

**RLI Insurance Company**

**Nonprofit Healthcare Organization and Executive Liability Policy**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the Application forming a part hereof and its attachments and the material incorporated therein, RLI Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

**INSURING CLAUSE**

1. The Insurer will:
  - a. Pay on behalf of an **Insured**, **Loss** which an **Insured** is legally obligated to pay as a result of a **Claim** first made during the **Policy Period**, or during the Discovery Period (if purchased), against the **Insured** for **Wrongful Acts**;
  - b. Reimburse the **Healthcare Organization** for **Workplace Violence Expenses** incurred by the **Healthcare Organization** resulting from any **Workplace Violence** that takes place during the **Policy Period**; and
  - c. Reimburse the **Healthcare Organization** for **Violation of Employee Privacy Expenses** incurred by the **Healthcare Organization** in connection with a **Violation of Employee Privacy** that takes place during the **Policy Period**.

**DEFINITIONS**

2. When used in this Policy:

**Claim** means:

- a. a written demand for monetary, non-monetary or injunctive relief against any **Insured**;
- b. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
- c. an administrative, regulatory or EEOC (or similar state or local agency) proceeding against any **Insured** commenced by the filing of a notice of charges or formal investigative order;
- d. an arbitration or other alternative dispute resolution (ADR) proceeding against any **Insured** commenced by a demand for such arbitration or ADR proceeding;
- e. a criminal proceeding against any **Insured Person** commenced by the return of an indictment;
- f. a formal civil, criminal, administrative or regulatory investigation against any **Insured Person** commenced by the service upon or other receipt by the **Insured Person** of a written notice or subpoena from the investigating authority identifying such **Insured Person** as an individual against whom a formal proceeding may be commenced;
- g. a written request received by an **Insured** to toll or waive a statute of limitations; or
- h. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;

for a **Wrongful Act**, including any appeal thereof.

**Defense Expenses** means reasonable and necessary fees and expenses (including without limitation attorneys' fees and experts' fees) incurred by an **Insured** in the defense or appeal of a **Claim**, including the opposition to or revocation of an **Extradition** or any judicial ruling related thereto, after notice of such **Claim** is given to the Insurer pursuant to Section 7. of this Policy; provided such fees and expenses shall be subject to the Insurer's standard litigation management and billing guidelines. **Defense Expenses** shall not include the **Healthcare Organization's** overhead expenses or any salaries, wages, fees or benefits of its directors, trustees, officers or **Employees**.

**Discrimination** means the failure to hire an applicant for employment, the failure to promote or the demotion of an **Employee**, or the segregation, classification, defamation or mistreatment of any individual because of race, color, creed, religion, age, national origin, sex, sexual orientation or preference, gender, disability, handicap, pregnancy, obesity, marital status, or other protected class or characteristic established under any applicable federal, state or local statutory law or common law anywhere in the world.

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

**Employee**, either in the singular or plural, means any one or more natural persons who have received, now receive, or shall receive wages or a salary from the **Healthcare Organization** for either full or part-time work that is directed and controlled by the **Healthcare Organization**. **Employee** also includes the following individuals but only with respect to activities undertaken by them in connection with their work for the **Healthcare Organization**:

- a. any natural person who is a seasonal or temporary worker directed and controlled by the **Healthcare Organization**;
- b. any natural person who is leased to, and working for, the **Healthcare Organization**, but only if the **Healthcare Organization** provides indemnification to such leased natural person pursuant to a written contract to the same extent as is provided to the **Healthcare Organization's** employees;
- c. any **Independent Contractor**, but only if the **Healthcare Organization** provides indemnification to such **Independent Contractor** pursuant to a written contract to the same extent as is provided to the **Healthcare Organization's** employees; and
- d. any volunteers or students of the **Healthcare Organization**.

**EMTALA** means the Emergency Medical Treatment and Active Labor Act (42 U.S.C. Section 1395dd *et. Seq.*), as amended, or any similar state or local statute.

**Excess Benefit Transaction** means any excess benefit transaction as defined in Section 4958 of the Internal Revenue Code of 1986, as amended.

**Excess Benefit Transaction Tax** means the ten percent (10%) excise tax assessed 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**.

**Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country in connection with a criminal proceeding against such **Insured Person** for **Wrongful Acts**.

**Financial Impairment** means the status of the **Healthcare Organization** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Healthcare Organization**, or the **Healthcare Organization** becoming a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country.

**Harassment** means:

- a. unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is used as a basis for decisions within the **Healthcare Organization**, or that creates an environment that interferes with an individual's performance or is otherwise intimidating, hostile, or offensive; or
- b. conduct of a non-sexual nature which creates an environment that interferes with an individual's performance or that is otherwise intimidating, hostile, or offensive.

**Healthcare Organization** means the organization designated in Item 1. of the Declarations for this Policy, and all **Subsidiaries**, including any such organization as a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country.

