

**HEALTH CARE ORGANIZATIONS AND
PROVIDERS EXCESS AND
UMBRELLA LIABILITY POLICY**



PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ THIS 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 all of the terms and conditions of this Policy (including all endorsements hereto), the Underwriter and the **Insured** agree as follows:

I. INSURING AGREEMENTS

Coverage may apply under an INSURING AGREEMENT only if such INSURING AGREEMENT is indicated as purchased in ITEM 3 of the Declarations.

(A) Claims-Made Professional Liability Insurance:

The Underwriter will pay on behalf of an **Insured**, up to the applicable Limit of Liability shown in ITEM 4.A. of the Declarations, **Loss and Defense Expenses** in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a covered **Claim** for a **Professional Services Wrongful Act** happening on or after the **Retroactive Date**; provided, that the **Claim** is first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(B) General Liability Insurance:

(1) Occurrence-Based Coverage:

The Underwriter will pay on behalf of an **Insured**, up to the applicable Limit of Liability shown in ITEM 4.B. of the Declarations, **Loss and Defense Expenses** in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a covered **Claim** alleging **Bodily Injury, Property Damage, Advertising Injury or Personal Injury** that is caused by an **Occurrence** that takes place during the **Policy Period**; provided, that the **Claim** is reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(2) Claims-Made Coverage:

The Underwriter will pay on behalf of an **Insured**, up to the applicable Limit of Liability shown in ITEM 4.B. of the Declarations, **Loss and Defense Expenses** in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a covered **Claim** alleging **Bodily Injury, Property Damage, Advertising Injury or Personal Injury** that is caused by an **Occurrence** that takes place on or after the **Retroactive Date**; provided, that the **Claim** is first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period and reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(C) Follow-Form Excess Liability Insurance:

The Underwriter will pay on behalf of an **Insured**, up to the applicable Limit of Liability shown in ITEM 4.C. of the Declarations, **Loss** and **Defense Expenses** in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a **Claim** to which this INSURING AGREEMENT applies; provided, that:

- (1) such **Underlying Insurance** also applies and has been exhausted by actual payment thereunder, or would apply but for exhaustion of the applicable limit(s) of liability thereunder;
- (2) with respect to any coverage provided by such **Underlying Insurance** on a claims-made basis, this INSURING AGREEMENT applies only to **Claims** first made against an **Insured** during the **Policy Period**. In all events, Professional Liability coverage shall be deemed to apply on a claims-made basis;
- (3) with respect to any coverage (other than Professional Liability coverage) provided by such **Underlying Insurance** on an occurrence basis, this INSURING AGREEMENT applies only to **Claims** arising out of an occurrence that takes place during the **Policy Period**;
- (4) coverage under this INSURING AGREEMENT will apply in conformance with, and will follow the form of, the terms, conditions, agreements, exclusions, definitions and endorsements of such **Underlying Insurance**, except:
 - (a) with respect to any provisions to the contrary contained in this Policy;
 - (b) the applicable limit of liability of such **Underlying Insurance** shall be deemed to be reduced or exhausted solely as a result of payments for **Loss** or **Defense Expenses** that are covered under this INSURING AGREEMENT; and
 - (c) the coverage provided by this INSURING AGREEMENT shall not be broader than any such **Underlying Insurance** unless expressly provided herein, including any endorsement hereto;
- (5) the Underwriter will not have any obligation to make any payment hereunder unless and until the full amount of the applicable limit(s) of liability of such **Underlying Insurance** has been paid by the issuer(s) of such **Underlying Insurance**, an **Insured** or by another party on behalf, or for the benefit, of the **Insured** or the issuer(s) of such **Underlying Insurance**; and
- (6) the **Claim** is reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

(D) Umbrella Liability Insurance:

The Underwriter will pay on behalf of an **Insured**, up to the applicable Limit of Liability shown in ITEM 4.D. of the Declarations, **Loss** and **Defense Expenses** in excess of the **Retained Amount** which an **Insured** is legally obligated to pay as a result of a covered **Claim** alleging **Bodily Injury, Property Damage, Advertising Injury or Personal Injury** that is caused by an **Occurrence** that takes place during the **Policy Period**; provided, that such **Claim** is:

- (1) not covered by any **Underlying Insurance**;

- (2) not excluded by any **Underlying Insurance** due to a term, condition or exclusion of such **Underlying Insurance**;
- (3) not within the scope of the coverage provided by any other INSURING AGREEMENT of this Policy, whether or not such INSURING AGREEMENT has been purchased; and
- (4) reported to the Underwriter in accordance with GENERAL CONDITION (D) of this Policy.

II. DEFINITIONS

- (A) **"Advertisement"** means a notice that is broadcast or published to the general public or specific market segments about an **Insured's** goods, products or services, for the purpose of attracting customers or supporters. For purposes of this Definition:
- (1) notice that is broadcast or published includes material placed on the Internet or similar means of electronic communication; and
 - (2) with regard to websites, only that part of a website that is about an **Insured's** goods, products or services, for the purpose of attracting customers or supporters, will be considered an **Advertisement**.
- (B) **"Advertising Injury"** means injury arising out of one or more of the following offenses:
- (1) an **Insured's** use of another's advertising idea in an **Advertisement**;
 - (2) an **Insured's** use of another's copyright, trade dress or slogan in an **Advertisement**; or
 - (3) an **Insured's** infringement upon another's copyright, trade dress or slogan in an **Advertisement**.
- (C) **"Bodily Injury"** means bodily injury, sickness or disease sustained by a person, other than a **Patient**, including death resulting from any of these at any time; mental anguish; and mental injury.
- (D) **"Claim"** means:
- (1) solely with respect to and limited to the coverage afforded under INSURING AGREEMENTS (A), (B) and (D), any written notice received by an **Insured** that any person or entity intends to hold an **Insured** responsible for a **Professional Services Wrongful Act** or an **Occurrence**; and
 - (2) solely with respect to and limited to the coverage afforded under INSURING AGREEMENT (C), any written notice received by an **Insured** for which coverage is afforded by the applicable **Underlying Insurance**.
- (E) **"Covered Contract"** means any lease of premises; sidetrack agreement; elevator maintenance agreement; easement or license agreement; or contract or agreement specifically added as a **Covered Contract** by written endorsement to this Policy, under which the **Named Insured** assumes the tort liability of another to pay damages for **Bodily Injury** or **Property Damage** covered by this Policy that is sustained by others.
- (F) **"Defense Expenses"** means the reasonable fees of attorneys, experts and consultants and costs and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**; provided, that **Defense Expenses** shall not include remuneration, salaries, overhead, fees, loss

of earnings reimbursement or benefit expenses of any **Insured**.

