



BEAZLEY REMEDY DECLARATIONS

NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY SUBJECT TO ITS TERMS. IT APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE UNDERWRITERS AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN THE END OF THE POLICY PERIOD, IN ACCORDANCE WITH AN APPLICABLE REPORTING PERIOD, OR 60 DAYS AFTER THE POLICY PERIOD EXPIRATION DATE IN THE CASE OF A CLAIM FIRST MADE DURING THE LAST 60 DAYS OF THE POLICY PERIOD. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTIONS. THE UNDERWRITERS HAVE NO OBLIGATION TO PAY DEFENSE COSTS OR ANY SETTLEMENTS OR JUDGMENTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the completed and signed **Application** and the **Policy** with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

Underwriters: Beazley Insurance Company, Inc.

Policy Number:

Item 1. **Named Insured:**

Address:

Item 2. **Policy Period:** From:

To:

Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.

Item 3.

Clauses Forming This Policy

Included

Policy Terms and Conditions (F00449 042015 ed.)

☐ Yes

Directors, Officers and Entity Liability Clause (F00451 042015 ed.)

☐ Yes ☐ No

Regulatory Liability Clause (F00452 042015 ed.)

☐ Yes ☐ No

Employment Practices Liability Clause (F00453 042015 ed.)

☐ Yes ☐ No

Fiduciary Liability Clause (F00459 042015 ed.)

☐ Yes ☐ No

Item 4. **Aggregate Limit(s) of Liability**

Limits of Liability applicable to each clause are shared under this Policy as indicated:

Directors, Officers and Entity Liability Clause	☐
Regulatory Liability Clause	☐
Employment Practices Liability Clause	☐
Fiduciary Liability Clause	☐

Clause	Aggregate Limit of Liability for the Policy Period
All Coverages Under This Policy	\$
Additional Defense Limit of Liability	\$
Directors, Officers and Entity Liability Clause	\$
Additional Side A D&O Limit of Liability	\$
Antitrust Claim Sublimit	\$
Derivative Demand Sublimit	\$
Provider Selection Claim Sublimit	\$
EMTALA Claim Sublimit	\$
IRS Claim Sublimit	\$
HIPAA Claim Sublimit	\$
Regulatory Liability Clause	\$
Employment Practices Liability Clause	\$
Third Party Wrongful Acts Sublimit	\$
Employment Event Sublimit	\$
Privacy Violation Sublimit	\$
Fiduciary Liability Clause	\$
Voluntary Compliance Sublimit	\$

Item 5. **Retention(s)**

Clause	Retention each Claim:
Directors, Officers and Entity Liability Clause	\$
Antitrust Claim Retention	\$
Provider Selection Retention	\$
Regulatory Liability Clause	\$
Employment Practices Liability Clause	\$
Third Party Wrongful Acts Retention	\$
Fiduciary Liability Clause	\$
Voluntary Compliance Retention	\$

Item 6. **Coinsurance**

- % applicable to the **Antitrust Claim**
- % applicable to the **Regulatory Liability Clause**

Item 7. **Premium:** \$

Item 8. **Optional Reporting Period**

- a. Premium for **Optional Reporting Period:** 100% of the total annual premium for the Policy
- b. Length of **Optional Reporting Period:** 12 Months

Item 9. **Notification Under This Policy**

- a. Notification pursuant to Clause VII. shall be given to:
- Beazley Insurance Company, Inc.
 30 Batterson Park Road
 Farmington, CT 06032
 Tel: (860) 677-3700
 Fax: (860) 679-0247
 Attn: Claims
 Or by email: claims@beazley.com

b. All other notices under this Policy shall be given to:

Beazley Insurance Company, Inc.
 30 Batterson Park Road
 Farmington, CT 06032
 Tel: (860) 677-3700
 Fax: (860) 679-0247
 Attn: Claims
 Or by email: claims@beazley.com

Item 10. **Pending or Prior Litigation Date(s)**

Clause

Date

Directors, Officers and Entity Liability Clause

Employment Practices Liability Clause

Third Party Wrongful Acts

Fiduciary Liability Clause

Item 11. Regulatory Liability **Continuity Date**

Item 12. Regulatory Liability **Retroactive Date**

Item 13. **Terrorism Coverage**

Coverage Purchased: ☐ Yes ☒ No

If "Yes", Terrorism Coverage Premium:

included

Item 14. Endorsements Effective at Inception

SPECIMEN

The Underwriters have caused this **Policy** to be signed and attested to by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Underwriters.

Authorized Representative

Date

Secretary

President

**BEAZLEY REMEDY
POLICY TERMS AND CONDITIONS**

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

I. DEFINITIONS

The following terms whenever used in this **Policy** in boldface type shall have the meanings indicated. Terms not defined below, but appearing in bold face type, shall have the meanings indicated in the applicable Clause.

- A. **"Application"** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this **Policy**, including any endorsement or other part thereof, or any other **Policy** issued by the Underwriters of which this **Policy** is a renewal, replacement or which it succeeds in time.
- B. **"Change of Control"** means:
1. the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **Named Insured** representing the present right to vote for the election of directors or **Managers**; or
 2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.
- C. **"Financial Impairment"** means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**.
- D. **"Insured Organization"** means the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or having similar legal status under foreign law.
- E. **"Interrelated Wrongful Acts"** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- F. **"Managers"** means all persons who were, now are, or shall be managers, managing members, members of the board of managers, managing partners, or equivalent executives of any **Insured Organization**, manager of limited liability company.
- G. **"Named Insured"** means the entity designated in Item 1. of the Declarations.
- H. **"Optional Reporting Period"** means the period described in Section IX. of the Policy Terms and Conditions.

- I. **"Policy", "Insurance Policy" or "Insurance"** means this contract of **Insurance** including, the **Application**, any Declarations, and any endorsements or variations, all forming part hereof.
- J. **"Policy Period"** means the period of time between the Inception Date and the Expiration Date unless terminated earlier, and specifically excludes any **Optional Reporting Period**.
- K. **"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 any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, but are not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, other air emission, acids, alkalis, mold, spores, fungi, germs, odor, waste (including infectious or medical waste, and material to be recycled, reconditioned or reclaimed), waste water, oil or oil product, noise, electric, magnetic or electromagnetic field or radiation, or chemicals.
- L. **"Subsidiary"** means:
 - 1. any entity, while more than 50% of the outstanding voting securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** directly or indirectly;
 - 2. any limited liability corporation while the right to elect or otherwise appoint or designate more than 50% of such limited liability corporation's **Managers** is owned or controlled by the **Named Insured** directly or indirectly;
 - 3. any joint venture, which is a corporate entity, while the **Named Insured** has managerial control, or while the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled by the **Named Insured** directly or indirectly; or
 - 4. any auxiliary, foundation or guild set up for the sole purpose of benefiting programs and services of the **Insured Organization**.

if such entity or corporation was so owned or controlled as of or prior to the Inception Date of this **Policy**;

II. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of any advertising liability, which means injury arising out of one or more of the following, committed in the course of the **Insured's** advertising activities:
 - 1. libel, slander or defamation;
 - 2. infringement of copyright, title, slogan, trade dress, or advertising idea;
 - 3. false, deceptive or misleading labeling or advertising;

4. piracy or idea misappropriation under an implied contract; or
 5. invasion of right of privacy.
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the applicable Pending or Prior Litigation Date set forth in Item 10. of the Declarations, or any **Wrongful Act, Interrelated Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 2. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of a potential **Claim** given prior to the **Policy Period** under any other similar **Insurance** or renewal **Policy**;
 3. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** of a **Subsidiary** or the **Insured Person** of any **Subsidiary**:
1. occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**; or
 2. occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.
- D. based upon, arising from, or in any way attributable to the actual, potential, alleged or threatened presence, release or dispersal of any product, substance or waste which contains asbestos, silica or lead in whatever form or quantity, or any action taken by any party in response to any governmental or regulatory order, requirement, directive, mandate or decree in relation thereto.

III. LIMITS OF LIABILITY

A. Aggregate Limit(s) of Liability

The amount(s) shown in Item 4. of the Declarations shall be the Underwriters' maximum aggregate limit(s) of liability under the **Policy**.

B. Additional Defense Limit of Liability

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Defense Limit of the Underwriters applicable only to **Defense Costs** which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. Payment of **Defense Costs** shall erode the Additional

Defense Limit first and will not erode any other limit shown in Item 4. until the Additional Defense Limit is exhausted.

- C. If any **Claim** against the **Insureds** gives rise to an obligation both under this **Policy** and any other coverage, line slip or **Policy** of **Insurance** issued by Underwriters or any of its affiliates to any **Outside Entity**, the Underwriters' maximum aggregate limit of liability under all such coverage, line slips or policies for all **Loss** from such **Claim** shall not exceed the greater of:
 - 1. the applicable maximum aggregate limit(s) of liability of this **Policy**; or
 - 2. the maximum aggregate limit of liability under any such other coverage, line slip or **Policy**.
- D. The payment of **Defense Costs** by the Underwriters reduces and may totally exhaust the applicable Limit(s) of Liability.
- E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - 1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; regardless of whether a **Policy** underwritten by Underwriters was in force; or
 - 2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Section VII.B.
- F. Any amount described as a sublimit in Item 4. of the Declarations shall be the Underwriter's maximum aggregate limit of liability for all **Claims** falling within the applicable Insuring Clause, which amount shall be part of and not in addition to the applicable aggregate limit of liability in Item 4. of the Declarations.
- G. If all aggregate limit(s) of liability are exhausted, Underwriters' obligations under this **Policy** shall be completely fulfilled and extinguished.

IV. RETENTIONS

- A. The Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 5. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. The Retention is in addition to the Underwriters' Limit of Liability and not part thereof. The **Insured** shall make direct payments within the Retention to appropriate parties designated by the Underwriters. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, under this **Policy**. The Retention shall not apply, however, if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.
- B. If more than one of the Insuring Clauses are applicable to a **Claim**, the Retentions set forth in Item 5. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions

so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim**.

V. PRESUMPTIVE INDEMNIFICATION

For all purposes under this **Policy**, the **Insured Organization** is presumed to indemnify the **Insured Persons** to the fullest extent permitted by law or pursuant to the by-laws or other organizational documents of the **Insured Organization** for any **Loss**, or to advance any **Defense Costs** on their behalf, except to the extent that the **Insured Organization** cannot in fact do so for reasons of **Financial Impairment**.

VI. SPOUSAL AND DOMESTIC PARTNER EXTENSION

Coverage under this **Policy** will apply to an **Insured Person's** lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, but solely by reason of such spousal status or such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**.

VII. NOTIFICATION

- A. If any **Executive Officer** becomes aware that a **Claim** has been made against any of the **Insureds**, the **Insureds** shall, as a condition precedent to their rights to payment under this **Policy**, give to the Underwriters notice in writing of such **Claim** as soon as practicable provided, further, all **Claims** must be reported no later than the end of the **Policy Period**, in accordance the requirements of the **Optional Reporting Period** (if applicable), or sixty (60) days after the expiration date of the **Policy Period** only in the case of **Claims** first made against the **Insured** during the last sixty (60) days of the **Policy Period**.
- B. If during the **Policy Period**, except for the **Optional Reporting Period**, the **Insureds** first become aware of a specific **Wrongful Act** and if the **Insureds** during the **Policy Period**, except for the **Optional Reporting Period**, give written notice to the Underwriters as soon as practicable of:
1. the specific **Wrongful Act**;
 2. the consequences which have resulted or may result therefrom; and
 3. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this **Policy** to have been made at the time such notice was first given.

The Underwriters shall have no obligation to cover any amounts, including, but not limited to, any legal fees or expenses, incurred prior to the time such circumstances result in a **Claim**.