**HIPAA** means the Health Insurance Portability and Accountability Act, as amended.

**Indemnifiable Loss** means **Loss** incurred by the **Healthcare Organization**, and all **Loss** other than **Non-Indemnifiable Loss** incurred by **Insured Persons**.

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

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

**Insured(s)**, either in the singular or plural, means the **Healthcare Organization** or any **Insured Person** collectively or individually.

**Insured Person(s)**, either in the singular or plural, means any natural person who:

- a. has been, now is or shall become a duly elected director, advisory director, trustee, trustee emeritus, duly elected or appointed officer, comptroller, in-house risk manager, **Employee** or volunteer (whether or not salaried), or member of staff, faculty or duly constituted committee of the **Healthcare Organization**;
- b. has been, now is or shall become a holder of a title, position or capacity comparable or equivalent to a position described in a. above of any **Healthcare Organization** chartered in any jurisdiction outside the United States of America; or
- c. is licensed to practice law and who has been, now is or shall become a full-time or part-time **Employee** of the **Healthcare Organization** (“Employed Lawyer”), but only with respect to **Wrongful Acts** by such natural person in the course of providing legal services or legal advice to the **Healthcare Organization** as an **Employee** of the **Healthcare Organization**; provided, however, that such services shall not include any legal services or advice rendered to any other **Insured Person** or **Employee** as part of an employee benefit or otherwise, or any legal services or advice rendered to any outside third party, whether at the specific request of the **Healthcare Organization** or otherwise.

Solely for purposes of Exclusion 4. d. below, **Insured Person** does not include an **Employee** who otherwise is not an **Insured Person**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person**, or against a trust which holds assets contributed by such **Insured Person**, for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

**Loss** means damages, judgments, settlements and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a covered **Claim**, including but not limited to punitive, exemplary, multiple and non-contractual liquidated damages where insurable under applicable law, pre- and post-judgment interest, back pay, front pay and compensatory damages. The law of the jurisdiction most favorable to the insurability of those punitive, exemplary, multiple or liquidated damages shall control whether such damages are insurable, including without limitation the jurisdiction in which the **Insured** or the Insurer is incorporated or is located or in which such **Claim** or the underlying **Wrongful Acts** took place.

**Loss** shall include (i) civil fines or penalties assessed against any **Insured** for violation of **EMTALA** if such violation is not knowing or willful; (ii) any **Excess Benefit Transaction Tax** if and to the extent that indemnification by the **Healthcare Organization** for the **Excess Benefit Transaction Tax** is not expressly prohibited in the by-laws, certificate of incorporation, or other governing or organizational documents of the **Healthcare Organization**; (iii) civil penalties assessed against any **Insured** for violation of **HIPAA** if such violation is not knowing or willful; and (iv) civil penalties assessed against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-2(g)(2)(B).

**Loss** shall not include: (1) taxes or civil or criminal fines or penalties imposed by law, other than those expressly included above; (2) severance pay or damages determined to be owing under an express contract of employment or an express obligation to make such payments in the event of the termination of employment (including but not limited to payment for stock options or stock appreciation rights) unless the **Insured** would be liable for such pay or damages in the absence of such contract or express obligation; (3) the payment of any insurance or retirement plan benefits; (4) the cost to provide any reasonable accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local law; (5) the cost to comply with any injunctive or other non-monetary relief or any agreement to provide such relief; (6) any amount for which the **Insureds** are absolved from payment; (7) any amount allocated to uncovered **Loss** pursuant to Section 8. of this Policy; or (8) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be interpreted.

Solely for purposes of Insuring Clause 1. b. and 1. c., **Loss** means **Workplace Violence Expenses** and **Violation of Employee Privacy Expenses**, respectively.

**Managed Care Organization** means a Health Maintenance Organization (HMO), Preferred Provider Organization (PPO), Medical Service Organization (MSO), Physician Hospital Organization (PHO), or any similar organization engaged in the management of medical care for a **Managed Care Person(s)**.

**Managed Care Person** means any natural person for whom a **Managed Care Organization** has contracted to pay or reimburse all or part of the costs of necessary healthcare services pursuant to a written description of coverage.

**Non-Indemnifiable Loss** means **Loss** incurred by any **Insured Person** for which the **Healthcare Organization** is not permitted or required by law to indemnify or is permitted or required by law to indemnify but does not do so by reason of **Financial Impairment**. For purposes of this Policy, the certificate of incorporation, charter, articles of association or other organizational documents of the **Healthcare Organization**, including by-laws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

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

**Outside Entity** means an organization, other than the **Healthcare Organization**, which is chartered and operated as a non-for-profit organization, provided such organization is not a financial institution.

**Outside Position** means service by an **Insured Person** as a director, officer, trustee, regent or governor of an **Outside Entity**, but only if such service is rendered with the knowledge and consent of, or at the specific direction or request of the **Healthcare Organization** or is part of the duties regularly assigned to the **Insured Person** by the **Healthcare Organization**.