- (G) **"Employee"** means any person who has an assigned work schedule for and is on the regular payroll of the **Named Insured**, with federal and state taxes withheld. Independent contractors are not **Employees**. An **Employee's** status as an **Insured** shall be determined as of the date of the **Occurrence** or **Professional Services Wrongful Act** upon which a **Claim** involving the **Employee** is based.
- (H) **"Employment Practices"** means any of the following: breach of any employment contract; failure or refusal to hire or employ; dismissal, discharge, reduction in force, downsizing or termination of employment, whether actual or constructive; demotion, reassignment, failure or refusal to promote, or deprivation of career opportunity; discipline of **Employees**; evaluation of **Employees**; discrimination or harassment of any kind or on any basis including, but not limited to, discrimination, limitation, segregation or classification based on race, sex, marital status, ancestry, physical or mental handicaps, age, sexual preference, pregnancy or religion or other status that is protected under any applicable federal, state or local statute or ordinance affecting any present or former **Employee** or applicant for employment; humiliation or defamation of any present or former **Employee** or applicant for employment; retaliatory treatment against an **Employee** arising out of the **Employee's** attempted or actual exercise of the **Employee's** rights under the law; employment-related misrepresentations; or failure to implement appropriate workplace or employment policies or procedures.
- (I) **"First Named Insured"** means the entity designated as such in ITEM 1 of the Declarations.
- (J) **"Good Samaritan Acts"** means emergency medical treatment provided by an **Insured**, without remuneration, at the scene of an accident, medical crisis or disaster.
- (K) **"Hostile Fire"** means a fire which becomes uncontrollable or breaks out from where it was intended to be contained; provided, that **Hostile Fire** does not include any fire that originates at any site operating as a waste disposal facility or waste storage facility.
- (L) **"Impaired Property"** means tangible property, other than **Insured Product** or **Insured Work**, that cannot be used or is not useful because:
- (1) it incorporates **Insured Product** or **Insured Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
 - (2) the **Named Insured** has failed to fulfill the terms of any contract or agreement.
- (M) **"Insured"** means:
- (1) solely with respect to and limited to the coverage afforded under INSURING AGREEMENTS (A) and (B), any of the following:
 - (a) the **Named Insured**;
 - (b) any **Employee** or **Volunteer**, but only when such **Employee** or **Volunteer** is acting within the capacity and scope of his or her duties as such;
 - (c) any **Locum Tenens**, but only when such **Locum Tenens** is acting within the capacity and scope of his or her duties as such. Coverage for any **Locum Tenens** shall only extend for up to sixty (60) days during the **Policy Period** per **Insured** for whom such **Locum Tenens** is serving as a substitute;

- (d) the **Named Insured's** medical directors, department heads, or chiefs of staff, but only while acting within the scope and capacity of their duties for the **Named Insured**;
 - (e) any member of a duly authorized board or any committee of the **Named Insured**; any person communicating information to the **Named Insured** or its medical or professional staff for the purpose of aiding in the evaluation of **Professional Services** or the qualifications, professional competence, fitness, or character of an applicant for membership or privileges on such medical or professional staff or for purposes of initiating corrective action; or any person charged with the duty of acting as a hearing officer or an agent of a judicial review committee or executing directives of any such board or committee; but, in each case, only when such person is acting within the capacity and scope of his or her duties to such board or committee;
 - (f) any **Employee** providing **Proctoring Services** but only with respect to his or her legal liability for providing, or failing to provide, such **Proctoring Services**. The fact that a patient also may be obligated to pay for **Medical Services** rendered to the patient shall not reduce the coverage for the **Insured** to the extent of his or her **Proctoring Services**;
 - (g) any person enrolled as a student in a formal training program offered by the **Named Insured** or a subsidiary or an affiliate in connection with the **Named Insured's** on-site operation as a health care organization or provider, but only when such person is acting within the capacity and scope of his or her duties as such;
 - (h) any member or partner of a joint venture or partnership specifically listed as a **Named Insured** in Schedule A to this Policy, but only with respect to such member or partner's liability arising out of such joint venture or partnership; and
 - (i) any driver or operator of **Mobile Equipment**, but only when operating **Mobile Equipment** at the direction and with the permission of the **Named Insured**;
- (2) solely with respect to and limited to the coverage afforded under INSURING AGREEMENT (A), the lawful spouses of individual **Insureds** and, in the event of the death, incapacity, or bankruptcy of an individual **Insured**, the estates, heirs, legal representatives or assigns of such individual **Insured**;
- (3) solely with respect to and limited to the coverage afforded under INSURING AGREEMENT (C), any person or entity included within the definition of "Insured" (or similar term) in the applicable **Underlying Insurance**; and
- (4) solely with respect to and limited to the coverage afforded under INSURING AGREEMENT (D), any of the following:
- (a) the **Named Insured**;
 - (b) any **Employee**, but only when such **Employee** is acting within the capacity and scope of his or her duties as such; and
 - (c) any member or partner of a joint venture or partnership specifically listed as a **Named Insured** in Schedule A to this Policy, but only with respect to such

member or partner's liability arising out of such joint venture or partnership.

(N) "**Insured Product**" means:

- (1) any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) the **Named Insured**;
 - (b) others trading under the name of the **Named Insured**; or
 - (c) a person or an organization whose business or assets the **Named Insured** has acquired; and
- (2) containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products. **Insured Product** includes:
 - (a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the **Insured Product**; and
 - (b) the providing of or failure to provide warnings or instructions.

Insured Product includes leased equipment used in or useful to the **Named Insured** in providing its services, but only if the lease for such leased equipment had an original term of six (6) months or more. **Insured Product** does not include vending machines or other property rented to, or located for the use of, others but not sold.

(O) "**Insured Work**" means:

- (1) work or operations performed by the **Named Insured** or on the **Named Insured's** behalf; and
- (2) materials, parts or equipment furnished in connection with such work or operations. **Insured Work** includes:
 - (a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the **Insured Work**; and
 - (b) the providing of or failure to provide warnings or instructions.

(P) "**Locum Tenens**" means any physician, surgeon, midwife, nurse anesthetist, nurse practitioner, physician assistant or surgical assistant who is temporarily serving as a substitute physician, surgeon, midwife, nurse anesthetist, nurse practitioner, physician assistant or surgical assistant, as applicable, for an **Insured** while such **Insured** is temporarily absent from professional practice.