- C. Notice to the Underwriters provided for in Section VII.A. and B. shall be given to the firm shown in Item 9.(a) of the Declarations. All other notices to the Underwriters under this **Policy** shall be given to the entity shown in Item 9.(b) of the Declarations. All notices

under any provision of this **Policy** must be made in writing and delivered by electronic mail, prepaid express courier, or certified mail notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

VIII. GENERAL CONDITIONS

A. Representations:

By acceptance of this **Policy**, the **Insureds** agree:

1. the statements in the **Application** are their representations, and that this **Policy** is issued in reliance upon the truth of such representations;
2. in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this **Policy**, this **Policy** shall not afford any coverage with respect to those **Insureds** who made such misrepresentations, were aware of such misrepresentations, or were aware at the time of **Policy** inception of the true facts not truthfully disclosed; except that the knowledge of such misrepresentations and true facts by an **Insured** will not be imputed to any other **Insured Person**;
3. this **Policy** shall not afford any coverage for amounts paid by the **Insured Organization** as indemnification of any of the **Insureds** who made or had knowledge of the misrepresentations or the true facts, as set forth in Section VIII. A.2.;

The **Policy** shall not afford any coverage for the **Insured Organization** if the Chief Executive Officer or the Chief Financial Officer made or had knowledge of such misrepresentations as set forth in VIII.A.2. above.

None of the foregoing provisions in Clause VIII.A. shall in any other way limit or void Underwriters' rights to rescind this **Policy**; provided, that the Underwriters shall not rescind this **Policy** as to any **Insured Person**, where coverage is being provided to such **Insured Person**, and where indemnification by the **Insured Organization** is not permitted by law or the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

B. Run-Off

1. In the event any entity ceases to be a **Subsidiary** after the Inception Date of this **Policy**, or of any **Policy** issued by the Underwriters of which this **Policy** is a renewal or replacement, this **Policy**, subject to its terms including, but not limited to, Exclusion B. above, shall continue to apply to any of the **Insured Persons** who were covered under this **Policy** because of their service with such entity and to such **Subsidiary**.
2. In the event of a **Change of Control** after the Inception Date of this **Policy** or of any **Policy** issued by the Underwriters of which this **Policy** is a renewal or replacement, this **Policy**, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the **Change of Control**.

C. Cancellation/Nonrenewal

1. By acceptance of this **Policy**, the **Insureds** hereby confer the exclusive power and authority to cancel this **Policy** on their behalf to the **Named Insured**. Such entity may cancel this **Policy** by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. The Underwriters may cancel this **Policy** only for nonpayment of premium, by mailing or delivering to the **Named Insured** written notice of cancellation stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**.
3. If this **Policy** is cancelled, the Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation. If the **Named Insured** has reported a **Claim** or circumstance likely to give rise to a **Claim** under this **Policy**, the premium will be deemed to be fully earned.
4. The Underwriters may nonrenew this **Policy** by mailing to the **Named Insured** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**. The mailing or delivery of such notice shall be sufficient notice.

D. Other Insurance

This **Policy** shall apply in excess of any other existing valid and collectible policy not issued by the Underwriters including, but not limited to, any self insured retention or deductible portion thereof, whether such other **Insurance** is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written only as specific excess **Insurance** over the Limits of Liability of this **Policy**.

IX. OPTIONAL REPORTING PERIOD

- A. If this **Policy** is cancelled by the **Named Insured** or if the Underwriters non renew this **Policy**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 8.a. of the Declarations of the total annual premium for this **Policy**, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the period of time set forth in Item 8.b. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Reporting Period**, the total premium for this **Policy** must have been paid. The right to purchase the **Optional Reporting Period** shall terminate unless written notice together with full payment of the premium for the **Optional Reporting Period** is given to the Underwriters within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and

premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Reporting Period**.

- C. In the event of the purchase of the **Optional Reporting Period**, the entire premium for the **Optional Reporting Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Reporting Period** shall not in any way increase the Limit(s) of Liability of Underwriters.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Section IX.
- F. The right to the **Optional Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts within the applicable Retention.

X. ASSISTANCE, COOPERATION AND SUBROGATION

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

In the event of any payment under this **Policy**, the Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including, but not limited to, the execution of such documents as are necessary to enable the Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

Any amount recovered after payment under this **Policy** shall be applied and apportioned in the inverse order of payment (i.e., to Underwriters first, then to the **Insured**) and to the extent of actual payment, after reimbursement of actual expenses of any such recovery.

XI. ACTION AGAINST UNDERWRITERS

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this **Policy**, and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insureds** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

XII. ENTIRE AGREEMENT

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

XIII. TERRITORY

This **Policy** shall apply to **Claims** made against the **Insureds** anywhere in the world.

XIV. VALUATION AND CURRENCY

All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States. 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 judgment becomes final or payment of the settlement or other element of **Loss** is due.

XV. BANKRUPTCY

Bankruptcy or insolvency of the **Insureds** shall not relieve the Underwriters of their obligations nor deprive Underwriters of their rights or defenses under this **Policy**.

XVI. AUTHORIZATION

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this **Policy**, the payment of premiums and the receipt of any return premiums that may become due under this **Policy**, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Named Insured** shall act on their behalf.

XVII. HEADINGS

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

XVIII. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable except as requested by the Underwriters. If the **Insured** shall die or be adjudged incompetent, such **Insurance** shall cover the **Insured's** legal representative as the **Insured**, to the extent permitted by this **Policy**.

**BEAZLEY REMEDY
DIRECTORS, OFFICERS AND ENTITY LIABILITY**

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** which is not indemnified by the **Insured Organization** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- C. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** resulting from any **Claim** first made against the **Insured Organization** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- D. The Underwriters shall pay on behalf of the **Insured Organization** all **Costs of Investigation** resulting from any **Derivative Demand** first made and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- E. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** in excess of any indemnification and insurance available to such **Insured Persons** from an **Outside Entity**, resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

II. DEFINITIONS

- A. “**Antitrust Claim**” means any **Claim** alleging charges of price fixing, restraint of trade, monopolization or unfair trade, or any actual or alleged violations of:
1. the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, including, but not limited to, any such allegation in connection with setting of wages, hours or terms of employment of any person;
 2. any rules or regulations promulgated under or in connection with such statutes described in A. 1. above; or any similar provision of any federal, state, or local or foreign statutory law or common law.
- B. “**Claim**” means:
1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;

2. a civil, criminal (other than for actual or alleged violations of **HIPAA**), administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charges, investigative order or similar document; or
 - c. written notice, subpoena or search warrant from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. solely for the purpose of coverage afforded under Insuring Clause I.D., a **Derivative Demand** against an **Insured**;
 4. an arbitration or mediation or other alternative dispute resolution proceeding against an **Insured**, if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with the Underwriters' prior written consent, such consent not to be unreasonably withheld;
 5. an **Antitrust Claim**, **EMTALA Claim**, **IRS Claim**, **HIPAA Claim** (of a non-criminal nature) or **Provider Selection Claim**, each subject to the appropriate sublimit in Item 4. of the Declarations; or
 6. a written request or other written statement seeking extradition or rendition of an **Insured Person** commenced by the receipt of such written request or statement by an **Insured** (or the foreign equivalent thereof).
- C. "**Commercial Payor**" means any entity which arranges for payment or reimbursement of expenses on account of **Medical Services**, including the following types of entities:
1. any entity, including an investor-owned insurance company, which indemnifies subscribers against expenses incurred for **Medical Services**;
 2. any self-funded plan or any type of health plan where the risk for the cost of **Medical Services** is assumed, in whole or in part, by an employer rather than by an insurance company or managed care organization; or
 3. any managed care organization, such as a health maintenance organization ("HMO"), preferred provider organization ("PPO"), point of service plan ("POS"), integrated delivery network ("IDN"), or any other type of entity which has any of the following characteristics:
 - a. negotiated discount arrangements with selected providers;
 - b. explicit criteria for selection of providers;

- c. financial or program incentives or penalties to enrollees who do not use selected providers; and
 - d. provider risk-sharing arrangements.
- D. **"Costs of Investigation"** means reasonable and necessary legal fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons** or the **Insured Organization's** overhead expenses) incurred by the **Insured Organization** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Derivative Demand**.
- E. **"Defense Costs"** means reasonable and necessary legal fees and expenses (at rates which are actually paid by the Underwriters to attorneys retained in the ordinary course of business in the defense of similar actions in the community where the **Claim** arose or is being defended), to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** solely in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedes, injunction, attachment or similar bonds resulting from a covered judgment (provided, however, the Underwriters shall have no obligation to apply for, secure, collateralize, or furnish any bond for appeal, supersedes, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses; consent by Underwriters for **Defense Costs** shall not be unreasonably withheld. **Defense Costs** means only **"Costs of Investigation"** for the purpose of coverage afforded under Insuring Clause I.D.
- F. **"Derivative Demand"** means a written demand by one or more owners or directors of the **Insured Organization** to bring a civil proceeding in a court of law against any of the **Insured Persons** for a **Wrongful Act**, subject to the sublimit specified in Item 4. of the Declarations.
- G. **"Employee"** means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**, including members or managers, applicants for employment, employees, volunteers, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position and **Independent Contractors**, but does not include employees who are leased to another employer.
- H. **"EMTALA Claim"** means a civil lawsuit alleging violation of the Emergency Medical Treatment and Active Labor Act 42 U.S.C. 1396dd *et seq.*
- I. **"Excess Benefit"** means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.
- J. **"Executive Officer"** means the chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, or an individual acting in a similar capacity with the **Insured Organization**.
- K. **"HIPAA"** means the Health Insurance Portability and Accountability Act, as amended.

- L. **"HIPAA Claim"** an actual or alleged civil violation of **HIPAA** or the Health Information Technology for Economic and Clinical Health Act, provided that such violation did not result from willful neglect or dishonesty.
- M. **"Independent Contractor"** means any natural person independent contractor who performs labor or service for the **Insured Organization** pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.
- N. **"Insureds"** means the **Insured Persons** and the **Insured Organization**.
- O. **"Insured Persons"** means all persons who were, now are, or shall be duly elected or appointed:
1. Directors, officers, trustees, **Employees** or **Managers** of the **Insured Organization**; or
 2. Members of any duly constituted committee, any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician, any individual in charge of any operational department or any medical director, staff physician or faculty member of the **Insured Organization**, regardless of whether or not such person is directly employed by the **Insured Organization** or is considered to be an **Independent Contractor**;
including all persons outside the United States serving in a functionally equivalent role as 1.a. and 1.b., above, for the **Insured Organization** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy;
- P. **"IRS Claim"** means a **Claim** against an **Insured** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Service code of 1986 (as amended):
1. Section 4911 (tax on excess expenditures to influence legislation);
 2. Section 4940 (a);
 3. Section 4941 (taxes on self dealing);
 4. Section 4942 (taxes on failure to distribute income);
 5. Section 4943 (taxes on excess business holding);
 6. Section 4944 (taxes on investments which jeopardize charitable purpose);
 7. Section 4945 (taxes on taxable expenditures);
 8. Section 5652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registrations statements);

9. Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
10. Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).

Q. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:

1. the cost of providing non-monetary relief (except that this provision does not apply to **Defense Costs** where non-monetary relief is sought);
2. civil or criminal fines, penalties, sanctions, liquidated damages, payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this **Policy** is construed; except that this paragraph 2 shall not apply to:
 - a. civil fines or penalties resulting from **HIPAA Claims, IRS Claims** or **EMTALA Claims**, each subject to the sublimits specified in Item 4. of the Declarations;
 - b. any **Excess Benefit** penalty assessed in the amount of 10% by the Internal Revenue Service against any **Insureds** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto up to an aggregate amount of \$100,000 which shall be part of and not in addition to the aggregate limit of liability, except that there shall be no coverage for:
 - i. any 25% penalty assessed against an **Insured** deemed to have received an **Excess Benefit**;
 - ii. **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; or
 - iii. any 200% penalty against any **Insured** for failure to correct the award of an **Excess Benefit**. This paragraph b. shall not apply and there shall be no coverage for any **Excess Benefit** penalty if the **Insured** fails to correct the award of an **Excess Benefit**;
3. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree; or
4. any investigative costs other than **Costs of Investigation** or **Defense Costs** in connection with a **Claim**.

R. **“Medical Services”** means any health care, medical care, or treatment provided to any individual, including but not limited to: 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; and the handling of, or the performance of post-mortem examinations on human bodies.

S. **“Outside Entity”** means:

1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax;
2. any entity in which the **Insured Organization** has an equity or ownership interest; or
3. any other entity, if specified in an endorsement to this **Policy**.

T. **“Outside Executive Position”** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Persons** in an **Outside Entity** if service in such position is with the knowledge and consent of the **Insured Organization**.

U. **“Provider Selection”** means evaluation, selection, deselection, credentialing, privileging, conducting disciplinary proceedings, performing peer review of or contracting with an individual provider of **Medical Services**.