**Personal Injury Wrongful Act** means false arrest, wrongful detention or imprisonment, malicious prosecution, defamation including libel and slander, invasion of privacy or wrongful entry or eviction by an **Insured** in an insured capacity.

**Policy Period** means the period of time specified in Item 2. of the Declarations for this Policy, subject to prior cancellation or termination. If this period is less than or greater than one year, then the Aggregate Limit of Liability and Sublimits specified in Item 3. of the Declarations shall be the Insurer's respective maximum liability under this Policy for the entire period.

**Pollutants** means 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 a state, county, municipal or local counterpart thereof. Such substances shall include, but not be limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emissions, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic fields and any noise.

**Pollution** means:

- a. the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
- b. any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

**Premises** means the buildings, facilities or properties occupied by the **Healthcare Organization** in conducting its business.

**Provider Selection Practice** means the process of evaluating, by members of a formal duly constituted professional review board or committee, any practicing health care professional providing medical services, including but not limited to physicians, surgeons, dentists, residents, fellows and doctorate professionals independent or affiliated with the **Healthcare Organization**, for the purpose of selection, credentialing or performing peer review of, contracting with, or privileging, such healthcare professional, provided such process is performed solely for the **Healthcare Organization**.

**Publishers Wrongful Act** means any actual or alleged infringement of copyright or trademark, unauthorized use of title, plagiarism or misappropriation of ideas by an **Insured** in an insured capacity.

**Record** means an **Employee's** first name or first initial, and last name, in combination with:

- a. their social security number, driver's license number or other personal identification number (including an employee identification number or student identification number);
- b. their financial account number (including a bank account number, retirement account number, or healthcare spending account number);
- c. their credit, debit or other payment card number; or
- d. any individually identifiable health information, as described in **HIPAA**, held by the **Healthcare Organization**,

to the extent any such information is intended by the **Healthcare Organization** to be accessible only by persons or organizations specifically authorized by the **Healthcare Organization** to have access to such information.

**Regulatory Claim** means any **Claim** based upon, arising out of, directly or indirectly resulting from or in consequence of any **Wrongful Act** by any **Insured** in connection with Medicare, Medicaid, TriCare, or Federal Employees Health Benefits Programs or any similar federal, state, or local program, including without limitation:

- a. a violation of a statute, rule or regulation relating to such program,
- b. negligence, recklessness, fraud or other wrongdoing in connection with documenting, accounting for, reporting, billing or managing services, fees or expenses under, or otherwise administering any such program, or
- c. disclosures to any person(s) or entity(s) relating to any matters described above.

**Related Claims** means all **Claims** for **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

**Retaliation** means unlawful or abusive treatment against an **Employee** which results from an **Employee's** (i) exercise or attempted exercise of his or her rights under law, (ii) refusal to violate any law, (iii) opposition to any unlawful practice, (iv) disclosure or threatened disclosure to a superior or governmental authority of alleged violation of law, or (v) other activity which is protected by a whistleblower statute or law.

**Subsidiary** means any organization while the **Healthcare Organization**:

- a. owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of such organization's directors or trustees;
- b. both (i) owns, directly or through one or more **Subsidiaries**, fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of such organization's directors or trustees, and (ii) controls the operation and management of such organization pursuant to a written contract, operating agreement or similar document; or
- c. any other organization chartered and operated as a not-for-profit organization that is managed or controlled by one or more **Healthcare Organizations**, or is operated for the benefit of or in furtherance of the fundraising, charitable or volunteer activities of, one or more **Healthcare Organizations**.

Coverage afforded under this Policy with respect to **Claims** made against any **Subsidiary** or any **Insured Person** thereof shall only apply for **Wrongful Acts** occurring after the effective time such **Subsidiary** became a **Subsidiary** and prior to the time such **Subsidiary** ceased to be a **Subsidiary**.

**Third Party Discrimination Wrongful Act** means any actual or alleged **Discrimination** or **Harassment** by an **Insured**, in an insured capacity, against any natural person who is a student, patient, member, customer, supplier, service provider, vendor, or other business invitee of the **Healthcare Organization**.

**Violation of Employee Privacy** means a **Healthcare Organization's** actual or alleged failure to:

- a. secure an **Employee's Record** from actual or potential unauthorized access by another person or organization which results in injury to such **Employee**; or
- b. provide notice, as required by any state, federal or local statutory law or common law anywhere in the world, to an **Employee** whose **Record** was accessed or may have been accessed by an unauthorized person or organization.

**Violation of Employee Privacy Expense** means the reasonable and necessary fees and expenses (including without limitation attorneys' fees and experts' fees) incurred by the **Healthcare Organization** in connection with a **Violation of Employee Privacy**. **Violation of Employee Privacy Expense** shall not include the **Healthcare Organization's** overhead expenses or any salaries, wages, fees or benefits of its directors, trustees, officers or **Employees**.