(Q) "**Loss**" means damages, settlements, judgments or other amounts (including punitive or exemplary damages if insurable under the applicable law most favorable to the insurability thereof) which an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** shall not include:

- (1) **Defense Expenses**;
- (2) the multiple portion of any multiplied damage award;

- (3) fines, penalties, sanctions, fees, government payments or taxes;
 - (4) amounts owed to any provider of **Medical Services** under any contract;
 - (5) restitution, return or disgorgement of fees, profits, charges for products or services rendered, capitation payments, premium or any other funds allegedly wrongfully held or obtained;
 - (6) relief or redress in any form other than monetary compensation or monetary damages, including without limitation the cost of complying with any injunctive, declaratory or administrative relief;
 - (7) the payment, satisfaction or writing off of any medical bills or charges by an **Insured**; or
 - (8) matters which are uninsurable under applicable law.
- (R) **"Maintenance Deductible"** means the amount stated in ITEM 6 of the Declarations.
- (S) **"Managed Care Services"** means services or activities performed in the administration or management of health care plans; advertising, marketing or selling health care plans or health care products; handling, investigating or adjusting claims for benefits or coverages under health care plans; or establishing health care provider networks.
- (T) **"Medical Services"** means health care, medical care, or treatment provided to any individual, including without limitation any of the following: medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the 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; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- (U) **"Mobile Equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- (1) bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - (2) vehicles maintained for use solely on or next to premises owned or rented by an **Insured**;
 - (3) vehicles that travel on crawler treads;
 - (4) vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (a) power cranes, shovels, loaders, diggers or drills, or
 - (b) road construction or resurfacing equipment such as graders, scrapers or rollers;
 - (5) vehicles not described in clauses (1)-(4) above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (a) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (b) cherry pickers and similar devices used to raise or lower workers; and
- (6) vehicles not described in clauses (1)-(4) above maintained primarily for purposes other than the transportation of persons or cargos.

Mobile Equipment does not include self-propelled vehicles with the following types of permanently attached equipment:

- (i) equipment designed primarily for:
 - (aa) snow removal;
 - (bb) road maintenance but not construction or resurfacing; or
 - (cc) street cleaning;
- (ii) cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (iii) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- (V) **"Mold"** means mold, mildew, spores, mycotoxins, fungi, organic pathogens or other micro organisms of any type, nature or description whatsoever.
- (W) **"Named Insured"** means, solely with respect to and limited to the coverage afforded under INSURING AGREEMENTS (A), (B) and (D), the **First Named Insured** and each other entity listed as a **Named Insured** in Schedule A to this Policy.
- (X) **"Occurrence"** means:
 - (1) with respect to **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to substantially the same harmful conditions, which results in injury or damage neither expected nor intended by an **Insured**; and
 - (2) with respect to **Advertising Injury** or **Personal Injury**, a covered offense as set forth in DEFINITIONS (B) or DEFINITIONS (AA) of this Policy.
- (Y) **"Patient"** means any person or human body admitted or registered to receive **Medical Services** from an **Insured**, whether on an inpatient, outpatient or emergency basis.
- (Z) **"Peer Review"** means the process of evaluating, by members of a formal, duly constituted professional review board or committee of the **Named Insured**, any individual or entity for purposes of selecting, employing, contracting with or credentialing current or prospective providers of **Medical Services**.
- (AA) **"Personal Injury"** means injury, other than **Bodily Injury**, arising out of one or more of the following offenses:
 - (1) false arrest, detention or imprisonment;

- (2) malicious prosecution;
 - (3) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
 - (4) oral or written publication of material that slanders or libels a person or an organization or disparages a person's or an organization's goods, products or services; or
 - (5) oral or written publication of material that violates a person's right of privacy.
- (BB) **"Policy Period"** means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation date of this Policy.
- (CC) **"Pollutant"** means smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, medical waste, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants. **Pollutant** does not include smoke, fumes, vapor or soot emanating from equipment used to heat or cool a building owned or operated by an **Insured**.
- (DD) **"Proctoring Services"** means such supervision, evaluation or instruction provided by a member of the **Named Insured's** medical staff to other members of, or applicants to, the **Named Insured's** medical staff or to residents, paramedics, trainees or **Employees** of the **Named Insured**, pursuant to medical staff bylaws, rules and regulations or by authority of a governmental authority or directive, which is required by the **Named Insured** as an obligation of medical staff membership and for which the medical staff member either volunteers or is paid by the **Named Insured**.
- (EE) **"Professional Services"** means:
- (1) **Medical Services**;
 - (2) **Good Samaritan Acts**;
 - (3) the activities of an **Insured** as a member of a board or committee of the **Named Insured**, or as a member of any committee of the medical or professional staff of the **Named Insured**, when engaged in **Peer Review** or **Utilization Review**;
 - (4) the activities of an **Insured** as a member of a formal accreditation, standards review or similar professional board or committee, including executing the directives of such board or committee; or
 - (5) reviewing the quality of **Medical Services** or providing quality assurance on behalf of the **Named Insured**.
- (FF) **"Professional Services Wrongful Act"** means:
- (1) any actual or alleged act, error or omission, or series of acts, errors or omissions, by an **Insured** in rendering, or failing to render, **Professional Services**; or
 - (2) any actual or alleged act, error or omission, or series of acts, errors or omissions, by any person other than an **Insured** in rendering, or failing to render, **Medical Services**, but

only for an **Insured's** vicarious liability with regard to such **Medical Services**. In no event shall this Policy provide coverage for the direct liability of any person other than an **Insured** for the rendering of, or failure to render, **Medical Services**.

(GG) **"Property Damage"** means:

- (1) physical injury to tangible property, including all resulting loss of use of that property; provided, that such loss of use shall be deemed to have occurred at the time of the physical injury that caused it; or
- (2) loss of use of tangible property that is not physically injured; provided, that such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

(HH) **"Related Claims"** means all **Claims** based upon, arising out of, relating in any way to, directly or indirectly resulting from, in consequence of, involving, or in any way having a common nexus of, 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, in any combination, and whether or not involving more than one policy, practice, procedure or product, including any course of treatment, whether or not deemed a continuous tort.

(II) **"Retained Amount"** means the amount stated in ITEM 7 of the Declarations.

(JJ) **"Retroactive Date"** means the applicable date set forth in ITEM 8 of the Declarations.

(KK) **"Underlying Insurance"** means all policies, self-insurance programs, trust agreements, or other risk transfer arrangements scheduled in ITEM 5 of the Declarations or a written endorsement attached to this Policy and, subject to GENERAL CONDITION (B) of this Policy, all renewals or replacements thereof.

(LL) **"Utilization Review"** means the process of evaluating the appropriateness or necessity of **Medical Services** provided or to be provided by an **Insured**. **Utilization Review** shall include prospective review of proposed **Medical Services**, concurrent review of ongoing **Medical Services**, and retrospective review of already rendered **Medical Services**. **Utilization Review** does not include services or activities performed in the administration or management of health care plans.

(MM) **"Volunteer"** means any person who provides his or her services or labor to the **Named Insured**, and whose activities are supervised and directed by the **Named Insured**, but who is not compensated for such services and labor. No **Employee** or staff physician shall be considered a **Volunteer**.

III. EXCLUSIONS

(A) **Exclusions Applicable to INSURING AGREEMENT (A):**

In addition to the EXCLUSIONS listed under (C) below, no coverage will be available under INSURING AGREEMENT (A), and the Underwriter will not pay any **Loss** or **Defense Expenses**, for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:

- (1) **Professional Services Wrongful Act** that happened before the **Retroactive Date**;
- (2) **Bodily Injury** or **Property Damage**;

- (3) **Advertising Injury** or **Personal Injury**, except to the extent that such injury relates to the rendering of, or failure to render, **Professional Services**; or
- (4) rendering of, or failure to render, **Medical Services** by any person other than an **Insured**; except this EXCLUSION (A)(4) will not apply to an **Insured's** vicarious liability with regard to such **Medical Services**.