V. **“Provider Selection Claim”** means a **Claim** by a provider of **Medical Services** alleging a **Wrongful Act** by an Insured in **Provider Selection**, which shall be subject to the retention specified in Item 5. of the Declarations.

W. **“Unauthorized Disclosure”** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Insured** and is without knowledge of, consent, or acquiescence of any, member of the Board of Directors, **Executive Officer**, Chief Information Officer, Chief Security Officer, Chief Privacy Officer, staff attorneys employed by the **Insured Organization**.

X. **“Wrongful Act”** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission by:

1. any of the **Insured Persons** solely in their capacity as such;
2. any of the **Insured Persons** while in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E; or
3. the **Insured Organization** solely with respect to the coverage afforded under Insuring Clause I.C..

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of property (including loss of use thereof); except that this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** in **Provider Selection** seeking **Loss** for mental anguish, emotional distress, libel, slander, or defamation;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 - 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 - 2. any direction or request that the **Insureds** test for, monitor, provide notice of, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so (such costs hereinafter "Clean Up Costs") including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or its securities holders, purchasers or sellers;

provided, however, this exclusion shall not apply to the extent such **Claim** is otherwise covered under Insuring Clause I.A., other than Clean Up Costs; or **Loss** resulting from any **Claim** covered under Insuring Clauses I.B., I.C., I.D. or I.E., other than Clean Up Costs, to the extent such **Claim** is brought by any security holders of the **Insured Organization** solely in their capacity as such whether directly in their own name or right or derivatively on behalf of the **Insured Organization** and such **Claim** is instigated and continuously pursued totally independent of and totally without the solicitation, assistance, active participation or intervention of the **Insureds**;

- C. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, any federal, state, statutory, regulatory, local or common law relating to any wage and hour practice, including, but not limited to, any **Claim** for off-the-clock work; failure to provide rest or meal periods; failure to provide or pay for vacation, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of employees as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages or compensation; improper deductions from pay; improper credit for food, lodging or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any person; and any related **Claim** to the foregoing for conversions, unjust enrichment, consumer or employment protection laws, unfair business practice, including but not limited to, **Claims** under the Fair Labor Standards Act (except Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including, but not limited to, any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations;

- D. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including, but not limited to, contracts or agreements which are not subject to the provisions of ERISA;
- E. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
1. is a derivative action brought or maintained by or on behalf of a securities holder of the **Insured Organization**, including such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or having similar legal status under foreign law, who, when such **Claim** is first made, is acting independently of and without the solicitation, assistance, participation or intervention of any **Insured**;
 2. is brought by any of the **Insureds** in the form of a cross-claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this **Policy**;
 3. is a **Derivative Demand**;
 4. is first brought by a receiver, liquidator, trustee or similar official of the **Insured Organization**;
 5. is brought by any former **Insured Person** who has not served in such capacity or as a consultant to the **Insured 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 **Insured Organization** or any other **Insured Persons** or consultants to the **Insured Organization** who are serving or have served in such capacity within such three (3) year period; except that this exclusion shall not apply to any **Claim** brought by an **Insured Person** for a **Wrongful Act** as a "whistleblower";
 6. is brought by a provider of **Medical Services** alleging a **Wrongful Act** in **Provider Selection**;
 7. is first brought by the creditor committee; or
 8. is brought and maintained solely and entirely in a jurisdiction outside of the United States, its possessions or territories; and subject to the substantive and procedural laws of a jurisdiction other than the United States, its possessions or territories;
- F. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Persons** began serving in an **Outside**

Executive Position if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**; or

2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. the public offer, sale, solicitation or distribution of securities of the **Insured Organization** or an **Outside Entity**; or
 2. the actual or alleged violation of any federal, state, local or provincial statute relating to securities, including but not limited to the Securities Act of 1933 and the Securities and Exchange Act of 1934, or any rules or regulations promulgated thereunder;

except that this exclusion will not apply to any offer, purchase or sale of securities of the **Insured Organization**, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933 or to any offer of tax exempt bonds (an "Exempt Transaction").

If at least thirty (30) days prior to an offering of securities of the **Insured Organization**, other than pursuant to an Exempt Transaction, the Underwriters receive notice of the proposed transaction and any additional information requested by the Underwriters, the **Insured Organization** may request a proposal for coverage subject to any additional terms and conditions and payment of any additional premium the Underwriters may specify in such proposal. However, the Underwriters will not be obligated to provide such coverage;

- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, the purchase by the **Insured Organization** of securities of any entity whose securities are traded on any public stock exchange which purchase results in the **Insured Organization** having the right to vote for the election of such entity's directors, either directly or indirectly;
- I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any deliberately dishonest, fraudulent or criminal act or omission by any of the **Insureds**; or
 2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled;

as determined by a final non-appealable adjudication, except that this exclusion shall not apply to **Defense Costs** incurred up until such determination is made;

- J. for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization**; except that this exclusion shall not apply to **Defense Costs** incurred in

connection with any such **Claim** until such time as it is determined by a final non-appealable adjudication that such payment was unlawful;

- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged;
 - 1. presenting, or allowing to be presented, by an insured any erroneous submission (including submissions presented by third parties on behalf of the **Insured** only to the extent of the **Insured's** liability) to a governmental health benefit program or a **Commercial Payor**, seeking payment or reimbursement for **Medical Services** provided or prescribed by an Insured;
 - 2. any negligent or reckless act, error or omission by an **Insured** in violation of the Stark Act (42 U.S.C. §1395nn) or any federal, state or local anti-kickback or self-referral laws, or any rules or regulations promulgated thereunder; or
 - 3. a negligent or reckless act, error or omission by the **Insured** in violation of the United States False claims Act (31 U.S.C. § 3729(b)) or any similar federal or state statute, regulation or rule based on "knowing" conduct as that term is defined in the False claims Act (31 U.S.C. § 3729(b));
- L. for **Loss**, including **Defense Costs** or the payment of fines and penalties in connection with or resulting from any **Claim** for the theft, loss, or **Unauthorized Disclosure** of personally identifiable information, including "protected health information" as defined in the Health Insurance Portability and Accountability Act ("HIPAA"), as amended, and regulations issued pursuant to the Act, that is in the care, custody or control of the **Insured**, or a third party for whose theft, loss or **Unauthorized Disclosure** of such information is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act ("HIPAA")). Provided, however this exclusion shall not apply for any **Claim** resulting from any actual or alleged act, error or omission or breach of duty by any director, officer or **Manager** in the discharge of their duty if the **Claim** is brought by or on behalf of the **Insured Organization**, or any principals, directors, officers, **Managers**, stockholders, members or employees of the **Insured Organization** in his or her capacity as such;
- M. with respect to Insuring Clause I. C. only:
 - 1. for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade secret, trade dress, or any other intellectual property rights;
 - 2. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;
 - 3. based upon, arising out of, directly or indirectly resulting from or in consequence of any actual or alleged breach of contract, agreement, warranty, or guarantee where such **Claim** is brought by or on behalf of a party to or beneficiary of such contract, agreement, warranty, or

guarantee except to the extent that the **Insured** would have been liable in the absence of such contract, agreement warranty, or guarantee;

4. for the liability of others assumed by the **Insured Organization** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
5. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission in connection with the rendering of, or actual or alleged failure to render, professional services by or on behalf of the **Insured Organization** for the benefit of any other entity or person; except that this exclusion shall not apply to any **Claim** alleging any **Wrongful Act** in the performance of or failure to perform **Provider Selection**;
6. by, on behalf of, or at the direction of any **Employee** of or applicant for employment with the **Insured Organization** including, but not limited to, any leased employee, seasonal employee or volunteer; except that this exclusion shall not apply to a **Claim** brought by any such person in his or her capacity as a shareholder of the **Insured Organization**;
7. for costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including, but not limited to, actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to comply with **HIPAA**; or
8. for actual or alleged: (i) sexual abuse or injury; sexual molestation; sexual assault; sexual exploitation; child abuse or child neglect; or (ii) wrongful hiring or retention; wrongful supervision; wrongful investigation; wrongful reporting or failure to report to the proper authorities in connection with or in any way involving any incident or pattern of incidents of alleged sexual abuse or injury, sexual molestation, sexual assault, sexual exploitation, child abuse or child neglect.

No **Wrongful Acts** committed or alleged to have been committed by any **Insured** shall be imputed to any other **Insured Person** for the purpose of determining the applicability of exclusions I. and J. above. **Wrongful Acts** committed by any past, present or future **Executive Officer** of the **Named Insured** shall be imputed to the **Insured Organization** for the purpose of determining the applicability of exclusions I. and J. above.

IV. MERGERS & ACQUISITIONS

This **Policy** is issued and the premium computed on the basis of the information submitted to the Underwriters as part of the **Application**. In the event the **Named Insured**, after the Inception Date of this **Policy**:

1. merges with another entity such that the **Named Insured** is the surviving entity, or

2. acquires assets of another entity or creates or acquires a **Subsidiary** whose assets exceed twenty five percent (25%) of the total assets of the **Insured Organization** at the time of acquisition;

for a period of ninety (90) days, coverage granted by this **Policy** shall extend to **Loss** from **Claims** for **Wrongful Acts** occurring after the effective date of such event which arise of or relate to the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage for such loss beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to the Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as the Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

V. SETTLEMENT AND DEFENSE

- A. It shall be the duty of the **Insured** and not the duty of the Underwriters to defend **Claims**. The Underwriters shall have the right and shall be given the opportunity to effectively associate with the **Insured** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.
- B. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which they have not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then the Underwriters' consent shall not be required for such disposition.
- C. The Underwriters shall advance, on behalf of the **Insured**, **Defense Costs** which the **Insured** have incurred in excess of the **Retention** in connection with a **Claim** made against them, prior to the final disposition of such **Claim**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this **Policy**, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Underwriters. The Underwriters shall pay **Defense Costs** no more than once every sixty (60) days.
- D. The Limit of Liability available to pay **Loss** shall be reduced and may be completely exhausted by payment of **Defense Costs**. **Underwriters** shall not be liable for any **Loss** incurred within the Retention specified in Item 5. of the Declarations.
- E. The Underwriters shall not be obligated to pay any **Loss**, after the applicable Limit of Liability has been exhausted by payment of **Loss**, including **Defense Costs** or by reason of the tender of the remaining applicable limits into a court of competent jurisdiction.

F. The Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:

1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; and
2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VI. ALLOCATION

If **Loss** covered by this **Policy** and **Loss** uninsured by this **Policy** are incurred, either because the **Claim** includes both covered and uninsured claims or because it includes both insured and uninsured parties, then the **Insureds** and the Underwriters agree to use their best efforts to fairly and reasonably allocate such amount between covered loss, and uninsured **Loss** based upon the relative legal and financial exposure to the **Insureds** for the uninsured amounts. In the event that an allocation cannot be agreed to, then the Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

In the event that an allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. the Underwriters shall advance the amount of **Defense Costs** which they deem fair and proper, until a different amount is negotiated by the parties (determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially);
3. the Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

VII. ORDER OF PAYMENT

In the event of **Loss** for which payment is due under the provisions of this **Policy** which exceeds the remaining aggregate limit of liability, then the Underwriters shall:

1. first, pay **Loss** for which coverage is provided under this **Policy** for any **Insured Person**;
2. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for any **Plan**; and
3. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for the **Insured Organization**.

VIII. RETENTION AND COINSURANCE

In addition to the applicable Retention(s) the **Insureds** shall bear uninsured and retain at their own risk a percentage of any **Claim** ("Coinsurance") as set forth in Item 6. of the Declarations of any **Loss**, **Defense Costs** or **Costs of Investigation** resulting from an **Antitrust Claim**.

The Retention and Coinsurance applicable to I. Insuring Clauses A shall not apply if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

IX. ADDITIONAL SIDE A D&O LIMIT

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Side A D&O Limit of Underwriters applicable only to **Claims** under Insuring Clause I.A. above, which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. The Additional Side A D&O Limit shall apply excess of the aggregate limit of liability applicable to the Private Organization Directors, Officers and Entity Liability Clause and all policies of insurance providing excess coverage.

**BEAZLEY REMEDY
EMPLOYMENT PRACTICES LIABILITY CLAUSE**

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage, including any defense obligation, afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity** and any insurer of the **Outside Entity**.

- C. If indicated in Item 3. of the Declarations, Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any of the **Insureds** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Third Party Wrongful Act**.