**Workplace Violence** means any intentional and unlawful act:

- a. of deadly force involving the use of a lethal weapon; or
- b. the threat of deadly force involving the display of a lethal weapon,

which occurs on or in the **Premises** and which did or could result in bodily injury or death to an **Insured Person**.

**Workplace Violence Expenses** means the reasonable and necessary fees and expenses incurred by the **Healthcare Organization** for the following services as a result of **Workplace Violence**:

- a. an independent security consultant for ninety (90) days following the date the **Workplace Violence** occurs;
- b. an independent public relations consultant for ninety (90) days following the date the **Workplace Violence** occurs;
- c. a counseling seminar for all **Employees** conducted by an independent consultant following a **Workplace Violence**;
- d. independent security guard services for up to fifteen (15) days following a **Workplace Violence**; and
- e. an independent forensic analyst following a **Workplace Violence**.

**Wrongful Act** means:

- a. any actual or alleged error, omission, act, misstatement, misleading statement or breach of duty by the **Healthcare Organization** or an **Insured Person**, individually or otherwise, in his or her capacity as such or in an **Outside Position**, including without limitation any actual or alleged **Wrongful Employment Act, Third Party Discrimination Wrongful Act, Publishers Wrongful Act** or **Personal Injury Wrongful Act**; or
- b. any matter claimed against them solely by reason of such status.

**Wrongful Employment Act** means a **Wrongful Act** that constitutes actual or alleged:

- a. **Wrongful Termination** of an **Employee** by an **Insured**;
- b. **Discrimination** against an **Employee** or an applicant who has sought and been refused employment with the **Healthcare Organization** by an **Insured**;
- c. **Harassment** against an **Employee** or an applicant who has sought and been refused employment with the **Healthcare Organization** by an **Insured**;
- d. **Retaliation** against an **Employee** by an **Insured**;

- e. other employment-related tortious conduct by an **Insured**, including without limitation wrongful discipline; wrongful reference; deprivation of a career opportunity; demotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; negligent hiring, retention, supervision, training or performance evaluation; or employment-related misrepresentation, defamation, invasion of privacy or infliction of emotional distress or mental anguish; and
- f. other violations of any federal, state, local, foreign or common laws concerning employment, including without limitation any failure to adopt adequate workplace or employment policies and procedures,

including without limitation any such **Wrongful Act** relating to any **Provider Selection Practice**.

**Wrongful Termination** means the actual or constructive termination of an employment relationship with the **Healthcare Organization** in a manner which constitutes a violation of any law, a breach of an implied agreement to continue employment, or a retaliatory discharge.

## EXCLUSIONS

- 3. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured** based upon, arising out of, directly or indirectly resulting from or in consequence of:

- a. such **Insured**:

- (i) gaining any profit, remuneration or financial advantage to which such **Insured** is not legally entitled, or
- (ii) committing any deliberately fraudulent or criminal **Wrongful Act** or any willful violation of law,

if a final and non-appealable judgment or adjudication in any proceeding other than a proceeding initiated by the Insurer, or a guilty plea or other written admission under oath by such **Insured**, establishes that such **Insured** gained such profit, remuneration or financial advantage or committed such deliberately fraudulent or criminal **Wrongful Act** or such willful violation of law; however, this Exclusion shall not apply (a) by reason of a guilty plea or other written admission under oath by an **Insured Person** if a majority of disinterested directors or trustees of the **Healthcare Organization** elect to waive the applicability of this exclusion with respect to such **Insured Person** by reason of such guilty plea or written admission, (b) solely with respect to Exclusion 3. a. (ii) above, to a **Claim** for a **Wrongful Employment Act**, or (c) to **Defense Expenses**;

- b. any fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given under any policy for directors and officers liability, employment practice liability or other similar liability insurance, of which this Policy is a direct or indirect renewal or replacement;
- c. any demand for monetary damages, litigation, administrative or regulatory proceeding or investigation (including a proceeding or investigation by the EEOC or other similar state or local agency), or arbitration proceeding, or order, decree or judgment made, commenced, or entered against any **Insured** on or before the date set forth in Item 6. of the Declarations for this Policy, or any actual or alleged fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- d. any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or similar law; however, this Exclusion shall not apply to any **Claim** for any **Retaliation**;
- e. the rendering or failure to render the following professional services:
  - (i) providing medical, surgical, dental, psychiatric or nursing treatment, care, diagnosis or services, including furnishing of food or beverage in connection therewith;
  - (ii) furnishing or dispensing drugs or medical, dental or surgical supplies or appliances;
  - (iii) handling, arranging or performing post-mortem examinations on human bodies;

(iv) utilization review or quality assurance;

