuant to this paragraph (B).

- (C) As a condition precedent to any right to coverage under Insuring Agreements (B)(1), (B)(2), (B)(3), (B)(4), (B)(5) and (B)(6) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **First-Party Incident** as soon as practicable, and in no event later than thirty (30) days after any member of the **Control Group** first discovers or is made aware of such **First-Party Incident**. The **Insureds** must also:
- (1) notify the police if the **First-Party Incident** involves a violation or possible violation of the law;
 - (2) submit to examination under oath at the Underwriter's request, while not in the presence of any other **Insured**;
 - (3) as often as reasonably requested, permit the Underwriter to inspect the **Organization's Network** and examine and make copies of the **Organization's** books and records;
 - (4) send the Underwriter a detailed, signed sworn proof of loss as soon as reasonably practicable after the Underwriter's request; and
 - (5) cooperate with the Underwriter in the investigation and settlement of the **First-Party Incident**.
- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VII. OTHER INSURANCE

This Coverage Section is specifically excess of and will not contribute with any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy. This Coverage Section will not be subject to the terms of any other insurance.

VIII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) 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 Coverage Section 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 the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

SAMPLE

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

**Employed Lawyers Professional Liability
Coverage Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Employed Lawyers Professional Liability Non-Indemnified Loss Coverage:

The Underwriter will pay, on behalf of an **Insured**, **Loss** for which an **Insured** is not indemnified by the **Organization** from any **Claim** first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(B) Employed Lawyers Professional Liability Indemnified Loss Coverage:

The Underwriter will pay, on behalf of the **Organization**, **Loss** for which the **Organization** grants indemnification to an **Insured**, as permitted or required by law, from any **Claim** first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(C) General Counsel Replacement Reimbursement Coverage:

Upon satisfactory proof of payment by the **Named Organization**, the Underwriter will reimburse the **Named Organization**, up to the General Counsel Replacement Expenses Limit stated in Section V(B) of this Coverage Section, for **General Counsel Replacement Expenses** actually paid by the **Named Organization** in connection with a **General Counsel Injury Event**; provided, that such **General Counsel Injury Event** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

II. DEFINITIONS

(A) "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation); or
- (2) a civil, criminal, administrative, regulatory, bar association or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or

- (c) the filing of a notice of charges, formal investigative order or similar document, against an **Insured** for a **Wrongful Act**.
- (B) "**Employed Lawyer**" means any person admitted to practice law who is, was or becomes a full-time or part-time employee of the **Organization** for the purpose of providing legal services to the **Organization**.
- (C) "**General Counsel**" means the **Employed Lawyer** who acts as the chief legal officer of the **Named Organization** and manages the **Named Organization's** legal department.
- (D) "**General Counsel Injury Event**" means an **Injury** suffered by the **General Counsel** during the **Policy Period** that results in his or her loss of life during the **Policy Period**.
- (E) "**General Counsel Replacement Expenses**" means the following reasonable and necessary expenses of the **Named Organization**:
- (1) costs of advertising the **General Counsel** employment position opening;
 - (2) travel, lodging and meal expenses incurred in interviewing job applicants for the **General Counsel** employment position opening;
 - (3) costs to verify the background and references of the applicants for the **General Counsel** employment position opening; and
 - (4) legal expenses incurred to draw up an employment contract between the **Named Organization** and the attorney hired to fill the **General Counsel** employment position.
- (F) "**Independent Contractor Attorney**" means any person admitted to practice law who:
- (1) performs legal services for the **Organization**;
 - (2) is indemnified by the **Organization** pursuant to an independent contractor services agreement between the **Independent Contractor Attorney** and the **Organization**; and
 - (3) is not employed by or affiliated with a private law firm, other than as a sole practitioner.
- (G) "**Injury**" means any bodily injury sustained by a person that is caused by violence, fracture or an accident. **Injury** shall not include any self-inflicted bodily injury.
- (H) "**Insured**" means:
- (1) an **Employed Lawyer**;
 - (2) an **Independent Contractor Attorney**, solely in his or her capacity as an attorney performing legal services for the **Organization**;
 - (3) a **Paralegal**, solely in his or her capacity as an assistant to an **Employed Lawyer**;
 - (4) a **Temporary Lawyer**, solely in his or her capacity as a **Temporary Lawyer** for the **Organization**, but only if the **Organization** agrees in writing, no later than thirty (30)

days after a **Claim** is made, to indemnify the **Temporary Lawyer** for liability arising out of such **Claim**; and

- (5) any person identified in the **Application** who is employed in a position functionally equivalent to an **Employed Lawyer** in any **Subsidiary** chartered in any **Foreign Jurisdiction** and who is admitted or licensed to practice law in such **Foreign Jurisdiction**.
- (I) **"Intra-Organization Defense Claim"** means a **Claim** brought by or on behalf of the **Organization**, any **Joint Venture** or partnership in which the **Organization** is a partner or member, or any securityholder of the **Organization**, whether directly or derivatively; provided, that **Intra-Organization Defense Claim** does not include any such **Claim**:
 - (1) brought or maintained by a securityholder of the **Organization** independently of, and without the solicitation, assistance, active participation or intervention of, any **Insured** or the **Organization**, or any current or former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization**; or
 - (2) made against an **Insured** by a third party bankruptcy trustee, receiver, liquidator, conservator, rehabilitator, creditors' committee, or any similar official who has been appointed to take control of, supervise, manage or liquidate the **Organization**.
- (J) **"Joint Venture"** means any entity in which the **Organization**, directly or through one or more **Subsidiaries**, maintains an equity interest of fifty percent (50%) or less, and in which the **Organization** participates in the management and operation of such entity.
- (K) **"Loss"** means **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to, damages (including punitive or exemplary damages or the multiple portion of any multiplied damage award, to the extent that such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Organization**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment interest and post-judgment interest.

Loss does not include:

- (1) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award;
- (2) civil or criminal fines or penalties, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award;
- (3) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority);
- (4) any costs incurred by the **Insured** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief; or
- (5) the return, restitution or disgorgement of fees, costs or expenses.

- (L) **"Moonlighting Legal Services"** means legal services and notary services provided by an **Employed Lawyer** for natural person clients other than the **Organization's** directors, officers, trustees, trustees emeritus, executive directors, members of the board of managers, duly constituted committee members, general counsel, risk manager or employees.
- (M) **"Outside Capacity Legal Services"** means legal services performed by an **Employed Lawyer** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity**, but only during such time that such position is held at the request or direction of the **Organization**.
- (N) **"Outside Entity"** means any not-for-profit entity that is not included in the definition of **Organization**.
- (O) **"Paralegal"** means any person who is, was or becomes a full-time or part-time employee of the **Organization** for the purpose of assisting an **Employed Lawyer** in performing legal services for the **Organization**, and includes paralegal assistants, legal assistants, law students or notaries public.
- (P) **"Personal Legal Services"** means legal services and notary services performed by an **Employed Lawyer** or **Paralegal**, without compensation, for a director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** with regard to his or her personal legal matters.
- (Q) **"Pollutant"** means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (R) **"Professional Services"** means:
- (1) legal services and notary services provided by an **Employed Lawyer**, or an **Independent Contractor Attorney, Paralegal** or **Temporary Lawyer** while acting under the supervision and direction of an **Employed Lawyer**, but only if such legal services or notary services are performed for the **Organization** and in the case of an **Employed Lawyer** or **Paralegal**, as an employee of the **Organization**;
 - (2) pro bono legal services provided by an **Employed Lawyer**, or a **Paralegal** while acting under the supervision and direction of an **Employed Lawyer**, with the knowledge of the **Organization** without compensation for natural person indigent clients or non-profit public interest groups;
 - (3) **Personal Legal Services**;
 - (4) **Moonlighting Legal Services**; and
 - (5) **Outside Capacity Legal Services**.
- (S) **"Securities Wrongful Act"** means an actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Organization Act of 1940, any state "blue

sky" securities law, or any other federal, state, local securities law, or any amendments thereto or regulations promulgated under any such laws.