If a sublimit applicable to **Third Party Wrongful Acts** is indicated in Item 4. of the Declarations, then such amount shall be part of and not in addition to the aggregate limit of liability applicable to the Employment Practices Liability Clause.

- D. The Underwriters shall pay **Employment Event Loss** incurred by the **Insured Organization** solely with respect to an **Employment Event** first occurring during the **Policy Period** or **Optional Reporting Period**, if purchased, and reported in writing to the Underwriters as soon as practicable but in no event later than sixty (60) days after the expiration of the **Policy Period** or the last day of the **Optional Reporting Period**, if purchased, from first dollar, provided that the payment of **Employment Event Loss** shall not waive the Underwriters' rights under this **Policy** or at law. Coverage under this Clause I. shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Employment Event** and, in the case where a **Claim** is made, regardless of whether the **Employment Event Loss** is incurred prior to or subsequent to the making of the **Claim**.

If a sublimit applicable to **Employment Event Loss** is indicated in Item 4. of the Declarations, then such amount shall be part of and not in addition to the aggregate limit of liability applicable to the Employment Practices Liability Clause.

II. DEFINITIONS

- A. "**Breach Notice Law**" means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or may reasonably have been accessed by an unauthorized person.
- B. "**Claim**" means:

1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or a written request to toll or waive a statute of limitations;
2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds**, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charges, investigative order or similar document;
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom formal proceeding may be commenced;
3. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause against any **Insured**; or
4. an arbitration or mediation or other alternative dispute resolution against any **Insured** proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with the Underwriters' prior written consent, such consent not to be unreasonably withheld.

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

- C. **"Defense Costs"** means reasonable and necessary legal fees and expenses (at rates which are actually paid by the Underwriters to attorneys retained in the ordinary course of business in the defense of similar actions in the community where the claim arose or is being defended), to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** solely in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedes, injunction, attachment or similar bonds resulting from a covered judgment (provided, however, the Underwriters shall have no obligation to apply for, secure, collateralize, or furnish any bond for appeal, supersedes, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses; consent by Underwriters for **Defense Costs** shall not be unreasonably withheld.
- D. **"Discrimination"** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, military status in violation of the Uniformed Services Employment Reemployment Rights Act or any other basis which is or is alleged to be prohibited by federal, state or local law.

- E. **"Employee"** means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**, but only while that person is acting in such capacity, including members or managers, applicants for employment, employees, volunteers, interns, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position and **Independent Contractors**, but does not include employees who are leased to another employer.
- F. **"Employment Advisor"** means any public relations firm, security firm or mental health professional selected by the **Insured** with the Underwriters' consent, such consent not to be unreasonably withheld.
- G. **"Employment Event"** means any of the following events, which shall be deemed to commence (i) when an **Executive Officer** first believes in good faith that it is more likely than not that such event will occur within the next sixty (60) days, or (ii) with respect to 5. below, when the event occurs, whichever is earlier:
1. layoff/termination of 20% or greater of the **Insured Organization's** workforce;
 2. acquisition of an organization which necessitates a material change in employment status or terms of employment of 20% or greater of the **Insured Organization** workforce;
 3. the public announcement of allegations of discrimination or harassment implicating an **Executive Officer**; or a **Claim** alleging a **Third Party Wrongful Act**;
 4. receipt by the **Insured Organization** of notice that a civil rights organization, public interest group or similar organization is investigating the **Insured Organization** for violations of state or federal employment laws or is distributing literature which accuses the **Insured Organization** of violations of state or federal employment laws; or
 5. a workplace disaster resulting in loss of life or the imminent threat of or actual use of a lethal weapon which occurs on the **Insured Organization's** premises, including, but not limited to, flood, fire, or workplace violence.
- An **Employment Event** shall conclude ninety (90) days after it first commences or when the **Employment Event** Sublimit has been exhausted.
- H. **"Employment Event Loss"** means reasonable fees and expenses charged by an **Employment Advisor** in connection with:
1. advising the **Insured Organization** with respect to minimizing potential loss or liability on account of an **Employment Event**;
 2. Retaining an independent security consultant or for independent security guard services with respect to an **Employment Event** described in Definition G.1., 2. or 5;

3. managing or administering disclosures to clients, customers, suppliers, investors or the public regarding an **Employment Event**; or
4. providing counseling to any **Employee** on account of an **Employment Event**;

except that **Employment Event Loss** shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.

- I. **"Executive Officer"** means the chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, human resources staff, or an individual acting in a similar capacity with the **Insured Organization**.
- J. **"Harassment"** means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct, including bullying, of a sexual or non-sexual nature, where such harassment is based on an **employee's** race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis protected by federal, state or local law and is explicitly or implicitly made a condition of employment, used as a basis for employment decisions or performance, or creates a hostile, intimidating or offensive work environment or that interferes with performance.
- K. **"Inappropriate Employment Conduct"** means any of the following:
 1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful;
 2. actual or alleged wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
 3. actual or alleged breach of an express written employment agreement, but only when such breach would otherwise constitute a **Wrongful Act**;
 4. actual or alleged violation of the Family and Medical Leave Act;
 5. actual or alleged misrepresentation, false imprisonment, detention or malicious prosecution but only in connection with an employment decision;
 6. actual or alleged libel, slander, defamation of character or any invasion of right of privacy but only in connection with an employment decision;
 7. with respect to any of the foregoing items (1) through (6) of this definition; actual or alleged negligent hiring, retention or supervision, or failure to employ or promote, train, create or enforce adequate workplace or employment policies and procedures, or grant tenure or seniority; or
 8. any **Privacy Violation**, which shall be subject to any sublimit specified in Item 4. of the Declarations.

- L. **"Independent Contractor"** means any natural person independent contractor who performs labor or service for the **Insured Organization** on or pursuant to a written contract or agreement, but only where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.
- M. **"Insureds"** means the **Insured Persons** and the **Insured Organization**.
- N. **"Insured Persons"** means all persons who were, now are, or shall be duly elected or appointed:
1. directors, officers, trustees, **Employees** or **Managers** of the **Insured Organization**;
 2. members of any duly constituted committee, any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician, any individual in charge of any operational department or any medical director, staff physician or faculty member of the **Insured Organization**, regardless of whether or not such person is directly employed by the **Insured Organization** or is considered to be an **Independent Contractors**;
- O. **"Loss"** means compensatory money which an Insured is legally obligated to pay as a result of a **Claim** including compensatory damages, compensatory judgments (including prejudgment and post judgment interest awarded against an Insured on that part of any judgment paid by the Underwriters), back pay, front pay, covered settlements, statutory attorney fees pursuant to a covered judgment against an **Insured**, **Defense Costs** and punitive and, exemplary damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:
1. the cost of providing any remedial, preventative or non-monetary relief including, but not limited to, any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority, or to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any person, except that this provision does not apply to **Defense Costs** where non-monetary relief is sought;
 2. civil fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), criminal fines, penalties, sanctions, multiple damages, liquidated damages (other than those awarded under the **Age Discrimination** in Employment Act or the Equal Pay Act); and statutory damages that are predicted upon a finding of willfulness;
 3. payroll or other taxes;
 4. any matters that are deemed uninsurable according to the law under which this policy is construed;

5. amounts owed under **Wage and Hour Laws**;
 6. severance pay, commissions, bonuses, profit sharing, or benefits including but not limited to medical, stock options, vacation, holiday, and/or sick pay;
 7. future salary, wages, bonus, commissions and/or benefits resulting from a settlement of a **Claim**, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Insured Person**;
 8. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree;
 9. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend; or
 10. any amounts owed under an employment contract, partnership, stock or other ownership agreement, or any other type of contract.
- P. **"Outside Entity"** means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax; or
 2. any other entity, if specified in an endorsement to this **Policy**.
- Q. **"Outside Executive Position"** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Person** in an **Outside Entity** if service in such position is at the specific request of the **Insured Organization**.
- R. **"Personally Identifiable Non-Public Information"** means information about an **Employee** obtained by the **Insured** solely in its capacity as the employer of such individual. **Personally Identifiable Non-Public Information** does not include any information obtained by the **Insured** in any other capacity including, but not limited to, information obtained as the result of the **Employee** being a customer of the **Insured**.
- S. **"Privacy Policy"** means the internal or publicly accessible written documents that set forth the **Insured Organization's** policies, standards and procedures for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Non-Public Information**.
- T. **"Privacy Violation"** means:
1. theft of **Personally Identifiable Non-Public Information** that is in the care, custody or control of the **Insured Organization**, or an **Independent Contractor** that is holding or processing such information on behalf of the **Insured Organization**;
 2. the **Insured Organization's** failure to timely disclose a incident or event triggering a violation of any **Breach Notice Law**;

3. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
 - a. prohibits or restricts the **Insured Organization's** disclosure, sharing or selling of an **Employee's Personally Identifiable Non-Public Information**;
 - b. requires the **Insured Organization** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by an **Employee**; or
 - c. mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**.
- U. **"Retaliation"** means any actual or alleged **Discrimination, Harassment**, and/or **Inappropriate Employment Conduct** against an **Employee** on account of such **Employee's** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- V. **"Third Party Wrongful Act"** means any actual or alleged discrimination, including discriminatory or sexual harassment, by any of the **Insureds** against any natural person who is not an **Insured Person** or an applicant for employment of the **Insured Organization**.
- W. **"Wage and Hour Law"** means any federal, state, statutory, regulatory, local or common law relating to any wage and hour practice, including, but not limited to, any failure to provide rest or meal periods; failure to provide or pay for vacation, off-the-clock work, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of employees as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages or compensation; improper deductions from pay; improper credit for food, lodging or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any person; and any allegation related to the foregoing for conversions, unjust enrichment, consumer or employment protection laws, unfair business practice, including but not limited to, the Fair Labor Standards Act (except Equal Pay Act).
- X. **"Wrongful Act"** means **Inappropriate Employment Conduct, Discrimination, Harassment**, and/or **Retaliation** by any of the **Insureds** against an **Insured Person** or an applicant for employment of the **Insured Organization**. If indicated in Item 3. of the Declarations, **Wrongful Act** shall also include a **Third Party Wrongful Act**.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving libel, slander, defamation, bodily injury, sickness disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, or damage to or destruction of tangible property (including loss of use thereof); except that this exclusion shall not apply to a **Claim** alleging **Inappropriate Employment Conduct** involving libel, slander, defamation or false imprisonment;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of any **Wage and Hour Law**, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the Employee Retirement Income Security Act of 1974, and any workers' compensation, unemployment insurance, social security, or disability benefits law, whether or not such allegations are made in connection with any governmental or administrative proceedings provided, however, this exclusion will not apply to any **Claim** for **Retaliation**;
- C. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any Employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; except that this exclusion shall not apply to a **Claim** for **Retaliation**; or to any **Claim** alleging violation of Section 510 of the Employee Retirement Income Security Act of 1974;
- D. against any of the **Insured Persons** serving in an **Outside Executive Position**:
 1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Person** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**; or
 2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives;
- E. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving lockout, strike, picket line, hiring of replacement workers or other similar action in connection with any labor dispute or labor negotiation or for or arising out of any alleged violation or responsibilities, duties or obligations imposed on an **Insured** under the National Labor Relations Act or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; except that this exclusion E. shall not apply to any **Claim** for **Retaliation**;
- F. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving the liability of others assumed by an **Insured** under any contract or

agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;

- G. for breach of an express written employment agreement, or under any policy or procedure providing for payment in the event of separation from employment unless such liability would have attached in the absence of such contract or agreement; except that this exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim** that is otherwise covered by this policy;
- H. for actual or alleged: (i) sexual abuse or injury; sexual molestation; sexual assault; sexual exploitation; child abuse or child neglect; or (ii) wrongful hiring or retention; wrongful supervision; wrongful investigation; wrongful reporting or failure to report to the proper authorities in connection with or in any way involving any incident or pattern of incidents of alleged sexual abuse or injury, sexual molestation, sexual assault, sexual exploitation, child abuse or child neglect;
- I. based upon, arising out of, directly or indirectly connected or related to, or in any way alleging violation(s) of the Immigration Reform Control Act of 1986 ("IRCA") or any other similar federal, state, or local laws or regulations.