(B) Exclusions Applicable to INSURING AGREEMENTS (B)(1) or (B)(2) and (D):

In addition to the EXCLUSIONS listed under (C) below, no coverage will be available under INSURING AGREEMENT (B)(1) or (B)(2), as applicable, or INSURING AGREEMENT (D), and the Underwriter will not pay any **Loss** or **Defense Expenses**, for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:

- (1) **Occurrence** that happened before the Inception Date set forth in ITEM 2(a) of the Declarations, except this EXCLUSION (B)(1) shall apply only to INSURING AGREEMENT (B)(1) and INSURING AGREEMENT (D);
- (2) **Occurrence** that happened before the **Retroactive Date**, except this EXCLUSION (B)(2) shall apply only to INSURING AGREEMENT (B)(2);
- (3) **Professional Services Wrongful Act**;
- (4) injury to a **Patient**; except this EXCLUSION (B)(4) shall not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: fire or lightning; windstorm or hail; explosion; riot, including riot attending a strike or civil commotion; aircraft or vehicles; smoke; vandalism or malicious mischief; sprinkler leakage; elevator malfunction; earthquake or flood; or structural collapse of a building;
- (5) **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** expected or intended from the standpoint of any **Insured**; except for **Bodily Injury** resulting from use of reasonable force to protect persons or property;
- (6) **Personal Injury** or **Advertising Injury** arising out of oral or written publication of material:
 - (a) if done by or at the direction of an **Insured** with knowledge of its falsity; or
 - (b) whose first publication took place before the Inception Date set forth in ITEM 2(a) of the Declarations, except this EXCLUSION (B)(6)(b) shall apply only to INSURING AGREEMENT (B)(1) and INSURING AGREEMENT (D); or
 - (c) whose first publication took place before the **Retroactive Date**, except this EXCLUSION (B)(6)(c) shall apply only to INSURING AGREEMENT (B)(2);
- (7) **Advertising Injury** arising out of any false, incorrect or misleading description of the price of goods, products or services;
- (8) **Bodily Injury** or **Property Damage** for which an **Insured** is or may be held liable by reason of:

- (a) causing or contributing to the intoxication of any person;
- (b) the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (c) any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages;

except this EXCLUSION (B)(8) will not apply if such **Insured** is not in the business of manufacturing, selling or distributing alcoholic beverages;

(9) **Bodily Injury or Property Damage** arising out of:

- (a) the transportation of **Mobile Equipment** by, in or on an auto owned or operated by, or rented or loaned to, any **Insured**; or
- (b) the use of **Mobile Equipment** in, or while in practice or preparation for, any prearranged racing, speed, demolition or stunt activity;

(10) **Property Damage** to:

- (a) property an **Insured** owns, rents or occupies;
- (b) premises sold, given away or abandoned by the **Named Insured**, if the **Property Damage** arises out of any part of those premises;
- (c) property loaned to an **Insured**;
- (d) personal property in the care, custody or control of an **Insured**;
- (e) that particular part of real property on which an **Insured**, or any contractor or subcontractor working directly or indirectly on an **Insured's** behalf, is performing operations, if the **Property Damage** arises out of those operations;
- (f) that particular part of any property that must be restored, repaired or replaced because the **Insured's Work** was incorrectly, poorly or improperly performed on it; or
- (g) property which is being transported by an **Insured** by automobile, **Mobile Equipment** or team, including the loading and unloading thereof;

EXCLUSION (B)(10)(b) above does not apply if the premises are **Insured Work** and were never occupied, rented or held for rental by the **Named Insured**;

EXCLUSIONS (B)(10)(c), (d), (e), and (f) above do not apply to liability assumed under a sidetrack agreement; and

EXCLUSION (B)(10)(f) above does not apply to **Property Damage** included in the products and completed operations hazard;

(11) **Property Damage** to the **Insured Product** arising out of it or any part of it;

(12) **Property Damage** to **Insured Work** arising out of it or any part of it and included in the products and completed operations hazard; except if the damaged work or the work

out of which the damage arises was performed on behalf of the **Named Insured** by a subcontractor;

- (13) **Property Damage to Impaired Property** or property that has not been physically injured, arising out of:
- (a) defect, deficiency, inadequacy or dangerous condition in **Insured Product** or **Insured Work**; or
 - (b) a delay or failure by an **Insured** or anyone acting on the **Named Insured's** behalf to perform a contract or an agreement in accordance with its terms; except this EXCLUSION (B)(13)(b) does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Insured Work** after it has been put to its intended use; or
- (14) damages claimed for any loss, cost or expense incurred by the **Named Insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
- (a) **Insured Product**;
 - (b) **Insured Work**; or
 - (c) **Impaired Property**, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

(C) Exclusions Applicable to INSURING AGREEMENTS (A), (B)(1) or (B)(2) and (D):

No coverage will be available under INSURING AGREEMENT (A), INSURING AGREEMENT (B)(1) or (B)(2), as applicable, or INSURING AGREEMENT (D), and the Underwriter will not pay any **Loss** or **Defense Expenses**, for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:

- (1) act, error or omission if any **Insured**, on or before the Inception Date stated in ITEM 2(a) of the Declarations, knew or reasonably could have foreseen that such act, error or omission might result in a **Claim**;

If, however, this Policy is a renewal of one or more policies previously issued by the Underwriter to the **First Named Insured**, and the coverage provided by the Underwriter to the **First Named Insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (C)(1) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the Underwriter began to provide the **First Named Insured** with the continuous and uninterrupted coverage of which this Policy is a renewal;

- (2) act, error, omission, event, suit or demand which was the subject of any notice given under any other policy of insurance or plan or program of self-insurance in effect prior to the Inception Date set forth in ITEM 2(a) of the Declarations;
- (3) violation of any federal, state or local antitrust, restraint of trade, unfair competition, or price-fixing law, or any rules or regulations promulgated thereunder, or any involvement in any agreement or conspiracy to restrain trade, except for any **Claim** otherwise

covered under INSURING AGREEMENT (A) arising out of the rendering of, or failure to render, **Medical Services**;