(v) in connection with the **Insured's** business as a **Managed Care Organization**, establishing provider networks, contracting with other healthcare providers, processing, investigating, adjusting, or managing claims for benefits or coverage under healthcare plans, managing medical cases, or enrolling, designing, administering, managing, advertising, marketing, or selling healthcare benefit plans; or

(vi) proffering of any counseling or advice by the **Insureds** in connection with any of the above;

however, this Exclusion shall not apply with respect to any **Provider Selection Practice**;

f. **Pollution**, including but not limited to any **Claim** for financial loss to the **Healthcare Organization** based upon, arising out of, directly or indirectly resulting from or in consequence of the **Pollution**; however, this Exclusion will not apply to (i) any derivative action by or on behalf of, or in the name or right of, a shareholder or member of the **Healthcare Organization** brought and maintained independently of, and without the solicitation, assistance, participation or intervention of any **Insureds**; (ii) **Non-Indemnifiable Loss** incurred by **Insured Persons**; or (iii) any **Claim** for actual or alleged **Wrongful Termination** or **Retaliation** on account of the claimant's actual or threatened disclosure of the matters described in this Exclusion; or

g. an actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any rules or regulations of the Securities and Exchange Commission promulgated thereunder, any other federal, state, local, or provincial statute or common law relating to securities, or any rules or regulations promulgated thereunder, all as amended; however, this Exclusion shall not apply to any **Claim** (i) based upon, arising out of, directly or indirectly resulting from, or in consequence of the **Healthcare Organization's** issuance or sale of any tax exempt bonds, or any disclosure or failure to disclose information relating to any such tax exempt bonds, or (ii) by or on behalf of any holder, purchaser or seller of any such tax exempt bonds.

4. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:

a. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), any law concerning wage and hour practices (including the Fair Labor Standards Act but not including the Equal Pay Act), the National Labor Relations Act, the Workers Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or similar provisions of any federal, state or local statutory law or common law; however, this Exclusion shall not apply to any **Claim** for any **Retaliation**;

b. for liability of others assumed by any **Insured** under any written, oral, express or implied contract or agreement, except to the extent that an **Insured** would have been liable in the absence of such contract or agreement;

c. for an actual or alleged breach of any written or express contract or agreement; however, this Exclusion shall not apply to any **Claim** (i) against an **Insured Person**, or (ii) if and to the extent the **Healthcare Organization** would have been liable in the absence of such contract or agreement;

d. brought by or on behalf of, or in the name or right of, any **Insured** in any capacity; however, this Exclusion shall not apply to any **Claim**:

(i) that is a derivative action by or on behalf of, or in the name or right of, the **Healthcare Organization** brought and maintained by one or more persons who are not **Insured Persons** and who bring and maintain such **Claim** independently of and without the solicitation, assistance, participation or intervention of, any **Insured**;

(ii) that is a cross claim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms and conditions of this Policy;

(iii) for any **Wrongful Employment Act**;

(iv) brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, creditors' committee or similar official for the **Healthcare Organization**, or any assignee of such trustee, examiner, receiver, creditors' committee or similar official;



- (v) if the conduct of all **Insureds** who brought or otherwise solicited, assisted, participated or intervened in such **Claim** is protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute; or
  - (vi) brought and maintained by an **Insured Person** who has not served as such with the **Healthcare Organization** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Healthcare Organization** or any other **Insured Person** who is serving or has served as such within such three (3) year period;
  - e. for any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof; however, this Exclusion shall not apply with respect to any actual or alleged mental anguish or emotional distress in any **Claim** (i) for any **Wrongful Employment Act** or **Third Party Discrimination Wrongful Act**; or (ii) by any practicing health care professional providing medical services for any **Provider Selection Practice**; or
  - f. if such **Claim** is a **Regulatory Claim**; however, this Exclusion shall not apply to **Defense Expenses**.
5. The Insurer shall not be liable under Insuring Clause 1. b. for any **Workplace Violence Expenses** based upon, arising out of, directly or indirectly resulting from or in consequence of:
- a. any **Workplace Violence** which occurs at any location other than the **Premises**;
  - b. any declared or undeclared war, civil war, insurrection, riot, civil commotion, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization;
  - c. any legal costs, judgments and settlements incurred as the result of any claim, suit or judicial action brought against the **Healthcare Organization** in connection with **Workplace Violence**; or
  - d. any use or threat of force or violence occurring on the **Premises** for the purpose of demanding money, securities or property.
6. To determine the applicability of the foregoing Exclusions: (i) no fact pertaining to or knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person** and (ii) only facts pertaining to or knowledge possessed by any past, present or future Chairman, President, Chief Executive Officer, Chief Financial Officer, or holder of an equivalent position of the **Healthcare Organization**, shall be imputed to the **Healthcare Organization**.