IV. MERGERS & ACQUISITIONS

This **Policy** is issued and the premium computed on the basis of the information submitted to the Underwriters as part of the **Application**. In the event the **Named Insured**, after the Inception Date of this **Policy**:

- 1. merges with another entity such that the **Named Insured** is the surviving entity, or
- 2. acquires assets of another entity or creates or acquires a **Subsidiary** whose employees exceed twenty five percent (25%) of the total number of employees of the **Insured Organization** at the time of acquisition;

for a period of ninety (90) days, coverage granted by this **Policy** shall extend to **Loss** from **Claims** for **Wrongful Acts** occurring after the effective date of such event which arise of or relate to the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage for such loss beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to the Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as the Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

V. SETTLEMENT AND DEFENSE

- A. It shall be the duty of the **Insured** and not the duty of the Underwriters to defend **Claims**. The Underwriters shall have the right and shall be given the opportunity to effectively associate with the **Insured** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.

- B. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which they have not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then the Underwriters' consent shall not be required for such disposition.
- C. The Underwriters shall advance, on behalf of the **Insured**, **Defense Costs** which the **Insured** have incurred in excess of the Retention in connection with a **Claim** made against them, prior to the final disposition of such **Claim**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this **Policy**, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Underwriters. The Underwriters shall pay **Defense Costs** no more than once every sixty (60) days.
- D. The Limit of Liability available to pay **Loss** shall be reduced and may be completely exhausted by payment of **Defense Costs**. Underwriters shall not be liable for any **Loss** incurred within the Retention specified in Item 5. of the Declarations.
- E. The Underwriters shall not be obligated to pay any **Loss**, after the applicable Limit of Liability has been exhausted by payment of **Loss**, including **Defense Costs** or by reason of the tender of the remaining applicable limits into a court of competent jurisdiction.
- F. The Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
 - 1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
 - 2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VI. ALLOCATION

If **Loss** covered by this **Policy** and **Loss** uninsured by this **Policy** are incurred, either because the **Claim** includes both covered and uninsured claims or because it includes both insured and uninsured parties, then the **Insureds** and the Underwriters agree to use their best efforts to fairly and reasonably allocate such amount between covered **Loss**, and uninsured loss based upon the relative legal and financial exposure to the **Insureds** for the uninsured amounts. In the event that an allocation cannot be agreed to, then the Underwriters shall make

an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

In the event that an allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. the Underwriters shall advance the amount of **Defense Costs** which they deem fair and proper, until a different amount is negotiated by the parties (determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially);
3. the Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

VII. OTHER INSURANCE

Notwithstanding Section VIII.D., Other Insurance, of the Policy Terms and Conditions, solely in respect of **Claims** for **Wrongful Acts** other than **Third Party Wrongful Acts**, this **Policy** shall apply as primary insurance, except with respect to:

1. **Claims** which include allegations covered under both a fiduciary liability policy (including coverage under this **Policy**) and this **Policy**;
2. **Claims** brought by or on behalf of an **Independent Contractor** or leased or temporary **Employee**; or
3. **Claims** under Insuring Clause B. of the Employment Practices Liability Clause.

in which case the provisions of Section VIII.D., Other Insurance, of the Policy Terms and Conditions shall apply.

**BEAZLEY REMEDY
FIDUCIARY LIABILITY CLAUSE**

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Reporting Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insureds** any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice**. Such amount shall be subject to any sublimit specified in Item 4. of the Declarations and the Fiduciary Liability Retention set forth in Item 5. of the Declarations and shall be part of and not in addition to the Limit of Liability set forth in Item 4. of the Declarations. This Insuring Clause shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the Inception Date of this **Policy**.

II. DEFINITIONS

- A. **"Administration"** means one or more of the following administrative duties or activities with respect to a **Plan**:
 - 1. counseling or advising participants or beneficiaries;
 - 2. providing interpretations;
 - 3. handling of records; or
 - 4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B. **"Administrator"** means a natural person with responsibility for Administration and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C. **"Application"**, for purposes of the Fiduciary Liability Clause only, includes any publicly available documents that are filed by the **Named Insured** or **Plan** prior to the Inception Date of this **Policy** with the Internal Revenue Service ("IRS"), Department of Labor or Pension Benefit Guaranty Corporation (or for any similar federal, state, local or foreign regulatory agency).
- D. **"Benefits"** means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.
- E. **"Claim"** means:
 - 1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
 - 2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:

- a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charge, investigative order or similar document; or
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. any fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States;
 4. solely for the purpose of coverage afforded under Insuring Clause I.B., a **Voluntary Compliance Notice**; or
 5. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with the Underwriters' prior written consent, such consent not to be unreasonably withheld.
- F. **"Defense Costs"** means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (except that the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses.
- G. **"ERISA"** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), and any amendment or revision thereto, or any similar common or statutory law of the United States, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject. **ERISA** shall not include any law concerning worker's compensation, unemployment insurance, social security, government mandated disability benefits or similar law.
- H. **"ESOP"** means any employee stock ownership plan as defined in **ERISA** or any **Plan** under which investments are made primarily in securities of the **Insured Organization**.
- I. **"ESOP Administration"** means one of more of the following administrative duties or activities with respect to an **ESOP**:
1. giving notice to employees, participants or beneficiaries;
 2. interpreting benefits;
 3. handling records; or
 4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries;

provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Insured Organization**.

- J. **“Executive Officer”** means the chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, trustee or **Administrator**, or individual acting in a similar capacity with the **Insured Organization**.
- K. **“Fiduciary”** means a fiduciary of a **Plan** as defined in **ERISA**.
- L. **“Insured”** means any **Insured Person**, the **Insured Organization** and any **Plan**.
- M. **“Insured Person”** means all persons who were, now are, or shall be employees or trustees of the **Insured Organization** or a **Plan**; or duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** or a **Plan** in his or her capacity as a **Fiduciary** or **Administrator** of a **Plan** including all persons outside the United States of America serving in a functionally equivalent role including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- N. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim**, other than a **Voluntary Compliance Notice**, including damages, judgments (including prejudgment or post judgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney’s fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages.

However, **Loss** shall not include:

- 1. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
 - a. the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
 - b. the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**; or
 - c. **Voluntary Compliance Fees**;
- 2. **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured’s Wrongful Act**; except that this exclusion shall not apply to a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to, the securities of the **Company** regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits”;

3. any amounts for which the **Insureds** are legally or financially absolved from payment;
 4. matters deemed uninsurable under the law pursuant to which this **Policy** shall be construed; or
 5. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- O. **"Plan"** means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:
1. a welfare plan as defined in **ERISA** sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the Inception Date of this **Policy** or becomes so sponsored after the Inception Date of this **Policy** pursuant to Section IV.A. below;
 2. a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the Inception Date of this **Policy** or becomes so sponsored after the Inception Date of this **Policy** pursuant to Section IV.A. below;
 3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to below) sponsored solely by the **Insured Organization** or sponsored jointly by the **Insured Organization** and a labor organization solely for the benefit of the employees of the **Insured Organization**, and which is so sponsored prior to the Inception Date of this **Policy** or becomes so sponsored after the Inception Date of this **Policy** pursuant to Section IV.A below;
 4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for employees of the **Insured Organization**;
 5. any other plan, fund or program which is included in the definition of **Plan** by written endorsement attached hereto;
 6. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the **Insured Organization** exclusively for the benefit of employees of the **Insured Organization**; or
 7. an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.

- P. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this **Policy** shall be construed.
- Q. **“Voluntary Compliance Notice”** means a written notice given to the Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.
- R. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction program.
- S. **“Wrongful Act”** means:
1. as respects a **Fiduciary**, a **Plan** or the **Insured Organization**:
 - a. any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or
 - b. any matter claimed against an **Insured** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
 2. as respects an **Administrator**:
 - a. any actual or alleged act, error or omission in the performance of **Administration**; or
 - b. any matter claimed against an **Administrator** by reason of his or her status as such;
 3. as respects an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Insured Organization**; or
 4. any actual or alleged act, error or omission by an **Insured Person** in the performance of **ESOP Administration**.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional

distress, invasion of privacy, or damage to or destruction of any tangible property (including loss of use thereof);

- B. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or the **Plan** or any of their security holders, purchasers or sellers;

except that this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Insured Organization** which are owned by the **Plan**;

- C. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act;
- D. for liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan** as defined in this **Policy**, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Wrongful Act** as respects a **Plan** taking place at any time when the **Insured Organization** did not sponsor such **Plan**;
- G. for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any law concerning workers' compensation, unemployment insurance, Social Security, or disability insurance, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law other than COBRA;
- H. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**;

- I. for **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of an **Insured Person**; except that this exclusion shall not apply to **Defense Costs**; or
- J. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 1. any deliberately dishonest, fraudulent or criminal act or omission by any of the **Insureds**; or
 2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled;

as determined by a final non-appealable adjudication; except that this exclusion shall not apply to **Defense Costs** incurred up until such determination is made.

No **Wrongful Act** shall be imputed to any of the other **Insureds** for the purpose of determining the applicability of any of the exclusions.

IV. ACQUISITIONS

A. Sponsorship of Another Plan

In the event the **Insured Organization** becomes a sponsor of a plan, other than an **ESOP**, after the Inception Date of this **Policy**, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Insured Organization** is the surviving entity or by its own creation, and the total assets of such newly sponsored plan do not exceed twenty five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements, coverage shall be afforded for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Persons** for such **Plans** whose total assets do exceed twenty five percent (25%) of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements shall be afforded for a period of ninety (90) days, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Insured Organization**. Coverage beyond such ninety (90) days shall only be available if:

1. written notice of such sponsorship is given to the Underwriters by the **Insured Organization**;
2. the **Insured Organization** provides the Underwriters with such information in connection therewith as the Underwriters may deem necessary;
3. the **Insureds** accept any special terms, conditions, exclusions or additional premium as may be required by the Underwriters; and
4. the Underwriters, in their sole discretion, agree to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Section IV. A. only for **Claims** relating to **ESOP Administration** and no coverage shall be granted for **Claims** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this **Policy** and any related additional premium required by the Underwriters has been paid.

B. Cessation of Plan Sponsorship and Termination, Sale or Spin-off of Plan

In the event a **Plan** ceases to be sponsored by the **Insured Organization** or ceases to be sponsored jointly by the **Insured Organization** and a labor organization after the Inception Date of this **Policy**, or in the event the **Insured Organization** terminates, sells or spins off any **Plan** before or after the Inception Date of this **Policy**; or of any policy issued by the Underwriters of which this **Policy** is a renewal or replacement, coverage under this **Policy** with respect to such **Plan** and its **Insured Persons** shall continue until the end of the **Policy Period** for those who were **Insureds** at the time such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or who were **Insureds** at the time of such **Plan** termination, sale or spin-off or who would have been **Insureds** at the time of **Plan** termination, sale or spin-off if this **Policy** had been in effect, but only with respect to **Wrongful Acts** committed or allegedly committed prior to the date such **Plan** ceased to be sponsored by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, or such **Plan** termination, sale or spin-off. The **Insureds** shall give notice to the Underwriters of cessation of sponsorship as soon as practicable together with such information as the Underwriters may require.

C. Merged Plans

In the event a **Plan** is merged with another **Plan** during the **Policy Period**, this **Policy** shall continue to provide coverage for both **Plans** for as long as this **Policy** shall remain in effect and subject to all the terms and conditions of this **Policy**.

In the event a **Plan** is merged with another plan for which coverage is not provided under this **Policy**, this **Policy** shall continue to provide coverage only for the covered **Plan** for as long as this **Policy** shall remain in effect and subject to all the terms and conditions of this **Policy** for **Claims** with regard to **Wrongful Acts** which took place prior to the date the plans merged.

V. SETTLEMENT AND DEFENSE

- A. The Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; except that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.
- B. The **Insureds** shall cooperate with the Underwriters and, upon the Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then the Underwriters' consent shall not be required for such disposition.
- D. The Underwriters shall not be obligated to pay any **Loss** or **Defense Costs**, or to associate in the defense of any **Claim**, after the applicable Limit of Liability has been exhausted by payment of **Loss** or **Defense Costs**, or after deposit of the remaining applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment the Underwriters shall have the right to withdraw from the association in any further defense of the **Claim** without further liability by tendering full control of said defense to the **Insured**.
- E. The Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
 - 1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
 - 2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VI. ALLOCATION

If both **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:

- 1. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- 2. settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-**Insureds'** exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and the Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to,

then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

VII. ORDER OF PAYMENT

In the event of **Loss**, for which payment is due under the provisions of this **Fiduciary** Liability Clause, which exceeds the remaining aggregate limit of liability, then the Underwriters shall:

1. first, pay **Loss** for which coverage is provided under this **Policy** for any **Insured Person**;
2. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for any **Plan**; and
3. then, with respect to any remaining amount of the aggregate limit of liability available after such payment, pay **Loss** for which coverage is provided under this **Policy** for the **Insured Organization**.