- (T) **"Temporary Lawyer"** means any person admitted to practice law who:
- (1) is neither an **Employed Lawyer** nor an **Independent Contractor Attorney**;
 - (2) works under the supervision and direction of an **Employed Lawyer** through a service agreement between the **Organization** and a temporary agency; and
 - (3) is not employed by or affiliated with a private law firm, other than as a sole practitioner.
- (U) **"Wrongful Act"** means any actual or alleged act, error, omission, neglect or breach of duty, including any **Securities Wrongful Act**, libel or slander by an **Insured**, but only in connection with the performance of, or actual or alleged failure to perform, **Professional Services**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory, arbitration or bar association proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - (3) brought by or on behalf of any **Insured** or any other current or former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization**; provided, that this EXCLUSION (A)(3) shall not apply to:
 - (a) any **Claim** brought or maintained by a current or former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** to whom the **Insured** provided legal services or notary services at the direction of the **Organization** regarding a matter within the scope of such director's, officer's, trustee's, trustee emeritus', executive director's, member's, general counsel's, risk manager's or employee's duties with the **Organization**;
 - (b) any **Claim** brought or maintained by a current or former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** for any actual or alleged discrimination, harassment or

wrongful termination, solely to the extent such **Claim** is based upon employment-related legal advice provided by an **Employed Lawyer**;

- (c) any **Claim** brought or maintained by a current or former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** regarding **Personal Legal Services**;
 - (d) any **Claim** brought or maintained by a former director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** who has not served as a director, officer, trustee, trustee emeritus, executive director, member of the board of managers, duly constituted committee member, general counsel, risk manager or employee of the **Organization** for at least two (2) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently of, and without the solicitation, assistance, active participation or intervention of, the **Organization** or any other individual who is serving or has served in any of the listed capacities within such two (2) year period; or
 - (e) **Defense Expenses** incurred in connection with any such **Claim** if such **Claim** is in the form of a cross-claim, third party claim or other claim for contribution or indemnity which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Section;
- (4) with respect to **Outside Capacity Legal Services**, brought by or on behalf of (a) the **Outside Entity** for which an **Employed Lawyer** provided such **Outside Capacity Legal Services**, or (b) any director, officer, trustee, governor or equivalent executive of such **Outside Entity** in any capacity; provided, that this EXCLUSION (A)(4) shall not apply to any **Claim** brought or maintained derivatively on behalf of the **Outside Entity** by one or more securityholders or members of the **Outside Entity** who are not **Insureds** and are not directors, officers, trustees, governors or equivalent executives of the **Outside Entity** and who bring and maintain such **Claim** independently of, and without the solicitation, assistance or active participation of any **Insured** or of any director, officer, trustee, governor or equivalent executive of the **Outside Entity**;
- (5) 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, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(5) shall not apply to any **Claim** alleging any of the foregoing if the underlying legal services performed by an **Insured** giving rise to such **Claim** were not the direct immediate cause of the foregoing;
- (6) for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (7) for any actual or alleged violation of the responsibilities, duties or obligations imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto or regulations or promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law, except to the extent

that an **Employed Lawyer** is deemed to be a fiduciary solely by reason of legal advice provided with respect to an employee benefit plan;

- (8) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the service of an **Insured** in his or her capacity as a partner, principal, director, officer, shareholder or employee of any entity other than the **Organization**; provided, that this EXCLUSION (A)(8) shall not apply to any **Claim** for **Wrongful Acts** committed or allegedly committed by an **Employed Lawyer** in the performance of, or actual or alleged failure to perform, **Outside Capacity Legal Services**;
- (9) where an **Insured's** position as an **Insured** is with respect to any **Subsidiary**, for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;
- (10) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or
 - (b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(10) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final and non-appealable adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;

- (11) for any actual or alleged act, error, omission, neglect, breach of duty, libel or slander committed by an **Insured** before such person became, or after such person ceased to be, an **Employed Lawyer, Independent Contractor Attorney, Paralegal or Temporary Attorney** of the **Organization**;
 - (12) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Insured** notarizing any signature not made in the presence of such **Insured** at the time of such notarization;
 - (13) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Securities Wrongful Act** committed or allegedly committed by an **Employed Lawyer** in the performance of, or actual or alleged failure to perform, **Outside Capacity Legal Services**; or
 - (14) brought by or on behalf of any non-profit service organization regarding legal services rendered for such non-profit service organization; provided, that this EXCLUSION (A)(14) shall not apply to any **Claim** brought by or on behalf of the third party beneficiaries of such legal services.
- (B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss**, other than **Defense Expenses**, from any **Intra-Organization Defense Claim**.

IV. SEVERABILITY OF EXCLUSIONS

No fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** to determine the application of EXCLUSION (A)(10) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

(A) Intra-Organization Claims Defense Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses** resulting from all **Intra-Organization Claims** shall be the amount stated in ITEM 4 of the Declarations as the Intra-Organization Claims Defense Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(B) General Counsel Replacement Expenses Limit:

The Underwriter's maximum limit of liability for all **General Counsel Replacement Expenses** resulting from all **General Counsel Injury Events** shall be \$50,000, which amount shall be in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid. If the Underwriter and the **Insured** agree to use voluntary mediation as a dispute resolution approach with respect to a **Claim** and the Underwriter and the **Insured** consent to a full and final settlement of such **Claim** during such voluntary mediation (as evidenced by a full and final settlement agreement with respect to such **Claim**), the **Insured's** obligation to pay the applicable Retention stated in ITEM 5 of the Declarations for such **Claim** will be reduced by ten percent (10%), subject to a maximum reduction of \$25,000 of the Retention for such **Claim**.
- (2) If the **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify any **Insured** for **Loss**, or to advance **Defense Expenses** on behalf of any **Insured**, to the fullest extent permitted by statutory or common law, then, notwithstanding any other terms, conditions or limitations of this Coverage Section to the contrary, any payment by the Underwriter of such **Defense Expenses** or other **Loss** shall be subject to the applicable Insuring Agreement (B) Retention stated in ITEM 5 of the Declarations.