## CONDITIONS

### 7. Notice/Claim Reporting Provisions

As a condition precedent to any right to payment in respect of any **Claim**, **Workplace Violence** or **Violation of Employee Privacy**, the **Insured** must give the Insurer written notice thereof with full details, as soon as practicable after the Risk Manager, General Counsel, or other **Employee** whose job functions involve the handling of **Claims**, first learns thereof, but in no event later than (i) ninety (90) days after expiration of the **Policy Period**, or (ii) expiration of the Discovery Period (if purchased).

If, during the **Policy Period** or the Discovery Period (if purchased):

- a. an **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**, and
- b. the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**, and
- c. the **Insureds** request coverage under this Policy for any subsequent **Claim** arising from such **Wrongful Act**;

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the **Policy Period**.

All **Related Claims** will be treated as a single **Claim** first made when the earliest of such **Related Claims** was first made, regardless of whether such date is before or during the **Policy Period**.

## 8. Defense Coverage, Settlement and Allocation of Loss

If Duty to Defend coverage is provided pursuant to Item 7. of the Declarations for this Policy, the Insurer shall have the right and Duty to Defend any **Claim** covered by this Policy, even if any of the allegations are groundless, false or fraudulent. The Insurer's Duty to Defend any **Claim** shall cease upon exhaustion of the Aggregate Limit of Liability set forth in Item 3. of the Declarations for this Policy or upon exhaustion of the applicable Sublimit of Liability set forth in Item 3. b. of the Declarations for this Policy if such **Claim** involves only the coverages that are subject to such Sublimit.

If Duty to Defend coverage is not provided pursuant to Item 7. of the Declarations for this Policy:

- a. It shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claims**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by this Policy.
- b. The Insurer shall, upon request, advance on a current basis covered **Defense Expenses** on behalf of the **Insureds** prior to final disposition of the **Claim**. Any advancement of **Defense Expenses** shall be subject to, and conditioned upon, receipt by the Insurer of a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent any such **Insured** shall not be entitled under the terms and conditions of this Policy to coverage for such **Defense Expenses**.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests, including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings. In the event of a **Claim**, the **Insureds** will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

If, in any **Claim**, the **Insureds** incur **Loss** jointly with uncovered parties or incur an amount consisting of both **Loss** covered by this Policy and loss not covered by this Policy, then the **Insured** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to covered and uncovered matters.

If Duty to Defend coverage is not provided pursuant to Item 7. of the Declarations and if there can be an agreement on an allocation of **Defense Expenses**, the Insurer shall, upon request, advance on a current basis **Defense Expenses** allocated to the covered **Loss**. If there can be no agreement on an allocation of **Defense Expenses**, the Insurer shall advance on a current basis **Defense Expenses** which the Insurer believes to be covered under this Policy until a different allocation is negotiated or judicially determined. Any negotiated or judicially determined allocation of **Defense Expenses** arising out of a **Claim** shall be applied retroactively to all **Defense Expenses** arising out of such **Claim**, notwithstanding any prior advancement. Any allocation or advancement of **Defense Expenses** arising out of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** arising out of such **Claim** or any other **Claim**.

## 9. Limit of Liability

The amount stated in Item 3. a. of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under this Policy for all **Loss** resulting from all **Claims** and for all **Workplace Violence Expense** and **Violation of Employee Privacy Expense** for which this Policy provides coverage, regardless of the time of payment by the Insurer, and regardless of whether such **Claims** are made or **Workplace Violence Expenses** or **Violation of Employee Privacy Expenses** are incurred during the **Policy Period** or during any Discovery Period (if purchased).

The amount if any stated in Item 3. b. (i) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1. a. for all **Loss** resulting from all **Claims** for **Wrongful Employment Acts** or **Third Party Discrimination Wrongful Acts**.

The amount if any stated in Item 3. b. (ii) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1. a. for all **Loss** resulting from all **Claims** for any **Wrongful Acts** other than **Wrongful Employment Acts** or **Third Party Discrimination Wrongful Acts**.

The amount if any stated in Item 3. b. (iii) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1.a. for all **Loss** resulting from all **Claims** based upon, arising out of, directly or indirectly resulting from or in consequence of any actual or alleged 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 or any other allegation of price fixing, restraint of trade, or unfair competition.

The amount if any stated in Item 3. b. (iv) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1.a. for all **Defense Expenses** resulting from all **Regulatory Claims**; however, the Insurer shall be liable for only fifty percent (50%) of such **Defense Expenses** which are in excess of the applicable Retention, and the **Insureds** shall be liable for the remaining fifty percent (50%) of such **Defense Expenses**.

The amount if any stated in Item 3. b. (v) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1. c. for all **Violation of Employee Privacy Expenses**.

The amount if any stated in Item 3. b. (vi) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under Insuring Clause 1. b. for all **Workplace Violence Expenses**.