SPECIMEN

**BEAZLEY REMEDY
REGULATORY LIABILITY CLAUSE**

I. INSURING CLAUSES

A. Regulatory Liability

The Underwriters will pay on behalf of the **Insured Loss** and **Defense Costs** which the **Insured** shall become legally obligated to pay in respect of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** and reported to the Underwriters during the **Policy Period** or the **Optional Reporting Period**, if applicable, arising out of any **Wrongful Act**, except as excluded or limited by the terms, conditions and exclusions of this **Policy**.

Provided always that:

1. the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date specified in Item 11. of the Declarations;
2. such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 12. of the Declarations; and
3. the **Insured** has not notified any **Government Entity** or **Commercial Payor** of the **Wrongful Act** giving rise to the **Claim**.

B. Voluntary Notification to any Government Entity or Commercial Payor

If, during the **Policy Period**, the **Insured** notifies any **Government Entity** or **Commercial Payor** of a **Wrongful Act** which the **Insured** reasonably believes could give rise to a **Claim** and notifies the Underwriters consistent with Section VII.B. of the Policy Terms and Conditions, the Underwriters shall indemnify the **Insured** for **Loss** and **Defense Costs** in excess of the Retention stated in Item 5 of the Declarations which the **Insured** incurs as a result of any **Claim** subsequently made against the **Insured** arising out of that **Wrongful Act**; provided always that the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date of this **Policy** specified in Item 11. of the Declarations and such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 12. of the Declarations.

II. DEFINITIONS

- A. "Claim"** means any written demand brought by or on behalf of any **Government Entity** or brought by a **Commercial Payor** against an **Insured** (i) seeking monetary compensation for a **Wrongful Act**; (ii) commencing an audit or investigation of a **Wrongful Act**; or (iii) seeking injunctive relief on account of a **Wrongful Act**.

However, **Claim** does not include:

1. any customary or routine billing inquiry, including any cost report, request for documentation to support a submission for payment or reimbursement, or other audit/reconciliation conducted by or at the behest of a **Government Entity** or a **Commercial Payor**

2. notice of a **Wrongful Act** provided in accordance with Section VII.B. of the Policy Terms and Conditions;
3. any criminal proceeding against an **Insured**, except when a **Claim** arising from the same conduct alleged in the criminal proceeding is also asserted against an **Insured** entity in a civil proceeding; or
4. any written demand or civil proceeding brought by or on behalf of a citizen or any non-governmental entity (other than a **Commercial Payor**) against an **Insured**; except that this subsection shall not apply to a *qui tam* action commenced by a private citizen as the relator for a **Government Entity**.

B. **"Defense Costs"** means (i) reasonable and customary fees charged by an attorney, external auditor or billing and coding consultant, designated and agreed by the Underwriters in consultation with the **Insured** but subject always to the Underwriters' final decision; and (ii) other reasonable and necessary fees, costs or expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**, if incurred by the **Insured** with the written consent of the Underwriters.

However, **Defense Costs** does not include:

1. remuneration, salaries, wages, overhead, fees, benefits or other charges of any **Insured**;
2. any fees, costs, or expenses incurred with respect to any criminal proceedings or actions against any **Insured**, except when a **Claim** arising from the same conduct alleged in the criminal proceeding is also asserted against an **Insured** entity in a civil proceeding. However, in that event the Underwriters will have the right to recover those **Defense Costs** incurred in the criminal proceeding from any **Insured** found to have committed a criminal act by a court or jury, including through a plea agreement accepted by a court or the entry of a guilty verdict or conviction; or
3. any fees, costs or expenses associated with the adoption and implementation of any security measures, corporate integrity agreement, deferred prosecution agreement, compliance program or similar provision regarding the operations of the **Insured's** business.

C. **"Commercial Payor"** means any entity which arranges for payment or reimbursement of expenses on account of **Medical Services**, including the following types of entities:

1. any entity, including an investor-owned insurance company, which indemnifies subscribers against expenses incurred for **Medical Services**;
2. any self-funded plan or any type of health plan where the risk for the cost of **Medical Services** is assumed, in whole or in part, by an employer rather than by an insurance company or managed care organization; or

3. any managed care organization, such as a health maintenance organization ("HMO"), preferred provider organization ("PPO"), point of service plan ("POS"), integrated delivery network ("IDN"), or any other type of entity which has any of the following characteristics:
 - a. negotiated discount arrangements with selected providers;
 - b. explicit criteria for selection of providers;
 - c. financial or program incentives or penalties to enrollees who do not use selected providers; and
 - d. provider risk-sharing arrangements.

- D. **"Employee"** means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**, including members or managers, applicants for employment, employees, volunteers, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position, but does not include employees who are leased to another employer or **Independent Contractors**.

- E. **"Executive Officer"** means the chief executive officer, chief operating officer, chief compliance officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, or an individual acting in a similar capacity with the **Insured Organization**.

- F. **"Government Entity"** means:
 1. any department, agency, task force or other organization created by any federal, state or local law, executive order, ordinance or rule;
 2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county or local government;
 3. any organization operating as a Medicare Integrity Program Contractor in accordance with 63 F.R. 1590 (20 March 1998) and pursuant to section 1893 of the Social Security Act (42 U.S.C. § 1395ddd);
 4. any organization auditing billing on behalf of the government in respect of contracted rates including, but not limited to, in accordance with The Tax Relief and Health Care Act of 2006 or the Medicare Prescription Drug Improvement and Modernization Act of 2003; and
 5. any governmental health benefit program or payor.

- G. **"Insured"** means any **Insured Organization** and **Insured Person** with provider numbers on file with the **Named Insured** at the time of the covered **Wrongful Act**.

- H. **"Insured Person"** means any past, present, or future **Employee**, director, officer, trustee, review board or committee member, or volunteer of an **Insured** entity, but only while acting within the scope of that person's duties or capacity as such; and, in

the event of the death, incapacity, or bankruptcy of any such person, the estate, heirs, legal representatives, or assigns of such person.

- I. **“Loss”** means any monetary amount, otherwise covered by this **Policy** and subject to the Limit of Liability, which an **Insured** is legally obligated to pay as a result of a **Claim**, including sums paid as awards, judgments, settlements and civil fines and penalties imposed by or on behalf of a **Government Entity** or **Commercial Payor**, and any interest accrued or imposed on any covered amount.

However, **Loss** shall not include:

1. the **Insured's** return, refund, disgorgement or restitution of fees, profits, charges, overpayments or benefit payments to any **Commercial Payor** or **Government Entity**, and any interest accrued or imposed thereon;
2. any fees, costs or expenses associated with the adoption and implementation of any security measures, corporate integrity agreement, deferred prosecution agreement, compliance program or similar provision regarding the operations of the **Insured's** business;
3. matters deemed uninsurable by law;
4. punitive and exemplary damages, taxes, sanctions, criminal fines and penalties; except that this provision does not apply to any multiplied portion of a civil fine or penalty; or
5. any costs associated, whether directly or indirectly, with the **Insured's** temporary or permanent loss of provider number(s) or the **Insured's** exclusion from participation in any **Commercial Payor** program or governmental health benefit program, including, but not limited to, Medicare and/or Medicaid.

- J. **“Medical Services”** means any health care, medical care, or treatment provided to any individual, including but not limited to: 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; and the handling of, or the performance of post-mortem examinations on, human bodies.

- K. **“Wrongful Act”** means:

1. presenting, or causing or allowing to be presented, by an **Insured** any actual or alleged erroneous submission (including submissions presented by third parties on behalf of the **Insured** only to the extent of the **Insured's** liability therefor) to a governmental health benefit program or a **Commercial Payor**, seeking payment or reimbursement for **Medical Services** provided or prescribed by an **Insured**;

2. any negligent or reckless act, error or omission by an **Insured** in violation of the Stark Act (42 U.S.C. §1395nn) or any federal, state or local anti-kickback or self-referral laws, or any rules or regulations promulgated thereunder; or
3. a negligent or reckless act, error or omission by the **Insured** in violation of the United States False Claims Act (31 U.S.C. § 3729(b)) or any similar federal or state statute, regulation or rule based on "knowing" conduct as that term is defined in the False Claims Act (31 U.S.C. § 3729(b)).

III. EXCLUSIONS

The coverage under this **Policy** does not apply to **Loss** or **Defense Costs** incurred with respect to any **Claim**:

A. based upon or arising out of:

1. any dishonest, fraudulent, criminal, intentional, or malicious act by any **Insured**;
2. any willful violation of any law, statute, ordinance, rule or regulation by any **Insured**; or
3. any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled;

except that exclusions A. 1, 2, and 3. above shall not apply to any **Claim** brought under the United States False Claims Act (31 U.S.C. § 3729(b)) or any similar federal or state statute, regulation or rule based on "knowing" conduct as that term is defined in the False Claims Act (31 U.S.C. § 3729(b)); and exclusion (A)(3) shall also not apply to any **Claim** based upon an **Insured's** unintentional and erroneous billing for **Medical Services**.

For the purposes of determining the applicability of this exclusion, no **Wrongful Act** of any **Insured** shall be imputed to any other **Insured**;

- B. arising out of any actual or alleged act, error, or omission in the rendering of or failure to render **Medical Services** by any **Insured**, except with respect to any allegations of billing for **Medical Services** which were not rendered or were not medically necessary;
- C. for actual or alleged: libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof);
- D. arising out of actual or alleged plagiarism, misappropriation of likeness, breach of confidence, or misappropriation or infringement of any intellectual property right, including patent, trademark, trade secret, trade dress and copyright;
- E. based upon an express or implied warranty or guarantee, or breach of contract in respect of any agreement to perform work for a fee;

- F. arising out of employment discrimination, retaliation, termination or other wrongful employment acts in violation of any municipal, state or federal Civil Rights law, regulation or ordinance;
- G. arising out of any actual or alleged bodily injury, sickness, disease or death to any **Employee** of any **Insured** arising out of and in the course of employment by the **Insured**; or any obligation for which the **Insured** in its capacity as an employer and/or its insurer may be held liable under any Workers' Compensation, Unemployment Compensation, Disability Benefits law, or any similar law;
- H. arising out of the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto;
- I. arising out of or relating to any liability under any contract or agreement, whether written or oral, unless such liability would have attached to the **Insured** in the absence of such contract or agreement, but this exclusion shall not apply to any **Claim** by a **Commercial Payor**;
- J. arising out of any actual or alleged:
 - 1. insolvency, bankruptcy, conservatorship, rehabilitation, receivership, liquidation, or financial inability to pay of:
 - a. any **Insured** acting as an insurer or reinsurer; or
 - b. any other insurer, reinsurer, self-insurer, third party payor, managed care organization, health care plan, or other person or entity;
 - 2. failure to obtain, effect, or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship, or bond;
 - 3. commingling or mishandling of funds; or
 - 4. failure to collect or pay premiums, commissions, brokerage charges, fees or taxes;
- K. or circumstance which might lead to a **Claim**:
 - 1. in respect of which any **Insured** has given notice to any **Government Entity**, insurer of any other policy or self-insurance in force prior to the Continuity Date specified in Item 11. of the Declarations;
 - 2. known to any **Insured** prior to the Inception Date of this **Policy** and not disclosed to the Underwriters before inception; or
 - 3. arising out of any **Wrongful Act** which first took place, or is alleged to have taken place, prior to the Retroactive Date as specified in Item 12. of the Declarations;