VI. CLAIM SETTLEMENT

No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which consent shall not be unreasonably withheld. 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 applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- (A) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
- (B) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

VII. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:
 - (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:
 - (1) 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
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) 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 **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) As a condition precedent to any right to reimbursement under Insuring Agreement (C) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **General Counsel Injury Event** no later than thirty (30) days after the **Named Organization's** chief executive officer or chief financial officer (or an equivalent position thereof) first becomes aware of such **General Counsel Injury Event**. Within sixty (60) days of making any payment of **General Counsel Replacement Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **General Counsel Replacement Expenses** for which the **Named Organization** seeks reimbursement under Insuring Agreement (C) of this Coverage Section, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VIII. OTHER INSURANCE

This Coverage Section is specifically excess of and will not contribute with:

- (A) any other valid and collectible insurance available to any **Insured**, including but not limited to: (1) any directors and officers or management liability policy or coverage section; (2) any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy; and (3) with regard to an **Independent Contractor Attorney** or **Temporary Lawyer**, any Lawyers Professional Liability Insurance Policy or similar insurance policy that may cover such **Independent Contractor Attorney** or **Temporary Lawyer**; or
- (B) any indemnification to which any **Insured** is entitled from any entity other than the **Organization**.

This Coverage Section will not be subject to the terms of any other insurance.

IX. PAYMENT OF LOSS

In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section, the Underwriter shall:

- (A) first pay such **Loss** for which coverage is provided under Insuring Agreement (A) of this Coverage Section; then
- (B) to the extent of any remaining amount of such **Separate Limit of Liability** or **Shared Limit of Liability** after payment under paragraph (A) above, pay such **Loss** for which coverage is provided under Insuring Agreement (B) of this Coverage Section.

Except as otherwise provided in this Section IX, the Underwriter may pay covered **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

X. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** and the **Organization** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
- (1) this Coverage Section 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 the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** and the **Organization** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**).
- (C) The **Insureds** and the **Organization** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application** known only by the person or persons who signed the **Application**, no coverage will be available under INSURING AGREEMENT (B) of this Coverage Section with respect to any **Insured**.

**HEALTHCARE ORGANIZATION
MANAGEMENT LIABILITY POLICY**

Crime Coverage Section



In consideration of the payment of the premium, and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS:

Coverage is provided under the following Insuring Agreements for which a **Per Occurrence Limit of Liability** is stated in ITEM 9 of the Declarations and applies to loss that the **Insured** sustains resulting directly from an **Occurrence** taking place at any time and which is **Discovered** by the **Insured** or an **Executive** during the **Policy Period** or during the time period provided in Section VI (F), Extended Period to Discover Loss, of this Coverage Section, subject to Section VI (E), Liability for Prior Losses, of this Coverage Section:

(A) Fidelity Coverage:

(1) Employee Theft Coverage:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** sustained by the **Organization** resulting directly from **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with others.

(2) Employee Theft of Client Property Coverage:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** sustained by a **Client** resulting directly from **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with others.

(3) Employee Benefit Plans Coverage:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** sustained by an **Employee Benefit Plan** resulting directly from a fraudulent or dishonest act committed by a **Fiduciary**, whether identified or not, acting alone or in collusion with others.

Any payment the Underwriter makes for loss sustained by an **Employee Benefit Plan** will be made directly to the **Employee Benefit Plan** sustaining the loss. If two or more **Employee Benefit Plans** are covered under this Coverage Section, any payment the Underwriter makes for loss:

- (a) sustained by two or more **Employee Benefit Plans**, or

- (b) of **Money, Securities or Other Property** commingled among two or more **Employee Benefit Plans**,

resulting directly from an **Occurrence** will be made to each **Employee Benefit Plan** sustaining such loss by prorating the total applicable **Per Occurrence Limit of Liability** of all **Employee Benefit Plans** based upon the proportion that the amount of loss for each **Employee Benefit Plan** bears to the total amount of loss for all **Employee Benefit Plans** sustaining loss.

(B) **Forgery or Alteration Coverage:**

- (1) Checks Coverage:

The Underwriter will pay the **Organization** for loss sustained by the **Organization** resulting directly from **Forgery** or alteration of a **Financial Instrument** by a **Third Party**, including:

- (a) any check, draft, promissory note, convenience check, HELOC check or similar written promise, order or direction to pay a sum certain in **Money** made, drawn by, or drawn in the name of the **Organization**, or purportedly made, drawn by or drawn in the name of the **Organization**; and
- (b) any check, draft, promissory note, convenience check, HELOC check or similar written promise, order or direction to pay a sum certain in **Money** made or drawn by one purportedly acting as the agent of the **Organization**.

- (2) Credit, Debit or Charge Cards Coverage:

The Underwriter will pay the **Organization** for loss sustained by the **Organization** resulting directly from **Credit Card Fraud** committed by a **Third Party**.

- (3) For the purposes of this Insuring Agreement (B), a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original check it replaced.

- (4) If the **Organization** is sued for refusing to pay any **Financial Instrument** covered by this Insuring Agreement (B), on the basis that it has been forged or altered, and the **Organization** has obtained the Underwriter's prior written consent to defend against such suit, the Underwriter will reimburse the **Organization** for any reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses that the **Organization** incurs in defending such suit, but the Underwriter shall have no duty to defend such suit. Defense expenses paid on behalf of the **Organization** in connection with such suit: (a) shall be in addition to, and not part of, the **Per Occurrence Limit of Liability** stated in ITEM 9(B) of the Declarations, and (b) shall not be subject to the Deductible set forth in ITEM 9(B) of the Declarations.

(C) **Premises Coverage – Theft of Money or Securities:**

The Underwriter will pay the **Organization** for loss of **Money** or **Securities** resulting directly from **Theft** committed by a person present inside the **Premises** or **Banking Premises**, including the actual destruction or disappearance of **Money** or **Securities** within or from the **Premises** or **Banking Premises**.

Coverage under this Insuring Agreement (C) also includes:

- (1) loss constituting damage to the **Premises** or its exterior resulting directly from an actual or attempted **Theft** of **Money** or **Securities** within the **Premises**, if the **Organization** is the owner of the **Premises** or is liable for damage to the **Premises**; and
- (2) loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located within the **Premises** resulting directly from an actual or attempted **Theft** or unlawful entry into those containers.

(D) **Premises Coverage – Robbery or Safe Burglary of Other Property:**

The Underwriter will pay the **Organization** for loss of or damage to **Other Property** inside the **Premises** resulting directly from an actual or attempted **Robbery** of a **Custodian** or stored in a safe or vault resulting directly from an actual or attempted **Safe Burglary**.

Coverage under this Insuring Agreement (D) also includes:

- (1) loss constituting damage to the **Premises** or its exterior resulting directly from an actual or attempted **Robbery** or **Safe Burglary** of **Other Property** within the **Premises**, if the **Organization** is the owner of the **Premises** or is liable for damage to the **Premises**; and
- (2) loss of or damage to a locked safe or vault located within the **Premises** resulting directly from an actual or attempted **Robbery** or **Safe Burglary** of **Other Property**.

(E) **Outside the Premises Coverage:**

- (1) The Underwriter will pay the **Organization** for loss of **Money** or **Securities** outside the **Premises** while in the custody and care of a **Messenger** or an armored motor vehicle company resulting directly from an actual or attempted **Theft**, including the actual destruction or disappearance of **Money** or **Securities** outside the **Premises**.
- (2) The Underwriter will pay the **Organization** for loss of or damage to **Other Property** outside the **Premises** while in the custody and care of a **Messenger** or an armored motor vehicle company resulting directly from an actual or attempted **Robbery**.

(F) **Computer Crime Coverage:**

- (1) Computer Fraud Coverage:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** resulting directly from the use of any computer to cause a fraudulent or unlawful transfer of that property from inside the **Premises or Banking Premises** to a person (other than a **Messenger**) outside the **Premises**, or to a place outside the **Premises**.