- (4) dishonest, fraudulent, criminal or intentionally malicious act, error or omission by an **Insured**; any willful violation of law, statute, rule or regulation by an **Insured**; or the gaining of any profit, remuneration or advantage by an **Insured** to which such **Insured** was not legally entitled, including, but not limited to, health care fraud; provided, however, that no such act of one **Insured** will be imputed to any other **Insured** who was not aware of and did not participate in such act;
- (5) rendering of, or failure to render, **Medical Services** by an **Insured** or any person for whom an **Insured** is vicariously liable while the **Insured's** or such person's license to practice is or was not active;
- (6) **Claim** made by or for the benefit of, or in the name or right of, one current or former **Insured** against another current or former **Insured**; except this EXCLUSION (C)(6) will not apply to any **Claim** for **Peer Review** activities or the rendering of, or failure to render, **Medical Services**;
- (7) obligation of an **Insured** pursuant to any workers' compensation, unemployment compensation, disability benefits or similar law;
- (8) obligation which an **Insured** has assumed under a written or oral contract or agreement; except this EXCLUSION (C)(8) will not apply to:
 - (a) liability an **Insured** would have had in the absence of such contract or agreement; or
 - (b) liability assumed by the **Named Insured** under a **Covered Contract**;
- (9) **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, use, operation or entrustment to others of any aircraft, auto, watercraft, motor vehicle or semi-trailer or the loading or unloading thereof, except to the extent such injury arises from the loading or unloading of patients;
- (10) discrimination of any kind on any basis, including, but not limited to, discrimination, limitation, segregation or classification based on race, sex, marital status, ancestry, physical or mental handicaps, age, sexual preference, pregnancy, religion or other status that is protected under any applicable federal, state or local statute or ordinance affecting any present or former **Employee** or applicant for employment, except to the extent that such discrimination relates to the rendering of, or failure to render, **Professional Services**;
- (11) **Employment Practices**;
- (12) liability of any "Acquired Entity" described in GENERAL CONDITION (G) or its individual **Insureds** acting in their capacity as such for any **Claim, Occurrence**, fact, circumstance, situation, transaction or event or series of **Claims, Occurrences**, facts, circumstances, situations, transactions or events happening before the date such entity became an "Acquired Entity;"
- (13) unauthorized or illegal use or release of confidential, private or proprietary information;
- (14) infringement of any right of patent, service mark, trademark, copyright, title or slogan;

except this EXCLUSION (C)(14) will not apply to liability of an **Insured** for **Advertising Injury**;

- (15) liability of any **Insured** for **Managed Care Services**; except this EXCLUSION (C)(15) will not apply to liability of an **Insured** for **Professional Services**;
- (16) **Bodily Injury** or **Property Damage** arising from any consequence, direct or indirect, of war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, strike, riot or civil insurrection;
- (17) injury or damage arising in whole or in part, either directly or indirectly, out of asbestos, regardless whether the asbestos is:
 - (a) airborne as a fiber or particle;
 - (b) contained in a product;
 - (c) carried or transmitted on clothing or by any other means; or
 - (d) contained in or a part of:
 - (i) any building;
 - (ii) any building material;
 - (iii) any insulation product; or
 - (iv) any component part of any building, building material or insulation product;
- (18) (a) exposure to, or the manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, reproduction or growth of, **Mold**;
- (b) fee, cost, expense or charge to test, monitor, clean up, remediate, mitigate, remove, contain, treat, detoxify, neutralize, rehabilitate, or in any other way respond to or assess the effect(s) of **Mold**; or
- (c) fee, cost, expense, charge, fine or penalty incurred, sustained or imposed by order, direction, request or agreement of any court, governmental agency, regulatory body or civil, public or military authority in connection with or in any way relating to **Mold**;

except this EXCLUSION (C)(18) will not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured's** use of **Mold** in connection with the rendering of **Medical Services**, including medical research activities;

- (19) (a) exposure to, or generation, storage, manifestation, transportation, discharge, emission, release, dispersal, seepage, migration, escape, appearance, presence, reproduction, growth of, treatment, removal or disposal of, any **Pollutant**, except where such exposure, generation, storage, manifestation, transportation, discharge, emission, release, dispersal, seepage, migration, escape, appearance, presence, reproduction, growth, treatment, removal or disposal

was caused by an unintentional fire or any heat, smoke or fumes issuing from such unintentional fire;

- (b) fee, cost, expense or charge to test, monitor, clean up, remediate, mitigate, remove, contain, treat, detoxify, neutralize or rehabilitate any **Pollutant**; or
- (c) fee, cost, expense, charge, fine or penalty incurred, sustained or imposed by order, direction, request or agreement of any court, governmental agency, regulatory body or civil, public or military authority in connection with or in any way relating to any **Pollutant**;

except this EXCLUSION (C)(19) will not apply to any **Claim** for **Bodily Injury** or **Property Damage** caused by heat, smoke or fumes from a **Hostile Fire**;

- (20) nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance; except this EXCLUSION (C)(20) will not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured's** use of nuclear or radioactive material in connection with the rendering of **Medical Services**, including medical research activities;
- (21) injury to:
 - (a) an **Employee** resulting from and in the course of his/her employment by **Insured**, or resulting from and in the course of performing duties related to the conduct of an **Insured's** business; or
 - (b) the spouse, child, parent, brother or sister of an **Employee** as a consequence of injury described in paragraph (21)(a) above.

EXCLUSION (C)(21) applies whether an **Insured** may be liable as an employer or in any other capacity, and applies to any obligation to share damages with or repay another who must pay damages because of such injury;

- (22) act, error or omission in the administration of an **Insured's** "Employee Benefit Programs." For the purposes of this EXCLUSION (C)(22), "Employee Benefit Programs" means any group life insurance, group accident and health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social security and disability benefits insurance or any other similar plan under the administration of an **Insured** for the benefit of its **Employees**; or
- (23) violation of the Employee Retirement Income Security Act of 1974 (ERISA), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, all as may be amended, or any similar federal, state or local statutory or common law, or any rules or regulations promulgated thereunder; except this EXCLUSION (C)(23) will not apply to any **Claim** arising out of the rendering of, or failure to render, **Medical Services**, which is otherwise covered under INSURING AGREEMENT (A) and for which reimbursement for such services was received from health care plans covered by such statutes, rules or regulations.

IV. GENERAL CONDITIONS

(A) Limits of Liability; Maintenance Deductible; Retained Amount:

- (1) Insuring Agreement (A) – Professional Liability
 - (a) The “Each **Claim**” amount stated in ITEM 4.A. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (A).
 - (b) The “Aggregate for all **Claims**” amount stated in ITEM 4.A. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (A).
- (2) Insuring Agreement (B) – General Liability
 - (a) The “Each **Claim**” amount stated in ITEM 4.B. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (B)(1) or (B)(2), as applicable.
 - (b) The “Aggregate for all **Claims**” amount stated in ITEM 4.B. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (B)(1) or (B)(2), as applicable.
- (3) Insuring Agreement (C) – Follow-Form Excess Liability
 - (a) The “Each **Claim**” amount stated in ITEM 4.C. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (C).
 - (b) The “Aggregate for all **Claims**” amount stated in ITEM 4.C. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (C).
- (4) Insuring Agreement (D) – Umbrella Liability
 - (a) The “Each **Claim**” amount stated in ITEM 4.D. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from each **Claim** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (D).
 - (b) The “Aggregate for all **Claims**” amount stated in ITEM 4.D. of the Declarations will be the Underwriter’s maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage under INSURING AGREEMENT (D).