- L. or circumstance which might lead to a **Claim**, in respect of which any **Insured** has given notice to a **Government Entity** during the **Policy Period** and has not provided notice to the Underwriters in accordance with Section VII., Notification, of the Policy Terms and Conditions;
- M. arising out of any actual or alleged service of any **Insured Person** as an **Employee**, director, officer, trustee, member, member manager, governor, medical director, member of any duly constituted review board or committee, or volunteer of any entity other than the **Named Insured**, even if directed or requested by the **Insured** entity to serve in such capacity for such other entity;
- N. arising out of a violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any state Blue Sky or securities law or similar state or federal statute, and any regulation or order issued pursuant to any of the foregoing or similar statutes;
- O. for any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
- P. brought against any **Insured** by any other **Insured** hereunder; except that this provision shall not apply to any **Claim** brought by a *qui tam* plaintiff or Relator or brought under the False Claims Act (31 U.S.C. §3729 et seq.) or any similar state or local statute, ordinance or regulation;
- Q. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 - 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 - 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or its securities holders, purchasers or sellers;
- R. based upon or arising out of any **Insured's** data processing services, including but not limited to:
 - 1. conversion of data from source material into media for processing on the **Insured's** electronic data processing system;
 - 2. processing of data by the **Insured** on the **Insured's** electronic data processing system; except that this exclusion shall not apply to **Claims** brought under the False Claims Act (31 U.S.C. §3729 et seq.) or any similar state or local statute, ordinance or regulation; or
 - 3. design or formulation of an electronic data processing program or system;

- S. arising out of or resulting from the distribution of unsolicited email, direct mail or facsimiles, or telemarketing;
- T. arising from costs of complying with physical modifications to any premises or any changes to the **Insured's** usual business operations mandated by the Americans with Disabilities Act of 1990, including any amendments, or similar federal, state or local law;
- U. associated with the implementation of any compliance program or any policies, procedures or practices relating to participation as a provider of medical services to a managed care organization or under a healthcare benefit program, whether initiated voluntarily or pursuant to direction by, order of, or in settlement with a government body, hospital, healthcare facility or managed care organization;
- V. based upon or arising out of any actual or alleged unfair or deceptive trade practices or violation of any federal, state, or local anti-trust, restraint of trade, unfair competition, consumer protection or price fixing law, or any rules or regulations promulgated thereunder;
- W. based upon or arising out of any services provided for a fee by an **Insured** to any third party not identified as an **Insured** under this **Policy**;
- X. based upon or arising out of any decision of a **Government Entity** or a **Commercial Payor** during the **Policy Period**:
 - 1. that the **Insured** has readmitted patients in excess of their agreed guidelines, requirements, codes, programs or formulas in force from time to time; or
 - 2. based upon any survey or index involving patient satisfaction, clinical or other standards, or death rates, or similar;

which has resulted in the imposition of a fine, penalty, levy or financial adjustment (whether involving payment, reimbursement, reduction, set-off or otherwise) on the **Insured**.

For the purposes of this Section "**Claim**" includes any such decision;

- Y. arising out of (or alleged to arise out of) defective billing services which shall in no circumstances extend to any billing services provided by an **Insured** to any third party not identified as an **Insured** under this **Policy**;
- Z. based upon or arising out of any payment or reimbursement for **Medical Services** which is paid to or collected by any **Insured** acting as a billing administrator for any person or entity other than itself, himself or herself, or any other **Insured**.

IV. MERGERS AND ACQUISITIONS

This **Policy** is issued and the premium computed on the basis of the information submitted to the Underwriters as part of the **Application**. In the event the **Named Insured**, after the Inception Date of this **Policy**:

1. merges with another entity such that the **Named Insured** is the surviving entity, or
2. acquires assets of another entity or acquires a **Subsidiary** whose total annual revenues exceed twenty five percent (25%) of the total annual revenues of the **Insured Organization** at the time of acquisition,

for a period of ninety (90) days, coverage granted by this **Policy** shall extend to **Loss** from **Claims** for **Wrongful Acts** occurring after the effective date of such event which arise of or relate to the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage for such loss beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to the Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as the Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

V. SETTLEMENT AND DEFENSE

- A. It shall be the duty of the **Insured** and not the duty of the Underwriters to defend **Claims**. The Underwriters shall have the right and shall be given the opportunity to effectively associate with the **Insured** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.
- B. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without the Underwriters' prior written consent, which shall not be unreasonably withheld. The Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which they have not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then the Underwriters' consent shall not be required for such disposition.
- C. The Underwriters shall advance, on behalf of the **Insured**, **Defense Costs** which the **Insured** have incurred in excess of the Retention connection with a **Claim** made against them, prior to the final disposition of such **Claim**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this **Policy**, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Underwriters. The Underwriters shall pay **Defense Costs** no more than once every sixty (60) days.
- D. The Limit of Liability available to pay **Loss** shall be reduced and may be completely exhausted by payment of **Defense Costs**. Underwriters shall not be liable for any **Loss**, including **Defense Costs** incurred within the Retention specified in Item 5 of the Declarations.
- E. The Underwriters shall not be obligated to pay any **Loss**, including **Defense Costs** after the applicable Limit of Liability has been exhausted by payment of **Loss**, or by

reason of the tender of the remaining applicable limits into a court of competent jurisdiction.

- F. The Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; and the remaining 100% of such **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds** shall be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VI. ALLOCATION

If **Loss** covered by this **Policy** and **Loss** uninsured by this **Policy** are incurred, either because the **Claim** includes both covered and uninsured claims or because it includes both **Insured** and uninsured parties, then the **Insureds** and the Underwriters agree to use their best efforts to fairly and reasonably allocate such amount between covered **Loss**, and uninsured loss based upon the relative legal and financial exposure to the **Insureds** for the uninsured amounts. The right to allocate **Loss** includes but is not limited to **Claims** arising out of any **Wrongful Act** which occurs prior to and after the Retroactive Date. In the event that an allocation cannot be agreed to, then the Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

In the event that an allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. the Underwriters shall advance the amount of **Defense Costs** which they deem fair and proper, until a different amount is negotiated by the parties (determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially);
3. the Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

VII. COINSURANCE

In addition to the applicable Retention(s) the **Insureds** shall bear uninsured and retain at their own risk a percentage of any **Claim** ("Coinsurance") as set forth in Item 6. of the Declarations of any **Loss** and **Defense Costs**, and the Underwriters' shall only be liable for the remaining percentage of such **Loss** or **Defense Costs** within the Limit of Liability. Such Coinsurance does not erode or form part of the Limit of Liability.

VIII. NOTICE OF CLAIM

For the purposes of the Regulatory Liability Clause the following shall apply:

1. All **Claims** arising out of the same, related or continuing **Wrongful Acts** shall be deemed to be one **Claim** and shall be deemed to have been first made at the time the earliest **Claim** of such related **Claims** was received by the **Insured** if then properly notified.
2. The first relevant **Wrongful Act** occurs after the Retroactive Date and before the Expiration Date of the **Policy Period**.
3. The first of all such related **Claims** has been made within **Policy Period**; or directly relates to a **Wrongful Act** notified within the **Policy Period**.
4. The **Named Insured** has requested in writing prior to, or within one hundred twenty (120) days after, the Expiration Date of the **Policy Period** that the Underwriters agree to such designation as one **Claim**, such consent not to be unreasonably withheld.
5. If the Underwriters agree to designate such **Claims** as one **Claim**, then any later related **Claims** which are made and notified within three (3) years of the Expiration Date of the **Policy Period** are hereby covered under this **Policy** as that one **Claim**, and will be deemed to have been notified at the date of the first designated **Claim** or notification and are subject to one Retention and one Limit of Liability.
6. Any **Claims**, **Loss** or **Defense Costs** arising from any **Wrongful Act** notified to the Underwriters or other insurer prior to the Inception Date shall not be included as one **Claim** or payable under this **Policy** as **Loss** or **Defense Costs** arising out of the same, continuing or related **Wrongful Act** of which any **Claim** is made or notice is first given during this **Policy Period**.

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

DUTY TO DEFEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. Clause **V., Settlement and Defense**, paragraphs A., B, and C., of the **<applicable clause>** are deleted in their entirety and replaced with the following:

V. SETTLEMENT AND DEFENSE

- A. Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; provided, however, that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.
- B. The **Insureds** shall cooperate with Underwriters and, upon Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without Underwriters' prior written consent, which shall not be unreasonably withheld. Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then Underwriters' consent shall not be required for such disposition.

2. Clause **VI. Allocation**, of the **<applicable clause>** is deleted and replaced with the following:

VI. ALLOCATION

If both **Loss** covered by this **Policy** and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this **Policy**, then such covered **Loss** and non-covered loss shall be allocated as follows:

- a. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- b. Settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative

benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-Insureds' exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

In the event that an allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. the Underwriters shall advance the amount of **Defense Costs** which they deem fair and proper, until a different amount is negotiated by the parties (determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially);
3. the Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

IMMIGRATION PRACTICES ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. The Underwriters will pay **Defense Costs** that an **Insured**, other than an **Employee** alleged to be employed in violation of any **Immigration Practices Law**, becomes obligated to pay as a result of an **Immigration Practices Claim** first made against any such **Insured** during the **Policy Period**, or **Optional Extension Period**, if applicable.
2. For purposes of this endorsement, term "**Immigration Practices Claim**" means any **Claim** solely alleging violations of the Immigration Reform Control Act of 1986 or any other similar federal or state laws or regulations ("**Immigration Practices Law**").
3. The Underwriters' maximum aggregate Limit of Liability pursuant to this endorsement shall be \$150,000 and shall only apply to **Defense Costs** ("**Immigration Practices Sub-Limit**") which is part of, and not in addition to, the Limit of Liability identified in Item 4 of the Declarations. In no event shall the **Immigration Practices Sub-Limit** apply to **Loss**, such as damages, judgments, settlements, verdicts and awards, incurred in connection with **Immigration Practices Claims** and in no event shall we be obligated to pay more than the Limits of Liability identified in Items 4 of the Declarations.
4. Clause II. **Definitions** X. "**Wrongful Act**" of the Employment Practices Liability Clause shall not include any actual or alleged violations of any **Immigration Practices Law**.
5. The Underwriters shall not be liable to make any payment for **Defense Costs** in connection with or resulting from any **Immigration Practices Claim**, or for that portion of any **Claim** that alleges violations of any **Immigration Practices Law**:
 - a. if any **Insured** who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the HR or Risk Management department or **Employee(s)** with personnel and risk management responsibilities was aware of such alleged violations of or non-compliance with such **Immigration Practices Law** prior to the Inception Date of this **Policy**; or
 - b. upon a judgment, final adjudication or admission of a violation of any **Immigration Practices Law**.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement: <Effective Date>

This Endorsement is attached to and forms a part of Policy Number: <Policy Number>

Insurer: <Insurer>

REGULATORY LIABILITY DEFENSE ONLY ENDORSEMENT

This endorsement modifies insurance provided under the following:

<Product Name>

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

1. Clause I., **INSURING CLAUSES**, paragraph A. of the REGULATORY LIABILITY CLAUSE is deleted and replaced by the following:

A. Regulatory Liability - **Defense Costs** Only

The Underwriters will pay on behalf of the **Insured** **Defense Costs** which the **Insured** shall become legally obligated to pay in respect of any **Claim** or **Claims** first made against any **Insured** during the **Policy Period** and reported to the Underwriters during the **Policy Period** or the **Optional Reporting Period**, if applicable, arising out of any **Wrongful Act**, except as excluded or limited by the terms, conditions and exclusions of this **Policy**.

Provided always that:

1. the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date specified in Item 11. of the Declarations;
2. such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 12. of the Declarations; and
3. the **Insured** has not notified any **Government Entity** or **Commercial Payor** of the **Wrongful Act** giving rise to the **Claim**.

2. Clause I., **INSURING CLAUSES**, paragraph B. of the REGULATORY LIABILITY CLAUSE is deleted and replaced by the following:

B. Voluntary Notification to any **Government Entity** or **Commercial Payor** - **Defense Costs** Only

If, during the **Policy Period**, the **Insured** notifies any **Government Entity** or **Commercial Payor** of a **Wrongful Act** which the **Insured** reasonably believes could give rise to a **Claim** and notifies the Underwriters consistent with Section VII.B. of the Policy Terms and Conditions, the Underwriters shall indemnify the **Insured** for **Defense Costs** in excess of the Retention stated in Item 5 of the Declarations which the **Insured** incurs as a result of any **Claim** subsequently made against the **Insured** arising out of that **Wrongful Act**; provided always that the **Insured** had no knowledge of such **Wrongful Act** prior to the Continuity Date of this **Policy** specified in Item 11. of the Declarations and such **Wrongful Act** took place subsequent to the Retroactive Date specified in Item 12. of the Declarations.