(2) Computer Data Restoration Expenses Coverage:

The Underwriter will pay the **Organization** for **Computer Data Restoration Expenses** incurred by the **Organization** and resulting directly from a loss covered under Insuring Agreement (F)(1) of this Coverage Section, but only if such covered loss under Insuring Agreement (F)(1) of this Coverage Section is in excess of the Deductible applicable to such covered loss.

(G) **Funds Transfer Fraud Coverage:**

The Underwriter will pay the **Organization** for loss of **Funds** resulting directly from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from an **Insured's Transfer Account**.

(H) **Money Orders and Counterfeit Currency Coverage:**

The Underwriter will pay the **Organization** for loss resulting directly from the **Organization** having accepted in good faith:

- (1) money orders issued by any post office, express company or bank trust that are not paid upon presentation, or
- (2) **Counterfeit Money** of any country that is acquired in the ordinary course of the **Organization's** business,

in exchange for merchandise, **Money** or services.

(I) **Social Engineering Fraud Coverage:**

The Underwriter will pay the **Organization** for loss resulting from an **Organization** having transferred, paid or delivered any **Money** or **Securities** as the direct result of **Social Engineering Fraud** committed by a person purporting to be a **Vendor**, a **Client** or an **Employee** who was authorized by the **Organization** to instruct other **Employees** to transfer **Money** or **Securities**; provided, that prior to transferring, paying or delivering **Money** or **Securities**, an **Employee** verified the **Transfer Instruction** according to a pre-arranged callback or other established verification procedure before acting upon such **Transfer Instruction**. Such verification must be recorded, logged or otherwise documented by the **Insured**.

(J) **Personal Accounts Protection Coverage:**

- (1) Personal Accounts Forgery or Alteration Coverage:

The Underwriter will pay the **Organization**, on behalf of an **Executive**, for loss incurred by such **Executive** resulting directly from **Forgery** or alteration of any check, draft, promissory note, convenience check, HELOC check or similar written promise, order or direction to pay a sum certain in **Money** that is made

or drawn upon the personal account of such **Executive**, or purportedly made or drawn upon the personal account of such **Executive**.

For the purposes of this Insuring Agreement (J)(1), a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original check it replaced.

(2) Identity Fraud Expense Reimbursement Coverage:

The Underwriter will reimburse the **Organization**, on behalf of an **Executive**, for **Identity Fraud Expenses** incurred by such **Executive** as a direct result of an **Identity Fraud**.

(K) **Investigative Costs Coverage:**

The Underwriter will reimburse the **Organization** for reasonable investigative expenses incurred by the **Organization**, with the Underwriter's prior written consent, to pay an independent accounting, auditing or other service that is not a **Client** to determine the existence or amount of loss covered under any other applicable Insuring Agreement of this Coverage Section; provided, that: (1) payment of such investigative expenses shall reduce the **Per Occurrence Limit of Liability** applicable to such covered loss; and (2) any coverage for such investigative expenses shall only apply to a covered loss that is in excess of the Deductible applicable to such covered loss.

II. DEFINITIONS

- (A) "**Banking Premises**" means the interior portion of any building occupied by, or any depository or safe maintained and controlled by, any bank, trust company or similar financial institution including a night depository chute, ATM machine owned by such financial institution (wherever located) or safe of such institution.
- (B) "**Client**" means a customer of the **Organization** to whom such **Organization** provides goods or services pursuant to a written contract or for a fee.
- (C) "**Computer Data Restoration Expenses**" means reasonable expenses, other than the **Organization's** internal corporate costs (such as salary), incurred by the **Organization**, with the Underwriter's prior written consent, to reproduce or duplicate damaged or destroyed data that was stored in the **Organization's** computer system and was damaged or destroyed directly as a result of a loss covered under Insuring Agreement (F)(1), Computer Fraud Coverage, of this Coverage Section. Such damaged or destroyed data shall be reproduced or duplicated from other data available to the **Organization**; however, if such damaged or destroyed data cannot be reproduced or duplicated from other data, then **Computer Data Restoration Expenses** means reasonable costs, other than the **Organization's** internal corporate costs (such as salary), incurred by the **Organization** for computer programmers or technology consultants to restore such damaged or destroyed data to substantially the same level existing immediately before the covered loss. **Computer Data Restoration Expenses** shall not include any expenses incurred by a **Client**.
- (D) "**Counterfeit Money**" means an imitation of **Money** that is intended to deceive and to be taken as genuine.

- (E) **"Credit Card Fraud"** means the **Forgery** or alteration of, on or in any **Financial Instrument** required in connection with any credit, debit, convenience, stored-value, or charge card issued to the **Organization**, or issued to an **Employee** at the request of the **Organization**.
- (F) **"Custodian"** means the **Organization**, or any of the **Organization's** partners or members, or any **Employee** while having custody and care of property inside the **Premises**. **Custodian** does not include any person while acting as a **Watchperson** or janitor.
- (G) **"Discover," "Discovered,"** or **"Discovery"** means the time when an **Insured** or **Executive** first becomes aware of facts or circumstances which would cause a reasonable person to assume that a loss of a type covered by this Coverage Section has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of the loss may not be known.

"Discover," "Discovered," or **"Discovery"** also means the time when an **Insured** or **Executive** first receives notice of an actual or potential claim in which it is alleged that the **Insured** is liable to a **Third Party** under circumstances which, if true, would constitute a loss under this Coverage Section.

"Discover," "Discovered," or **"Discovery"** does not include knowledge acquired by an **Executive** acting alone or in collusion with an **Employee** committing a **Theft** or **Forgery**.

(H) **"Employee"** means:

- (1) any natural person:
 - (a) while in the **Organization's** service and for sixty (60) days after termination of service, unless such termination is due to **Theft** or any dishonest act committed by such natural person;
 - (b) who the **Organization** compensates directly by salary, wages or commissions; and
 - (c) who the **Organization** has the right to direct and control while performing services for the **Organization**;
- (2) any natural person who is furnished temporarily to the **Organization**:
 - (a) to substitute for a permanent **Employee**, as defined in paragraph (1) above, who is on leave; or
 - (b) to meet seasonal or short-term workload conditions;

while such natural person is subject to the **Organization's** direction and control and is performing services for the **Organization**, excluding, however, any such natural person while having custody and care of **Other Property** outside the **Premises**;

- (3) any natural person who is leased to the **Organization** under a written agreement between the **Organization** and a labor leasing firm, to perform duties related to the conduct of the **Organization's** business, but excluding any temporary **Employee** defined in paragraph (2) above;
- (4) any natural person who is a former **Executive** or **Employee** retained by the **Organization** as a consultant while performing services for the **Insured**;
- (5) any natural person who is a guest student of the **Organization** or intern pursuing studies or duties with the **Organization**;
- (6) any **Employee** of an entity merged or consolidated with the **Organization** prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;
- (7) any **Executive** while performing acts with the scope of the usual duties of an **Employee**;
- (8) any non-compensated natural person other than one who is a fund solicitor, while performing services for the **Organization** that are within the scope of the usual duties of an **Employee**;
- (9) any natural person who is a volunteer for the **Organization**; or
- (10) any **Employee** on military, disability, family medical or similar leave.