(5) Policy Aggregate Limit of Liability

The "Policy Aggregate Limit of Liability" amount stated in ITEM 4.E. of the Declarations will be the Underwriter's maximum Limit of Liability for all **Loss** and **Defense Expenses** resulting from all **Claims** or **Related Claims** for which this Policy provides coverage.

(6) Each Limit of Liability described in paragraphs (A)(1) through (5) above shall apply regardless of the time of payment by the Underwriter, the number of persons or entities included within the definition of **Insured**, or the number of claimants, and regardless of whether such **Claim** or **Related Claims** is/are first made during the **Policy Period** or during any applicable Extended Reporting Period. All **Insureds** under this Policy share the Limits of Liability, unless otherwise provided by written endorsement to this Policy.

(7) **Defense Expenses** are part of and not in addition to the Limits of Liability, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, such Limits of Liability.

(8) Maintenance Deductible

Solely with respect to INSURING AGREEMENTS (A), (B) and (C), the Underwriter's obligation to pay **Loss** or **Defense Expenses** resulting from each **Claim** first made against the **Insured** after the date on which the full amount of the aggregate limit of liability of the applicable **Underlying Insurance** has been paid by the issuer(s) of such **Underlying Insurance** shall be excess of the **Maintenance Deductible**. The **Insured** shall be responsible for payment in full of such **Maintenance Deductible**. The Underwriter shall have no obligation whatsoever, either to the **Insured** or any other person or entity, to pay all or any portion of the **Maintenance Deductible** on behalf of the **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insured** will repay the Underwriter any amounts so paid. Such **Maintenance Deductible** shall be eroded (or exhausted) by the payment of **Loss** or **Defense Expenses**. Any amounts paid within such **Maintenance Deductible** will reduce, and may exhaust, the applicable Limit of Liability.

(9) Retained Amount

Solely with respect to INSURING AGREEMENT (D), the Underwriter's obligation to pay **Loss** or **Defense Expenses** resulting from each **Claim** shall be excess of the **Retained Amount**. The **Insured** shall be responsible for payment in full of such **Retained Amount**. Such **Retained Amount** shall be eroded (or exhausted) by the payment of **Loss** or **Defense Expenses**.

(10) In the event a **Claim** under this Policy involves more than one (1) INSURING AGREEMENT hereunder, it is understood and agreed that only one (1) Limit of Liability and one (1) **Maintenance Deductible** or **Retained Amount** (if applicable) will apply to such **Claim**, which shall be the highest applicable "Each **Claim**" Limit of Liability stated in ITEM 4 of the Declarations and the applicable **Maintenance Deductible** or **Retained Amount** corresponding to such Limit of Liability.

(11) If any **Claim** made against the **Insureds** gives rise to coverage both under this Policy and under any other policy or policies issued by the Underwriter or any affiliate of the Underwriter, the Underwriter's and, if applicable, such affiliate's maximum aggregate limit of liability under all such policies for all **Loss** and **Defense Expenses** in respect of such **Claim** will not exceed the largest single available limit of liability under any such policy, including this Policy. In no event will more than one policy issued by the

Underwriter respond to a **Claim**.

(B) Maintenance of Underlying Insurance:

- (1) As long as this Policy is in effect, all **Underlying Insurance** must continuously:
 - (a) provide no less coverage than is scheduled in ITEM 5 of the Declarations or a written endorsement attached to this Policy; and
 - (b) provide no lower limits of insurance than those scheduled in ITEM 5 of the Declarations or a written endorsement attached to this Policy, except to the extent such limits are reduced or exhausted due to the payment of covered **Claims**.
- (2) If any **Underlying Insurance**:
 - (a) is not kept in full force and effect;
 - (b) contains provisions with substantive changes from the provisions originally applicable to such **Underlying Insurance** as scheduled in ITEM 5 of the Declarations or a written endorsement attached to this Policy;
 - (c) has limits of insurance of a lesser amount than those scheduled in ITEM 5 of the Declarations or a written endorsement attached to this Policy;
 - (d) is unavailable or uncollectible due to the bankruptcy, insolvency, liquidation of any **Insured** or insurer; or
 - (e) is unavailable or uncollectible due to the **Insured's** failure to comply with provisions of such policies,

then the Underwriter will not be liable under this Policy earlier or to any greater extent than it would have been if such **Underlying Insurance** contained the original, less restrictive provisions, was still in full force and effect, and was fully collectible.
- (3) The **Insured** will provide the Underwriter with prompt notice of:
 - (a) any settlement offer that the **Insured** intends to make, or any settlement demand made by any claimant, involving any of the matters listed in GENERAL CONDITION (D), or any offer or demand that may involve the coverage afforded by this Policy;
 - (b) the payment of any **Claims** under any **Underlying Insurance**;
 - (c) the cancellation or non-renewal of any **Underlying Insurance**; or
 - (d) the modification of any **Underlying Insurance** by endorsement or otherwise.
- (4) In the event that any **Underlying Insurance** applicable to INSURING AGREEMENT (C) is terminated or rescinded, then coverage under INSURING AGREEMENT (C) shall automatically terminate at the same time.

(C) Related Claims Deemed Single Claim:

All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:

- (1) the number of **Related Claims**;
- (2) the number or identity of claimants;
- (3) the number or identity of **Insureds** involved or against whom **Related Claims** have been or could be made;
- (4) whether the **Related Claims** are asserted in a class action or otherwise; and
- (5) the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one policy period.

All **Related Claims** shall be deemed made: (a) with respect to claims-made coverage, during the policy period of the policy in effect when the earliest of such **Related Claims** was first made against an **Insured**; and (b) with respect to occurrence coverage, during the policy period of the policy in effect at the time of the earliest occurrence giving rise to a **Related Claim**.

(D) Reporting of Claims and Circumstances:

As a condition precedent to any right to coverage under this Policy, the **Insured** must comply with the following reporting provisions:

- (1) The **Insured** must provide the Underwriter with written notice as soon as practicable of any **Claim** under any **Underlying Insurance**, or any circumstance that could give rise to a **Claim** under any **Underlying Insurance**, involving any of the following:
 - (a) unexpected deaths;
 - (b) unanticipated neurological, sensory and/or systemic deficits; brain damage; permanent paralysis, including, but not limited to, paraplegia and quadriplegia; partial or complete loss of sight or hearing; kidney failure; or sepsis;
 - (c) birth related injuries, including, but not limited to, maternal or fetal death; anesthesia related injuries; infant resuscitation; shoulder dystocia; or cerebral palsy;
 - (d) severe burns, including, but not limited to, thermal, chemical, radiological or electrical burns;
 - (e) severe internal injuries, including, but not limited to, lacerations of organs; infectious process; foreign body retention; sensory organic injury; or reproductive organ injury;
 - (f) failure to diagnose cancer;
 - (g) any sentinel event;
 - (h) class action suits; or

- (i) any matter reserved in excess of 25% of the total remaining applicable limits of liability of the applicable **Underlying Insurance**.