The respective amounts if any stated in Item 3. b. (vii), (viii) and (ix) of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under this Policy for all covered **Excess Benefit Transaction Taxes** or all covered civil fines or penalties assessed against the **Insureds** for violation of **HIPAA** or **EMTALA**, respectively.

The Sublimits stated in Item 3. b. of the Declarations are part of, and not in addition to, the Aggregate Limit of Liability stated in Item 3. a. of the Declarations. If any **Loss** is subject to two or more Sublimits, then the smallest of such Sublimits shall apply to such **Loss**.

If any **Claim** made against an **Insured** gives rise to coverage both under this Policy and under any other policy(ies) issued by the Insurer, the Insurer's maximum aggregate liability under this Policy and all such policies, combined, for all **Loss**, including **Defense Expenses**, in respect of such **Claim** shall not exceed the largest single available Limit of Liability under any such policy(ies), including this Policy.

**Defense Expenses** are part of and not in addition to the Aggregate Limit of Liability and any applicable Sublimit, and payment of **Defense Expenses** by the Insurer will reduce the Aggregate Limit of Liability and any applicable Sublimit.

If the Aggregate Limit of Liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this Policy.

## 10. Retentions

The Insurer's liability with respect to all **Loss** resulting from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 4. of the Declarations for this Policy, which shall be borne by the **Insureds** uninsured and at their own risk.

The Insurer's liability with respect to all **Violation of Employee Privacy Expenses** shall apply only to that part of the **Violation of Employee Privacy Expenses** which is excess of the applicable Retention set forth in Item 4. e. of the Declarations for this Policy, which shall be borne by the **Healthcare Organization** uninsured and at its own risk.

No Retention shall apply to **Non-Indemnifiable Loss** or to **Workplace Violence Expenses**.

If different Retentions are applicable to the same **Claim**, the maximum total retention under this Policy for such **Claim** shall be the largest applicable Retention, as set forth in Item 4. of the Declarations for this Policy.

## 11. Acquisitions, Mergers and Subsidiaries

If during the **Policy Period** the **Healthcare Organization** acquires securities or voting rights in another organization or creates another organization and as a result of such acquisition or creation such organization becomes a **Subsidiary**; or acquires any organization by merger into or consolidation with the **Healthcare Organization** (“Transaction”), then such organization and its **Insured Persons** shall become **Insureds** from the date of the Transaction, but only for **Wrongful Acts** committed or allegedly committed after the Transaction, unless the Insurer agrees by endorsement to provide coverage for **Wrongful Acts** committed or allegedly committed prior to such date.

## 12. Outside Position Coverage

All coverage under this Policy for **Loss** from **Claims** against **Insured Persons** for **Wrongful Acts** in their **Outside Positions** will be specifically excess of, and will not contribute with;

- a. any other insurance available to such **Insured Persons** by reason of their service in such **Outside Positions**, or
- b. any indemnification available to such **Insured Person** by the **Outside Entity** or any other person or organization, other than the **Healthcare Organization**.

## 13. Marital or Domestic Partner Extension

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from any **Claim** made against the lawful spouse (whether such stature is derived by reason of statutory law, common law, or any other applicable law of any jurisdiction in the world) or **Domestic Partner** of an **Insured Person** for **Claims** arising solely out of his or her capacity as the spouse or **Domestic Partner** of an **Insured Person**, including such **Claims** that seek damages recoverable from community property, property jointly held by the **Insured Person** and the spouse or **Domestic Partner**; or property transferred from the **Insured Person** to the spouse or **Domestic Partner**; provided, however, this extension shall not afford coverage for **Wrongful Acts** of the spouse or **Domestic Partner**. All terms, conditions and other provisions of this Policy, inclusive of any provision relative to the applicable retention, which would be applicable to **Loss** incurred by the **Insured Person** in such **Claim**, shall also apply to **Loss** incurred by the spouse or **Domestic Partner** in such **Claim**.

## 14. Change of Control

If during the **Policy Period** the **Healthcare Organization** designated in Item 1. of the Declarations for this Policy shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert and such **Healthcare Organization** is not the surviving entity (“Control Event”), then, if the **Healthcare Organization** gives the Insurer written notice of the Control Event as soon as practicable but not later than thirty (30) days after the effective date of the Control Event, this Policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the Control Event, but there shall be no coverage afforded by any provision of this Policy for any **Wrongful Act** occurring after the effective time of the Control Event and the entire premium for this Policy shall be deemed fully earned as of such time. The **Healthcare Organization** shall also have the right to elect a Discovery Period described in Section 15. of this Policy or a greater period as may be negotiated with the Insurer.