Employee does not include any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character that is not specified in this DEFINITION (H).

- (I) "**Employee Benefit Plan**" means any welfare or pension benefit plan that the **Organization** sponsors and that is subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and any amendments thereto.
- (J) "**Executive**" means any natural person:
 - (1) duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or
 - (2) holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in any **Foreign Jurisdiction**.
- (K) "**Fiduciary**" means any natural person who is:
 - (1) a trustee, officer, employee, administrator or manager of an **Employee Benefit Plan**, except an administrator or manager of an **Employee Benefit Plan** who is an independent contractor; and
 - (2) an **Executive** of the **Organization** while that person is handling **Money, Securities or Other Property** of any **Employee Benefit Plan**.
- (L) "**Financial Instrument**" means any check, draft, promissory note, or similar written

promise, order or direction to pay a sum certain in **Money** that is made, drawn by or drawn upon the **Organization** or made or drawn by anyone acting as the **Organization's** agent, or that is purported to have been so made or drawn.

- (M) **"Forgery"** means the signing of the name of another person or entity with intent to deceive. **Forgery** does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose. Facsimile, mechanical or electronic produced or reproduce signatures shall be treated the same as original signatures.
- (N) **"Fraudulent Instruction"** means:
- (1) an electronic, computer, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by the **Organization**, but which was, in fact, fraudulently transmitted by another party without the **Organization's** knowledge or consent;
 - (2) a written instruction issued by the **Organization**, which was forged or altered by another party without the **Organization's** knowledge or consent, or which purports to have been issued by the **Organization**, but which was, in fact, fraudulently issued without the **Organization's** knowledge or consent; or
 - (3) an electronic, computer, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by the **Organization** which purports to have been transmitted by an **Employee**, but which was, in fact, fraudulently transmitted by another party without such **Employee's** or the **Organization's** knowledge or consent.
- (O) **"Funds"** means **Money** or **Securities** held in a **Transfer Account**.
- (P) **"Identity Fraud"** means the act of knowingly transferring or using, without lawful authority, a means of identification of an **Executive** with the intent to commit, aid or abet any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law.
- (Q) **"Identity Fraud Expenses"** means:
- (1) costs for notarizing fraud affidavits (or similar documents for credit agencies, financial institutions, merchants or other credit grantors that have required such affidavits be notarized);
 - (2) costs for certified mail to law enforcement agencies, credit agencies, financial institutions, merchants or other credit grantors;
 - (3) costs for long distance telephone calls to law enforcement agencies, credit agencies, financial institutions, merchants or other credit grantors to discuss any actual **Identity Fraud**;
 - (4) lost wages, up to a maximum of one thousand dollars (\$1,000) per week for a maximum period of five (5) weeks, as a result of absence from employment:
 - (a) to communicate with law enforcement agencies, legal counsel, credit agencies, financial institutions, merchants or other credit grantors;

- (b) to complete fraud affidavits or similar documents; or
 - (c) due to wrongful incarceration arising solely from another person having committed a crime in an **Executive's** name; provided, that lost wages shall not apply in the case of wrongful incarceration unless all charges are dismissed or there is an acquittal;
- (5) loan application fees for re-applying for any loan when the original application is rejected solely because the lender received incorrect credit information; and
- (6) reasonable attorney fees incurred, with the Underwriter's prior written consent, for:
- (a) the defense of any lawsuit brought against an **Executive** by any financial institution, merchant or other credit grantor or their collection agency;
 - (b) the removal of any criminal or civil judgment wrongly entered against an **Executive**; or
 - (c) challenging the accuracy or completeness of any information in a consumer credit report.
- (R) "**Insured**" means the **Organization** and, solely with respect to Insuring Agreement (A)(3), Employee Benefit Plans Coverage, of this Coverage Section, any **Employee Benefit Plan**.
- (S) "**Messenger**" means any relative of the **Organization's** partners, members or **Employees** or any other person authorized by the **Organization** to have custody and care of the **Organization's** property, while such person has custody and care of the **Organization's** property outside the **Premises**.
- (T) "**Money**" means: (1) currency, coins, and bank notes in current use anywhere in the world and having a face value; (2) bullion; and (3) travelers checks, register checks and money orders held for sale to the public.
- (U) "**Occurrence**" means:
- (1) with respect to Insuring Agreement (A), Fidelity Coverage, of this Coverage Section, an individual act, the combined total of all separate acts whether or not related, or a series of acts whether or not related, committed by the same **Employee**, acting alone or in collusion with others, during the **Policy Period**, before such **Policy Period** or both;
 - (2) with respect to Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section, an individual act, the combined total of all separate acts whether or not related, or a series of acts whether or not related, committed by the same person, acting alone or in collusion with others, during the **Policy Period**, before such **Policy Period** or both; and
 - (3) with respect to all other Insuring Agreements of this Coverage Section, an individual act or event, the combined total of all separate acts or events whether

or not related, or a series of acts or events whether or not related, committed by the same person or entity, acting alone or in collusion with others, during the **Policy Period**, before such **Policy Period** or both.

- (V) "**Other Property**" means tangible property other than **Money** or **Securities** that has an intrinsic value. **Other Property** does not include intangible property such as computer programs, electronic data or any other property excluded from coverage under this Coverage Section.
- (W) "**Premises**" means the interior portion of a building occupied by the **Organization** in conducting its business.
- (X) "**Robbery**" means the unlawful taking of **Money**, **Securities** or **Other Property** from the custody and care of a person by one who caused or threatened to cause that person bodily harm or committed an obviously unlawful act witnessed by that person.
- (Y) "**Safe Burglary**" means the unlawful taking of property from within a locked safe or vault by forcible or violent entry, as evidenced by visible marks upon its exterior, or the unlawful taking of a safe or vault from within the **Premises**.
- (Z) "**Securities**" means negotiable and non-negotiable instruments or contracts representing **Money** or **Other Property**, including chips issued by the **Organization**, tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use, and evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Organization**. **Securities** does not include **Money**.
- (AA) "**Social Engineering Fraud**" means the intentional misleading of an **Employee** through the use of a **Transfer Instruction**.
- (BB) "**Theft**" means the unlawful taking of property to the deprivation of:
- (1) an **Insured**; or
 - (2) a **Client**, solely for the purposes of Insuring Agreement (A)(2), Employee Theft of Client Property Coverage, of this Coverage Section.
- (CC) "**Third Party**" means a natural person other than (1) an **Employee** or (2) a natural person acting in collusion with an **Employee**.
- (DD) "**Transfer Account**" means an account maintained by the **Organization** at a financial institution from which the **Organization** can initiate the transfer, payment or delivery of **Funds** by means of electronic, computer, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system, or by means of written instructions establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
- (EE) "**Transfer Instruction**" means an electronic, telegraphic, cable, teletype, telephone, or written instruction received by an **Employee** that:
- (1) directs the **Employee** to transfer, pay, or deliver **Money** or **Securities**;

- (2) contains a misrepresentation of a material fact; and
 - (3) is relied upon by the **Employee**, believing the material fact to be true.
- (FF) "**Vendor**" means any entity or natural person that has provided goods or services to an **Organization** under a legitimate pre-existing arrangement or written agreement; provided, that **Vendor** does not include any financial institution, asset manager, broker-dealer, armored motor vehicle company or any similar entity.
- (GG) "**Watchperson**" means any person the **Organization** retains specifically to have custody and care of property inside the **Premises** and who has no other duties.