Timely and sufficient notice by one **Insured** of any such **Claim** or circumstance shall be deemed timely and sufficient notice for all **Insureds**. Such notice shall give full particulars of the **Claim** or circumstance, including, but not limited to: a description of the **Claim** or circumstance; the alleged act, error or omission by an **Insured** or the **Occurrence** giving rise to the **Claim** or circumstance, the identity of all potential claimants and the health care provider(s) and/or any **Insureds** involved; a description of the injury or damages that resulted or may result from the act, error, omission or **Occurrence** giving rise to the **Claim** or circumstance; information on the time, place and nature of the act, error, omission or **Occurrence** giving rise to the **Claim** or circumstance; and the manner in which an **Insured** first became aware of such act, error, omission or **Occurrence**.

- (2)(a) No later than ten (10) days after the end of each calendar quarter during the **Policy Period**, the **Insured** shall submit to the Underwriter a Quarterly Loss Run Report in writing (or electronically if the Underwriter requests) summarizing all **Claims** and circumstances under any **Underlying Insurance**, including those described in paragraph (D)(1) above, providing a description of the nature of the **Claim** or circumstance, the date the **Claim** was made, the date of loss, the claimant's name, the names of any involved parties and the status of the **Claim** or circumstance.
- (b) After this Policy expires and until the Underwriter directs otherwise in writing, the **Insured** will be obligated to continue to submit Quarterly Loss Run Reports to the Underwriter on all **Claims** and circumstances under any **Underlying Insurance**.
- (c) The submission of such Quarterly Loss Run Reports will serve as notice for those **Claims** or circumstances not subject to the reporting criteria set forth in paragraph (D)(1) above.
- (3) With respect to any coverage provided by this Policy on a claims-made basis, if the **Insured** reports any circumstance during the **Policy Period** to the Underwriter in accordance with paragraph (D)(1) or (2) above, then any **Claim** not otherwise excluded by this Policy subsequently made against the **Insured** arising out of any such circumstance shall be treated as if it had been first made during the **Policy Period**.
- (4) Notice provided under any **Underlying Insurance** of matters described in paragraph (D)(1) or (2) above will not be deemed sufficient to establish reporting or notice to the Underwriter. Notice to the Underwriter in accordance with paragraph (D)(1) or (2) above must be sent in writing to the Underwriter at the address stated in ITEM 10 of the Declarations.

(E) Defense and Settlement:

- (1) The **Insured** shall not incur any **Defense Expenses** or admit liability for, or settle or offer to settle, any **Claim** in any amount that would involve the coverage afforded by this Policy without the Underwriter's prior written consent.
- (2) When there is **Underlying Insurance** that applies to a **Claim**, the Underwriter will have the right, but not the obligation, to associate with the **Insured** in the defense of any such **Claim** against the **Insured**.

When there is no **Underlying Insurance** that applies to a **Claim** but the **Retained Amount** has not been exhausted, the Underwriter will have the right, but not the

obligation, to associate with the **Insured** in the defense of any such **Claim** against the **Insured**.

- (3) When the applicable limit of liability of the applicable **Underlying Insurance** is exhausted with respect to any **Claim** to which this Policy applies, the Underwriter shall have the right, but not the obligation, to assume the defense of such **Claim** and to conduct settlement negotiations and make any settlement of such **Claim** which it deems appropriate.
- (4) The Underwriter may, at its discretion, investigate any **Occurrence** or **Professional Services Wrongful Act** that may give rise to a **Claim** involving the coverage afforded by this Policy.
- (5) The Underwriter will have no obligation to pay **Loss** or **Defense Expenses**, or continue to direct the defense of any **Insured**, after the applicable Limit of Liability has been exhausted by the payment of **Loss** and/or **Defense Expenses**.

(F) Territory:

INSURING AGREEMENTS (A), (B) and (D) apply to acts, errors, omissions or **Occurrences** taking place anywhere in the world; provided, that any **Claim** or suit must be made against an **Insured** in the United States of America, including its territories or possessions, Puerto Rico, or Canada.

(G) Mergers, Acquisitions or Newly Created Entities:

If, during the **Policy Period**, the **Named Insured** acquires or creates another entity or subsidiary or becomes a member of a joint venture or partner in a partnership, or if the **Named Insured** merges or consolidates with another entity such that the **Named Insured** is the surviving entity (any such acquired, created, merged or consolidated entity an "Acquired Entity"), then for a period of sixty (60) days after the effective date of the transaction, such Acquired Entity shall be included within the term "**Named Insured**" with respect to **Professional Services Wrongful Acts** or **Occurrences** happening after the effective date of the transaction. Upon the expiration of the sixty (60) day period, there will be no coverage under INSURING AGREEMENT (A), (B) or (D) for any **Claim** in any way involving the Acquired Entity or its **Insureds** unless within such sixty (60) day period:

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

For purposes of this GENERAL CONDITION (G), "subsidiary" means any entity for which the **Named Insured** owns or possesses fifty percent (50%) of the issued and outstanding capital stock, or has or controls the right to elect or appoint more than fifty percent (50%) of the directors or trustees.

(H) Sales or Dissolution of First Named Insured; Cessation of Business:

If, during the **Policy Period**:

- (1) the **First Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **First Named Insured** is not the surviving entity; or
- (2) any person, entity, or affiliated group of persons or entities obtains:
 - (a) ownership or possession of fifty percent (50%) of the issued and outstanding capital stock of the **First Named Insured**; or
 - (b) the right to elect or appoint more than fifty percent (50%) of the **First Named Insured's** directors or trustees; or
- (3) the **First Named Insured** ceases to do business for any reason;

(any of which events is referred to as a "Transaction" in this GENERAL CONDITION (H)) coverage under this Policy shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall apply only to **Professional Services Wrongful Acts, Occurrences** and other acts, errors or omissions by **Insureds** happening before the effective date of such Transaction. This Policy will not apply to, and the Underwriter will not pay any **Loss** or **Defense Expenses** for, any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Professional Services Wrongful Act** or any other act, error or omission by **Insureds** or **Occurrence** happening on or after the effective date of such Transaction.

(I) Extended Reporting Periods:

- (1) INSURING AGREEMENTS (A) and/or (B)(2):

If this Policy is canceled for any reason other than fraud, misrepresentation or non-payment of premium or is not renewed by the Underwriter or the **First Named Insured**, an additional period of time during which **Claims** made under INSURING AGREEMENTS (A) and (B)(2) (if purchased) may be reported (the "INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period") shall be made available as described in this GENERAL CONDITION (I)(1), but any such INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period shall apply only to **Claims** for **Professional Services Wrongful Acts** or **Occurrences** happening before the effective date of such cancellation or non-renewal (the "Termination Date") or the date of any conversion of coverage under GENERAL CONDITION (H), whichever is earlier. The INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period will apply as follows:

- (a) A sixty (60) day INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period, beginning as of the Termination Date, will apply automatically and requires no additional premium; provided, that such automatic INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period will remain in effect only as long as no other policy of insurance is in effect that would apply to any **Claim** made during such automatic INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period.
- (b) In order to purchase an additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period, the **First Named Insured** must (i) provide written notice to the Underwriter requesting such additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period no later than thirty (30) days after the Termination Date, and (ii) pay any additional premium required by the Underwriter promptly when due. Such additional premium shall be deemed fully earned upon

inception of such additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period. If no written request to purchase the additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period is made by the **First Named Insured** as described in this paragraph, or if the additional premium for the additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period is not paid promptly when due, there will be no right to purchase the additional INSURING AGREEMENT (A) and/or (B)(2) Extended Reporting Period at any later time.