## 15. Discovery Period

If:

- a. the **Healthcare Organization** cancels this Policy;
- b. either the Insurer or the **Healthcare Organization** refuses or declines to renew this Policy for any reason; or
- c. a Control Event described in Section 14. occurs, and,

within thirty (30) days after the end of the **Policy Period** the **Healthcare Organization** elects to purchase the Discovery Period by paying the additional premium set forth in Item 5. a. of the Declarations for this Policy, then the coverage otherwise afforded by this Policy will be extended for the period set forth in Item 5. b. of the Declarations for this Policy but only for **Wrongful Acts** occurring before the end of the **Policy Period** or the date of any Control Event under Section 14., whichever is earlier. The Aggregate Limit of Liability and any applicable Sublimits of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, the Aggregate Limit of Liability and any applicable Sublimits of Liability for the **Policy Period**.

As a condition precedent to the right to exercise the Discovery Period, the total premium for this Policy must have been paid in full.

If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.

Subject to all the terms and conditions of this Section 15., the Insurer shall, upon request, provide the **Healthcare Organization** with a quotation for up to six (6) years Discovery Period.

#### 16. **Representations; Severability; Non-Rescission**

The **Insureds** represent that the particulars and statements contained in the Application are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. In the event the Application contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, then this Policy will be void with respect to any **Insured** who knew the facts that were not truthfully disclosed, whether or not such **Insured** knew the Application contained such misrepresentation or omission. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person**. Only knowledge or information possessed by the Chief Executive Officer or Chief Financial Officer or holder of an equivalent position in the **Healthcare Organization** shall be imputed to the **Healthcare Organization**.

Notwithstanding anything in this Section 16. to the contrary, this Policy shall not be rescinded by the Insurer for any reason.

#### 17. **Worldwide Territory**

Coverage under this Policy shall extend anywhere in the world.

#### 18. **Valuation of Foreign Currency**

All premiums, limits, retentions/deductibles, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

#### 19. **Notice and Authorization**

All notices under this Policy shall be in writing and given by prepaid express courier, certified mail, e-mail or fax.

Notice to any **Insureds** may be given to the **Healthcare Organization** at the address as shown in Item 1. of the Declarations. It is agreed the **Healthcare Organization** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or **Loss**, cancellation or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of any endorsements issued to form a part of this Policy, and the exercising or declining to exercise any right to a Discovery Period.

Notice to the Insurer under this Policy shall be given to the respective address listed in Item 8. of the Declarations for this Policy.

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

#### 20. **Action Against the Insurer**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or organization shall have any right under this Policy to join the Insurer as a party to any actions against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of the estate of an **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.

## 21. Cancellation and Nonrenewal

This Policy shall terminate at the earliest of the following times:

- a. the effective date of termination specified in a prior written notice by the **Healthcare Organization** designated in Item 1. of the Declarations for this Policy to the Insurer;
- b. ten (10) days after the receipt by the **Healthcare Organization** designated in Item 1. of the Declarations of this Policy of a written notice of termination from the Insurer based upon failure to pay premium due, unless such premium is received by the Insurer prior to such tenth (10th) day;
- c. at such other time as may be agreed upon by the Insurer and the **Healthcare Organization** designated in Item 1. of the Declarations of this Policy; or
- d. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations of this Policy.

The Insurer shall refund the unearned premium computed at customary short rates if this Policy is terminated by the **Healthcare Organization**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

The Insurer shall not be required to renew this Policy upon its expiration.

## 22. Other Insurance

If any **Loss** is insured under any other valid and collectible policy(ies), prior or current, then this Policy shall act as an excess insurance policy and shall cover such **Loss** subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.

## 23. Priority of Payments

It is agreed that if the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this Policy exceeds the then-remaining Aggregate Limit of Liability or any Sublimit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to such Aggregate Limit of Liability or any such applicable Sublimit of Liability) in the following priority:

- a. First, the Insurer shall pay any such **Loss** which is incurred by **Insured Persons** and is not indemnified by the **Healthcare Organization**;
- b. Second, only if and to the extent the payment under subparagraph a. above does not exhaust the Aggregate Limit of Liability or any such applicable Sublimit of Liability, the Insurer shall pay any other **Loss** covered under this Policy.

Subject to the foregoing paragraph, the Insurer shall, upon receipt of a written request from the **Healthcare Organization** designated in Item 1. of the Declarations, delay any payment of covered **Loss** described in subparagraph b. above until such time as the **Healthcare Organization** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

## 24. Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the Insurer.

## 25. Termination of Prior Policies

Any Policies issued by the Insurer or its affiliates and specified in Item 9. of the Declarations of this Policy shall terminate, if not already terminated, as of the inception date of this Policy. Such prior Policies shall not cover any **Loss** not discovered and notified to the Insurer prior to the inception date of this Policy.

## 26. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all **Insureds'** rights of recovery. The **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**. The Insurer shall not exercise its right of subrogation against an **Insured Person** unless Exclusion 3. a. above applies to such **Insured Person**.

## 27. Changes

The terms and conditions of this Policy shall not be waived or changed, except by endorsement issued to form a part of this Policy.

## 28. Headings

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

## 29. Entire Agreement

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

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.

SPECIMEN