III. EXCLUSIONS

This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for:

- (A) loss resulting from **Theft, Forgery** or any other dishonest act committed by the **Organization**, the **Client** or any partner or member of the **Organization** or the **Client**, whether acting alone or in collusion with others; provided, that if such loss would otherwise be covered under Insuring Agreement (A), Fidelity Coverage, of this Coverage Section, this EXCLUSION III(A) shall not apply to the extent coverage under this Coverage Section is in excess of the amount of such partner's or member's percentage ownership interest in the **Organization** or the **Client** (as applicable), on the day immediately preceding the date of **Discovery**, multiplied by such **Organization's** or **Client's** total assets as reflected in such **Organization's** or the **Client's** most recent audited financial statement;
- (B) loss caused by an **Employee** if the **Employee** had also committed **Theft, Forgery** or any other dishonest act prior to the effective date of this Coverage Section and the **Organization** or any **Executive** not in collusion with such **Employee** learned of such **Theft, Forgery** or dishonest act prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;
- (C) loss resulting from **Theft, Forgery** or any other dishonest act committed by any **Employee, Executive** or **Fiduciary**:
 - (1) whether acting alone or in collusion with others, or
 - (2) while performing services for the **Organization** or otherwise;provided, that this EXCLUSION III(C) shall not apply to the extent that such loss is covered under Insuring Agreement (A), Fidelity Coverage, of this Coverage Section;
- (D) loss resulting from **Social Engineering Fraud**; provided, that this EXCLUSION III(D) shall not apply to the extent such loss is covered under Insuring Agreement (I), Social Engineering Fraud Coverage, of this Coverage Section;
- (E) loss resulting from:
 - (1) the unauthorized disclosure of the **Organization's** confidential information, including, but not limited to, patents, trade secrets, processing methods or customer lists; or

- (2) the unauthorized use or disclosure of confidential information of another person or entity which is held by the **Organization** including, but not limited to, financial information, personal information, credit card information, identification information or similar non-public information;
- (F) loss or damage resulting from any seizure or destruction of property by order of any governmental authority;
- (G) loss or damage that is an indirect or consequential result of an **Occurrence** covered by this Coverage Section, including, but not limited to, loss resulting from:
- (1) the **Organization's** inability to realize income, interest or dividends that the **Organization** would have realized had there been no loss of or damage to **Money, Securities or Other Property**;
- (2) payment of damages, fines or penalties of any type for which the **Organization** may be legally liable; or
- (3) payment of costs, fees or other expenses the **Organization** incurs in establishing either the existence of or the amount of loss under this Coverage Section;
- (H) costs, charges, fees, or expenses incurred or paid by the **Organization** in defending or prosecuting any legal proceeding or claim, except to the extent such costs, charges, fees, costs or expenses are covered under Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section;
- (I) loss or damage resulting from nuclear reaction, nuclear radiation, or radioactive contamination, or any act or condition incidental thereto;
- (J) loss or damage resulting from:
- (1) any declared or undeclared war or civil war;
- (2) any warlike action by a military force, including governmental or military action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents, or
- (3) any insurrection, rebellion, revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incidental to any of the foregoing;
- (K) loss of **Money** or **Securities** in any automatic teller machine ("**ATM**") or while being transported to or from any **ATM**, or any loss of or damage to any **ATM**; or
- (L) loss in any way involving any fact or circumstance that an **Insured** or an **Executive** is aware of prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, which would cause a reasonable person to assume that a loss of a type covered by this Coverage Section has been or will be incurred.

IV. EXCLUSIONS APPLICABLE TO CERTAIN INSURING AGREEMENTS

- (A) No coverage will be available under Insuring Agreement (A), Fidelity Coverage, of this Coverage Section for:
- (1) loss, or that part of any loss, the proof of which as to the amount or existence of such loss is dependent upon an inventory computation or a profit and loss computation; provided, that this EXCLUSION IV(A)(1) shall not apply to the extent that the **Insured** establishes wholly apart from such computations that the **Insured** or the **Client**, as applicable, has sustained a loss covered under Insuring Agreement (A), Fidelity Coverage, of this Coverage Section, in which event, the **Insured** may offer its inventory records and actual physical count of inventory to support the amount of loss claimed;
 - (2) loss sustained by a **Client** resulting from **Theft** or **Forgery** committed by an **Employee** acting in collusion with an employee of such **Client**; or
 - (3) loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities** or **Other Property**, whether in the name of an **Insured** or whether in a genuine or fictitious account.
- (B) No coverage will be available under Insuring Agreement (B)(2), Credit, Debit or Charge Cards Coverage, of this Coverage Section for loss resulting from any **Credit Card Fraud**, unless:
- (1) the **Insured** has fully complied with all provisions, conditions and other terms under which the involved credit, debit or charge card was issued; and
 - (2) the **Organization** is legally liable to the issuer of such credit, debit or charge card for such loss.
- (C) No coverage will be available under Insuring Agreement (C), Premises Coverage – Theft of Money or Securities, Insuring Agreement (D), Premises Coverage – Robbery or Safe Burglary of Other Property, or Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section for:
- (1) loss resulting from accounting or arithmetical errors or omissions;
 - (2) loss resulting from the giving or surrendering of **Money, Securities** or **Other Property** in any exchange or purchase;
 - (3) loss or damage resulting from fire; provided, that this EXCLUSION IV(C)(3) shall not apply to:
 - (a) loss or damage to **Money** or **Securities**; or
 - (b) damage to any safe or vault caused by fire and sustained in connection with a **Safe Burglary**;
 - (4) loss of or damage to property contained in any money operated device unless the amount of **Money** deposited in such device is recorded by a continuous recording instrument in such device;

- (5) loss of or damage to motor vehicles, trailers or semi-trailers or any equipment or accessories attached to any of the foregoing;
- (6) loss of or damage to **Money, Securities** or **Other Property**, after it has been transferred or surrendered to a person or place outside the **Premises** or outside of the **Banking Premises**:
 - (a) on the basis of a **Fraudulent Instruction**;
 - (b) as a result of a threat to do bodily harm to any person;
 - (c) as a result of a threat to do damage to any **Other Property**;
 - (d) as a result of a threat to introduce a denial of service attack into the **Organization's** computer system;
 - (e) as a result of a threat to introduce a virus or other malicious instruction into the **Organization's** computer system which is designed to damage, destroy or corrupt data or computer programs stored within the **Organization's** computer system;
 - (f) as a result of a threat to contaminate, pollute or render substandard the **Organization's** products or goods; or
 - (g) as a result of a threat to disseminate, divulge or utilize:
 - (i) the **Organization's** confidential information; or
 - (ii) any weakness in the source code within the **Organization's** computer system;

provided, that this EXCLUSION IV(C)(6) shall not apply to loss of **Money, Securities** or **Other Property** while outside the **Premises** in the custody and care of a **Messenger** that is otherwise covered under Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section if the **Organization**:

- (aa) had no knowledge of any threat at the time the conveyance began; or
 - (bb) had knowledge of a threat at the time the conveyance began, but the loss was not related to such threat;
 - (7) loss of or damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or **Other Property** resulting from vandalism or malicious mischief; or
 - (8) loss resulting from the **Organization**, or anyone acting on the **Organization's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any **Other Property**.
- (D) No coverage will be available under Insuring Agreement (F), Computer Crime Coverage, of this Coverage Section for:

- (1) loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value, or other cards or the information contained on such cards;
 - (2) loss resulting from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from the **Organization's Transfer Account**; or
 - (3) loss, or that part of any loss, the proof of which as to the amount or existence of such loss is dependent upon an inventory computation or a profit and loss computation.
- (E) No coverage will be available under Insuring Agreement (G), Funds Transfer Fraud Coverage, of this Coverage Section for:
- (1) loss resulting from the use of any computer to cause a fraudulent or unlawful transfer of **Money, Securities** or **Other Property**; or
 - (2) loss due to unintentional errors or omissions or the voluntary giving or surrendering of **Money, Securities** or **Other Property** in any exchange or purchase.
- (F) No coverage will be available under Insuring Agreement (I), Social Engineering Fraud Coverage, of this Coverage Section for:
- (1) loss due to any investment in **Securities**, or ownership in any corporation, partnership, real property, or similar instrument, whether or not such investment is genuine;
 - (2) loss due to the failure or malfunction of any product or service;
 - (3) loss due to the failure of any party to perform, in whole or in part, under any contract; or
 - (4) loss due to any party's use of or acceptance of any credit card, debit card or similar instrument, whether or not genuine.

V. LIMITS OF LIABILITY AND DEDUCTIBLES

The applicable **Per Occurrence Limit of Liability** stated in ITEM 9 of the Declarations shall be the maximum limit of the Underwriter's liability for all loss resulting from an **Occurrence**, regardless of the number of **Insureds** sustaining such loss.

If any loss is covered under more than one Insuring Agreement of this Coverage Section, the largest applicable **Per Occurrence Limit of Liability** of any such Insuring Agreement shall be the maximum of the Underwriter's liability for such loss.

The Underwriter's liability under this Coverage Section shall apply only to that part of each loss which is in excess of the applicable Deductible stated in ITEM 9 of the Declarations. Subject to the terms, conditions and limitations of this Coverage Section, the Underwriter will then pay to the **Organization** the amount of loss in excess of the applicable Deductible, up to the applicable **Per Occurrence Limit of Liability**. If more than one Deductible applies to a single loss, then the largest applicable Deductible shall apply to such loss.

VI. CONDITIONS APPLICABLE TO ALL INSURING AGREEMENTS

(A) Additional Premises or Employees:

If, while this Coverage Section is in effect, the **Organization** establishes any additional **Premises** or hires additional **Employees**, other than through an event described in Section XI(A) of the General Terms and Conditions Section, such **Premises** and **Employees** shall automatically be covered under this Coverage Section. Notice to the Underwriter of such an increase in the number of **Premises** or **Employees** is not required to be given to the Underwriter and no additional premium is required to be paid for the remainder of the **Policy Period**.

(B) Concealment, Misrepresentation or Fraud:

This Coverage Section is void in any case of fraud by any **Insured** at any time as it relates to the coverage provided by this Coverage Section. The Coverage Section is also void if the **Named Organization** or any other **Insured**, at any time, intentionally conceals or misrepresents a material fact concerning this Coverage Section, the property covered under this Coverage Section, the **Insured's** interest in the property covered under this Coverage Section, or a claim under this Coverage Section. If any **Insured** or any **Executive** has knowledge of any information relevant to this Coverage Section, then that knowledge will be considered knowledge possessed by every **Insured**.

(C) Duties in the Event of a Loss:

Upon **Discovery** by the **Insured** or an **Executive** of a loss or a situation that may result in loss of or damage to **Money, Securities or Other Property** that the **Insured** or an **Executive** reasonably believes will exceed fifty percent (50%) of the applicable Deductible stated in ITEM 9 of the Declarations, the **Insured** shall, as a condition precedent to coverage under this Coverage Section:

- (1) give written notice to the Underwriter as soon as practicable, but in no event later than ninety (90) days after such **Discovery**. If the **Insured** has reason to believe that any loss, other than a loss described under Insuring Agreement (A), Fidelity Coverage, or Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section, involves a violation of the law, the **Insured** must also notify local law enforcement authorities;
- (2) submit to examination under oath at the Underwriter's request;
- (3) produce for the Underwriter's examination all pertinent records concerning such loss, including, if possible, any **Financial Instrument** involved in any loss covered under Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section;
- (4) furnish to the Underwriter a detailed, sworn proof of loss as soon as practicable, but in no event later than one hundred twenty (120) days after **Discovery**;
- (5) cooperate fully with the Underwriter in the investigation and settlement of any loss or claim; and

(6) solely with respect to Insuring Agreement (I), Social Engineering Fraud Coverage, of this Coverage Section, furnish an electronic recording or other documentation evidencing verification of the applicable **Transfer Instruction**.

(D) Legal Action Against the Underwriter:

No **Insured** may bring any legal action against the Underwriter:

- (1) unless the **Insured** has fully complied with all of the terms of this Coverage Section and this Policy;
- (2) until ninety (90) days after the date on which the **Insured** filed its proof of loss with the Underwriter in accordance with Section VI(C)(4) of this Coverage Section; and
- (3) unless such legal action is commenced within two (2) years immediately following **Discovery**.

If any limitation of time set forth in this paragraph (D) is prohibited by applicable law, such limitation shall be deemed amended so as to equal the minimum period of limitation required by applicable law.

(E) Liability for Prior Losses:

- (1) If the **Insured** or an **Executive Discovers** loss during the **Policy Period** resulting directly from an **Occurrence** which took place in whole or in part during the policy period of any prior insurance issued to the **Named Organization**, or any predecessor in interest, the Underwriter will pay for such loss, provided that:
 - (a) if the Underwriter or an affiliate of the Underwriter issued such prior insurance, then such prior insurance shall terminate as of the Inception Date of this Coverage Section and such prior insurance shall not cover any loss not **Discovered** and noticed to the Underwriter or such affiliate prior to the Inception Date for this Coverage Section; or
 - (b) if another insurer issued such prior insurance and such loss was first discovered or **Discovered** by an **Insured** or an **Executive** prior to the expiration of the time allowed for discovery or **Discovery** under such prior insurance, then no coverage shall be available under this Coverage Section for such loss.

The Underwriter's maximum liability for such loss shall not exceed:

- (i) if the Underwriter or an affiliate of the Underwriter issued such prior insurance, the applicable **Per Occurrence Limit of Liability** stated in ITEM 9 of the Declarations; or
- (ii) if another insurer issued such prior insurance, the lesser of the applicable **Per Occurrence Limit of Liability** stated in ITEM 9 of the Declarations or the applicable limit of liability applicable during the period of loss written under such prior insurance.

In all events, the applicable Deductible stated in ITEM 9 of the Declarations will apply to such loss.

- (2) In no event shall the **Insured** be entitled to a separate recovery of the applicable limits of any policy in force at the time any part of the loss was sustained, nor shall the **Insured** be entitled to recover the sum of the applicable limits of liabilities of such policies.

(F) Extended Period to Discover Loss

The Underwriter will pay for loss the **Insured** sustained prior to the effective date of cancellation or termination of this Coverage Section, which is **Discovered** by the **Insured** or an **Executive**:

- (1) no later than sixty (60) days from the effective date of such cancellation or termination; and
- (2) with respect to any **Employee Benefits Plan** under Insuring Agreement (A)(3), Employee Benefits Plan Coverage, of this Coverage Section, no later than one (1) year from the effective date of such cancellation or termination.