(2) INSURING AGREEMENT (C):

If this Policy is canceled for any reason other than fraud, misrepresentation or non-payment of premium or is not renewed by the Underwriter or the **First Named Insured** and the **First Named Insured** exercises its right to purchase an extended reporting period under the applicable **Underlying Insurance**, then an additional period of time during which **Claims** made under INSURING AGREEMENT (C) (if purchased) may be reported (the "INSURING AGREEMENT (C) Extended Reporting Period") shall be made available as described in this GENERAL CONDITION (I)(2), but such INSURING AGREEMENT (C) Extended Reporting Period shall apply only to **Claims** for acts, errors, omissions or occurrences happening before the effective date of such cancellation or non-renewal (the "Termination Date") or the date of any conversion of coverage under GENERAL CONDITION (H), whichever is earlier. In order to purchase such INSURING AGREEMENT (C) Extended Reporting Period, the **First Named Insured** must (a) provide written notice to the Underwriter requesting such INSURING AGREEMENT (C) Extended Reporting Period no later than thirty (30) days after the Termination Date, and (b) pay any additional premium required by the Underwriter promptly when due. Such additional premium shall be deemed fully earned upon inception of such INSURING AGREEMENT (C) Extended Reporting Period. If no written request to purchase the INSURING AGREEMENT (C) Extended Reporting Period is made by the **First Named Insured** as described in this paragraph, or if the additional premium for such INSURING AGREEMENT (C) Extended Reporting Period is not paid promptly when due, there will be no right to purchase the INSURING AGREEMENT (C) Extended Reporting Period at any later time. Such INSURING AGREEMENT (C) Extended Reporting Period:

- (i) applies only to any coverage provided by the **Underlying Insurance** on a claims-made basis;
- (ii) applies only to those **Claims** that are covered by the extended reporting period of the applicable **Underlying Insurance**; and
- (iii) will immediately terminate if the extended reporting period of any **Underlying Insurance** terminates.

No Extended Reporting Period described in this GENERAL CONDITION (I) shall in any way increase the Underwriter's Limits of Liability as stated in ITEM 4 of the Declarations, and the Underwriter's Limit of Liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the Limits of Liability stated in ITEM 4 of the Declarations.

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

- (1) The Underwriter may cancel this Policy by mailing written notice to the **First Named Insured** at the last known address shown on the Declarations stating when, not less than sixty (60) days thereafter (or such longer period of time as required by applicable law), such cancellation shall be effective; except that, in the event of cancellation for

non-payment of premium, the Underwriter may make the cancellation effective upon notice of only ten (10) days (or such longer period of time as required by applicable law).

- (2) Except as set forth in GENERAL CONDITION (N), the **First Named Insured** may cancel this Policy by mailing the Underwriter written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (3) The Underwriter will not be required to renew this Policy upon its expiration.

(K) Assistance and Cooperation:

In the event of a **Claim**, 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**; 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.

(L) 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 **Insured**. The **Insured** 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 **Insured** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insured** under this GENERAL CONDITION (L) shall survive the expiration or termination of this Policy.

(M) Other Insurance and Risk Transfer Arrangements:

This Policy is excess over any other insurance or self-insurance policy or program or risk transfer instrument, whether primary, umbrella, excess, contingent, fronting or on any other basis, and whether or not collectible. It is the intent of this Policy to apply only to that portion of **Loss** or **Defense Expenses** that exceeds the total of all deductibles, limits of liability, self-insured amounts or other insurance or risk transfer arrangements, whether primary, contributory, excess, contingent, fronting or otherwise, and whether or not collectible. These provisions do not apply to other insurance policies or risk transfer arrangements written as specific excess insurance over the applicable Limits of Liability of this Policy. Except as provided under INSURING AGREEMENTS (C) and (D) with respect to applicable **Underlying Insurance**, this Policy will not be subject to the terms of any other policy of insurance or plan or program of self-insurance.

(N) Exhaustion:

If the Underwriter's "Aggregate for all **Claims**" Limit of Liability for any INSURING AGREEMENT, as set forth in ITEM 4 of the Declarations, is exhausted by the payment of **Loss** or **Defense Expenses**, all obligations of the Underwriter under such INSURING AGREEMENT will be completely fulfilled and exhausted, including any obligation to pay **Defense Expenses** or to continue to direct the defense of any **Insured**, and the Underwriter will have no further obligations of any kind or nature whatsoever under such INSURING AGREEMENT.

If the "Policy Aggregate Limit of Liability" is exhausted by the payment of **Loss** or **Defense Expenses**, the premium will be fully earned, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, including any obligation to pay **Defense Expenses** or to continue to direct the defense of any **Insured**, and the Underwriter will have no further obligations of any kind or nature whatsoever under this Policy.

(O) Minimum Earned Premium:

The percentage set forth in ITEM 9.B. of the Declarations is the percentage of the Policy Premium set forth in ITEM 9.A. of the Declarations that shall be deemed fully earned as of the Inception Date set forth in ITEM 2 of the Declarations.

(P) Authorization and Notices:

The **First Named Insured** 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.

(Q) Conformance:

Any terms of this Policy that are in conflict with the laws or regulations of the state in which this Policy is issued are amended to conform with such laws or regulations.

(R) Representation; Incorporation of Application:

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

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

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

(S) No Action against Underwriter:

- (1) 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.

- (2) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

(T) Notice:

- (1) Notice to any **Insured** shall be sent to the **First Named Insured** at the address designated in ITEM 1 of the Declarations.
- (2) Notice to the Underwriter shall be sent to the address designated in ITEM 10 of the Declarations.

(U) 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.

(V) 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.

(W) Inspections and Surveys:

The Underwriter or its duly authorized agent has the right but is not obliged to:

- (1) make inspections and surveys of any **Insured** entity's premises and operations at any time;
- (2) provide the **Insured** with reports on the conditions found;
- (3) recommend changes;
- (4) conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relate only to insurability and the premium to be charged.

The Underwriter does not:

- (a) make safety inspections;
- (b) undertake to perform the duty of any entity to provide for the health or safety of workers or the public; nor
- (c) warrant that conditions:
 - (i) are safe or healthy; or
 - (ii) comply with laws, regulations or codes.

The Underwriter may examine and audit the books and records of the **Insured** as they relate to

this Policy.

(X) 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.

(Y) Entire Agreement:

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

(Z) Headings:

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

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