Notwithstanding the foregoing, this extended period to **Discover** loss terminates immediately upon the effective date of any other insurance obtained by the **Insured** replacing in whole or in part the insurance afforded by this Coverage Section.

(G) Non-Accumulation of Liability

If there is more than one **Insured**, the maximum liability of the Underwriter for loss sustained by any or all **Insureds** shall not exceed the amount for which the Underwriter would be liable if all loss were sustained by any one **Insured**.

Regardless of the number of years this coverage remains in effect or the total premium amounts due or paid, whether under this Coverage Section, or under any prior bond or policy, or under any renewal or replacement of this Coverage Section, the liability of the Underwriter with respect to any loss shall not be cumulative from year to year or from policy period to policy period.

(H) Other Insurance:

This Coverage Section is specifically excess of, and will not contribute with, any other valid and collectible insurance available to any **Insured** or any other party with interest in any loss covered by this Coverage Section, unless such other insurance is written specifically in excess of any applicable **Per Occurrence Limit of Liability** provided by this Coverage Section.

(I) Ownership; Interests Covered:

- (1) Except as provided in subparagraph (2) below, the Underwriter's liability under this Coverage Section applies only to **Money, Securities or Other Property** owned or leased by the **Organization**, or for which the **Organization** is legally liable, or held by the **Organization** in any capacity whether or not the **Organization** is legally liable therefore.

- (2) The Underwriter's liability, solely with respect to Insuring Agreement (A)(2), Employee Theft of Client Property Coverage, of this Coverage Section applies only to **Money, Securities** or **Other Property** owned or leased by a **Client** or held by a **Client** for others whether or not such **Client** is legally liable therefore.

Notwithstanding the foregoing, the insurance provided by this Coverage Section is for the benefit of the **Insured** only and provides no rights or benefits to any other person or entity. Any claim for loss covered under this Coverage Section must be submitted by the **Insured**.

- (J) Records:

The **Organization** must keep records of all property covered under this Coverage Section so that the Underwriter can verify the amount of any loss.

- (K) Recoveries:

Recoveries for any loss covered under this Coverage Section, whether effected by the Underwriter or the **Insured** or whether effected before or after the Underwriter has made payment under this Coverage Section, less the costs of recovery shall be distributed as follows:

- (1) first, to an **Insured** in satisfaction of its covered loss in excess of the applicable **Per Occurrence Limit of Liability**;
- (2) second, to the Underwriter in satisfaction of the amounts paid to an **Insured** for a covered loss;
- (3) third, to an **Insured** in satisfaction of any Deductible applicable to such loss;
- (4) fourth, to an **Insured** in satisfaction of any amount of such loss not covered by this Coverage Section.

Any amounts recovered from insurance, suretyship, reinsurance, security or indemnity taken for the Underwriter's benefit shall not be deemed a recovery hereunder. Recovery of original **Securities** after duplicates of them have been issued shall not be deemed a recovery hereunder.

- (L) Valuation and Settlement:

The value of any loss for purposes of coverage under this Coverage Section shall be determined as follows:

- (1) Loss of **Money**:

The Underwriter will, at the **Insured's** option, pay for loss of **Money** up to and including its face value, issued by any country other than the United States of America:

- (a) at face value in currency issued by that country; or

(b) in the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.

(2) Loss of **Securities**:

The Underwriter will, at the Underwriter's option:

- (a) pay the market value of such **Securities** at the close of business on the day the loss was **Discovered**, or replace them in kind, in which event the **Insured** must assign to the Underwriter all of its rights, title and interest in and to those **Securities**, or
- (b) pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **Securities**; provided that, the Underwriter's liability will apply only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of: (i) the market value of the **Securities** at the close of business on the day the loss was **Discovered**, or (ii) the **Per Occurrence Limit of Liability** applicable to the **Securities**.

(3) Loss of or damage to **Other Property**, including damage to the **Premises** or its exterior:

The Underwriter will pay the replacement cost of such **Other Property** without deduction for depreciation; provided, that the Underwriter's liability shall not exceed the lesser of:

- (a) the cost to replace the lost or damaged **Other Property** with property of comparable material and quality and used for the same purpose;
- (b) the amount the **Insured** actually spends that is necessary to repair or replace the lost or damaged **Other Property**; or
- (c) the **Per Occurrence Limit of Liability** applicable to such **Other Property**.

Notwithstanding anything to the contrary contained in this paragraph (L)(3), the Underwriter will not be liable to make payment on a replacement cost basis for any loss or damage to **Other Property** until the lost or damaged **Other Property** is actually repaired and replaced and unless the repairs or replacements are made as soon as reasonably possible after the loss or damage. If the lost or damaged **Other Property** is not repaired or replaced, the Underwriter will pay on an actual cash value basis.

The Underwriter will, at the **Insured's** option, settle loss or damage to **Other Property** other than **Money**:

- (i) in the currency of the country in which the loss or damage occurred; or
- (ii) in the United States of America dollar equivalent of the currency of the country in which the loss or damage occurred determined by the rate of

exchange published in *The Wall Street Journal* on the date the loss was **Discovered**.

(M) Termination of Coverage as to Loss Caused by Certain Employees:

Insuring Agreement (A), Fidelity Coverage, of this Coverage Section shall terminate as to any **Employee** and no coverage will be available for loss caused by any **Employee** which is sustained by an **Insured**:

- (1) after the **Organization** or any **Executive**, not in collusion with such **Employee**, becomes aware of any **Theft, Forgery**, or any other dishonest act committed by such **Employee**, whether such act was committed before or after such **Employee** became employed by the **Organization**. However, this provision shall not apply if the **Theft, Forgery**, or any other dishonest act occurred prior to the **Employee** becoming an **Employee** of the **Organization** and the amount of loss resulting from such act did not exceed \$10,000; or
- (2) after the date specified in a notice mailed to the **Named Organization** by the Underwriter, which date will be at least sixty (60) days after the date of mailing. The Underwriter will mail or deliver such notice to the **Named Organization's** address set forth in ITEM 1 of the Declarations. If notice is mailed, proof of mailing will be sufficient proof of notice.

(N) Armored Vehicle Companies:

The Underwriter's liability under Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section shall apply only to the amount of loss the **Organization** cannot recover:

- (1) under the **Organization's** contract with the armored vehicle company; and
- (2) from any insurance or indemnity carried by, or for the benefit of customers of, the armored vehicle company.

(O) Special Limit of Insurance for Specified Property:

The Underwriter's maximum liability for all loss resulting from any **Occurrence** covered under Insuring Agreement (D), Premises Coverage – Robbery or Safe Burglary of Other Property, Insuring Agreement (E), Outside the Premises Coverage, or Insuring Agreement (F), Computer Crime Coverage, of this Coverage Section for loss of or damage to:

- (1) precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) manuscripts, drawings or records of any kind, or the cost of reconstructing manuscripts, drawings or records or reproducing any information contained in any manuscripts, drawings or records,

shall be \$5,000, which amount shall be part of, and not in addition to, the applicable **Per Occurrence Limit of Liability** stated in ITEM 9 of the Declarations.