3. Clause IV., **MERGERS AND ACQUISITIONS**, is deleted and replaced by the following:

This **Policy** is issued and the premium computed on the basis of the information submitted to the Underwriters as part of the **Application**. In the event the **Named Insured**, after the Inception Date of this **Policy**:

1. merges with another entity such that the **Named Insured** is the surviving entity, or
2. acquires assets of another entity or acquires a **Subsidiary** whose total annual revenues exceed twenty five percent (25%) of the total annual revenues of the **Insured Organization** at the time of acquisition,

for a period of ninety (days) days, coverage granted by this **Policy** shall extend to **Defense Costs** from **Claims** for **Wrongful Acts** occurring after the effective date of such event which arise of or relate to the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage for such **Defense Costs** beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to the Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as the Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

4. Clause V., **SETTLEMENT AND DEFENSE**, paragraphs D. and E., are deleted and replaced by the following:

- D. Underwriters shall not be liable for any **Defense Costs** incurred within the Retention specified in Item 5 of the Declarations.
- E. The Underwriters shall not be obligated to pay any **Defense Costs** after the applicable Limit of Liability has been exhausted or by reason of the tender of the remaining applicable limits into a court of competent jurisdiction.

5. Clause VI., **ALLOCATION**, is deleted and replaced by the following:

If a **Claim** covered by this **Policy** and a **Claim** not covered by this **Policy** are incurred, either because the **Claim** includes both covered and not covered **Claims** or because it includes both **Insured** and uninsured parties, then the **Insureds** and the Underwriters agree to use their best efforts to fairly and reasonably allocate such amount between Defense Costs for a covered **Claim**, and an uncovered **Claim** based upon the relative legal and financial exposure to the **Insureds** for the uninsured amounts. The right to allocate **Defense Costs** includes but is not limited to **Claims** arising out of any **Wrongful Act** which occurs prior to and after the Retroactive Date. In the event that an allocation cannot be agreed to, then the Underwriters shall make an interim payment of the amount of **Defense Costs** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

In the event that an allocation cannot be agreed upon by the Underwriters and the **Insureds**, then:

1. in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;
2. the Underwriters shall advance the amount of **Defense Costs** which they deem fair and proper, until a different amount is negotiated by the parties (determined pursuant to the arbitration process specified in subparagraph 3. below, or determined judicially);
3. the Underwriters, solely if requested by the **Insureds**, shall submit the allocation dispute to binding arbitration through the American Arbitration Association ("AAA"). The Commercial Arbitration Rules of AAA shall apply, except that notwithstanding any then-prevailing rule, the arbitration panel shall be selected from the Commercial Insurance Panel of AAA and shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary.

6. Clause **VII., COINSURANCE**, is deleted and replaced by the following:

In addition to the applicable Retention(s) the **Insureds** shall bear uninsured and retain at their own risk a percentage of any **Claim** ("Coinsurance") as set forth in Item 6. of the Declarations of any **Defense Costs**, and the Underwriters' shall only be liable for the remaining percentage of such **Defense Costs** within the Limit of Liability. Such Coinsurance does not erode or form part of the Limit of Liability.

7. Clause **VIII., NOTICE OF CLAIM**, paragraph 6., is deleted and replaced by the following:

6. Any **Claims, Loss or Defense Costs** arising from any **Wrongful Act** notified to the Underwriters or other insurer prior to the Inception Date shall not be included as one **Claim** or payable under this **Policy** as **Defense Costs** arising out of the same, continuing or related **Wrongful Act** of which any **Claim** is made or notice is first given during this **Policy Period**.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), insurance coverage provided by this Policy includes losses arising out of acts of terrorism, **as defined in Section 102(1) of the Act, as amended:** The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2020, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020; OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

(LMA 9104 amended)

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

NUCLEAR EXCLUSION

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that this Policy does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material",

"special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

SANCTION LIMITATION AND EXCLUSION CLAUSE

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

All other terms and conditions of this Policy remain unchanged.

SPECIMEN

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

WAR AND CIVIL WAR EXCLUSION

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that notwithstanding anything to the contrary contained herein this Policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

All other terms and conditions of this Policy remain unchanged.

SPECIMEN

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND SETTLEMENT AND DEFENSE CLAUSE

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that Clause **V. Settlement and Defense** of the

is deleted and replaced with the following:

2. % of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds** with the remaining % of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND SUBROGATION AGAINST INDIVIDUAL INSUREDS

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause **X. ASSISTANCE, COOPERATION AND SUBROGATION** of the POLICY TERMS AND CONDITIONS is amended to include the following:

The Underwriters can subrogate back against an individual **Insured** only if there has been a final adjudication that the individual **Insured** committed any act or omission that would be excluded by Clause **III., EXCLUSIONS**, I. of the DIRECTORS, OFFICERS AND ENTITY LIABILITY Clause.

All other terms and conditions of this Policy remain unchanged.

SPECIMEN

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND RUN-OFF CLAUSE B.1.

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause **VIII., GENERAL CONDITIONS, B.1., Run-Off**, of the **POLICY TERMS AND CONDITIONS** is deleted in its entirety and replaced by the following:

1. In the event any entity ceases to be a **Subsidiary** after the Inception Date of this **Policy**, or of any **Policy** issued by the Underwriters of which this **Policy** is a renewal or replacement, this **Policy**, subject to its terms including, but not limited to, Exclusion C. above, shall continue to apply to any of the **Insured Persons** who were covered under this **Policy** because of their service with such entity and to such **Subsidiary**.

SPECIMEN

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND RETENTION FOR SIDE A CLAIMS

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause **IV., RETENTIONS**, paragraph A. of the POLICY TERMS AND CONDITIONS is deleted in its entirety and replaced with the following:

- A. Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 5. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, under this Policy. The Retention shall not apply, however, if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment** or if a **Loss** arising from a **Claim** under **I., INSURING CLAUSES**, A. of the DIRECTORS, OFFICERS AND ENTITY LIABILITY Clause is not indemnified.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND REPRESENTATIONS (SEVERABILITY)

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. Clause **VIII., GENERAL CONDITIONS**, paragraph A. Representations of the POLICY TERMS AND CONDITIONS is deleted and replaced with the following:

A. Representations

By acceptance of this **Policy** the **Insureds** agree:

1. that the statements in the **Application** are their representations, and that this **Policy** is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this **Policy**, this **Policy** shall not afford any coverage with respect to those **Insureds** who made or had knowledge of such misrepresentations, provided, however, that the knowledge of such misrepresentations by an **Insured Person** will not be imputed to any other **Insured Person**; and
3. that this **Policy** shall not afford any coverage for amounts paid by the **Insured Organization** as indemnification of any of the **Insureds** who made or had knowledge of the misrepresentations set forth in Clause VIII.A.2.

The **Policy** shall not afford any coverage for the **Insured Organization** if the Chief Executive Officer or the Chief Financial Officer made or had knowledge of such misrepresentations as set forth in VIII.A.2. above.

None of the foregoing provisions in Clause VIII.A. shall in any other way limit or void Underwriters' rights to rescind this Policy; provided, that the Underwriters shall not rescind this **Policy** as to any **Insured Person**, where coverage is being provided to such **Insured Person**, and where indemnification by the **Insured Organization** is not permitted by law or the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

2. For the purposes of this endorsement and solely for Insuring Clauses A., B., and C. of the DIRECTORS, OFFICERS AND ENTITY LIABILITY the Underwriters shall not be entitled under any circumstances to rescind this Policy, but such coverage will be subject to all other terms, conditions and exclusions of the **Policy**.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

SPECIMEN

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., Referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND OPTIONAL EXTENSION PERIOD

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause **XI., OPTIONAL EXTENSION PERIOD, A.** of the POLICY TERMS AND CONDITIONS is deleted in its entirety and replaced with the following:

- A. If this **Policy** is cancelled or nonrenewed by the **Named Insured** or if Underwriters nonrenew this **Policy**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 8.a. of the Declarations of the total annual premium for this **Policy**, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the period of time set forth in Item 8.b. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND EXCLUSION B.1.

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the term "demand" set forth in Clause II., **EXCLUSIONS**, paragraph B.1. of the POLICY TERMS AND CONDITIONS is deleted and replaced with the term "written demand".

All other terms and conditions of this Policy remain unchanged.

SPECIMEN

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

CARVEBACK TO BODILY INJURY/PROPERTY DAMAGE EXCLUSION FOR PROVIDER SELECTION

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. Clause **III., EXCLUSIONS**, paragraph A. of the EMPLOYMENT PRACTICES LIABILITY CLAUSE will not apply to that portion of a **Claim** for a **Wrongful Act** in **Provider Selection** seeking **Loss** for mental anguish, emotional distress or humiliation.
2. For purposes of this endorsement, the term "**Provider Selection**" means evaluation, selection, credentialing, privileging, performing peer review of or contracting with an individual provider of medical services.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND CLAUSE III.A. (EPL)

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that Clause **III., EXCLUSIONS**, paragraph A. of the EMPLOYMENT PRACTICES LIABILITY CLAUSE is deleted in its entirety and replaced with the following:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving libel, slander, defamation, bodily injury, sickness disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, or damage to or destruction of tangible property (including loss of use thereof); provided, however, this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** seeking **Loss** for mental anguish, emotional distress or humiliation;

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

WHISTLEBLOWER CARVEBACK TO POLLUTION EXCLUSION

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause **III., EXCLUSIONS**, paragraph B. of the DIRECTORS, OFFICERS AND ENTITY LIABILITY CLAUSE shall not apply to any **Claim** brought by any **Insured Persons** for a **Wrongful Act** as a "whistleblower."

All other terms and conditions of this Policy remain unchanged.

SPECIMEN

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

SETTLOR ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

1. Clause **I., INSURING CLAUSES**, paragraph A. of the FIDUCIARY LIABILITY CLAUSE is deleted in its entirety and replaced with the following:
 - A. The Underwriters shall pay on behalf of the **Insureds**:
 1. all **Loss** resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act** (other than a **Settlor Wrongful Act**); or
 2. **Defense Costs** only resulting from any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Settlor Wrongful Act**.
2. Clause **II., DEFINITIONS**, M., "**Insured Person**", of the FIDUCIARY LIABILITY CLAUSE is deleted in its entirety and replaced with the following:
 - M. "**Insured Person**" means all persons who were, now are, or shall be employees of the **Insured Organization** or a **Plan**; or duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** or a **Plan** in his or her capacity as a **Fiduciary, Administrator** or settlor of a **Plan** including all persons outside the United States of America serving in a functionally equivalent role including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
3. Clause **II., DEFINITIONS**, O., "**Plan**", of the FIDUCIARY LIABILITY CLAUSE is amended by the addition of the following:
 8. any plan described in paragraphs 1., 2. or 3. above while such plan is being actively developed, formed or proposed by the **Insured Organization** prior to the formal creation of such plan.
4. Clause **II. DEFINITIONS** S. "**Wrongful Act**" of the FIDUCIARY LIABILITY CLAUSE is amended by the addition of the following:
 5. **Settlor Wrongful Act**.
5. Clause **II., DEFINITIONS**, of the FIDUCIARY LIABILITY CLAUSE is amended by the addition of:

"Settlor Wrongful Act" means any actual or alleged act, error or omission by any **Insured** while acting in a settlor capacity in connection with a **Plan**.

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

SECTION 4975 PENALTY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. Clause **II. DEFINITIONS** N. "**Loss**" 1. of the Fiduciary Liability Clause is amended by the addition of the following:
 - d. with respect to covered judgments, the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986; provided the Underwriter's maximum limit of liability for all such tax penalties on account of all **Claims** first made during the **Policy Period** shall be _____, which amount is part of, and not in addition to, the Underwriter's maximum aggregate Limit of Liability set forth in Item 4. of the Declarations;
2. No retention shall apply to **Loss** constituting the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

NON-COMMERCIAL PAYOR CARVEBACK ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that Clause **III., EXCLUSIONS**, paragraph I. of the REGULATORY LIABILITY CLAUSE is deleted in its entirety and replaced with the following:

- I. to any **Claim** arising out of or relating to any liability under any contract or agreement, whether written or oral, unless such liability would have attached to the **Insured** in the absence of such contract or agreement; provided, however, this exclusion shall not apply to any **Claim** made by any non-commercial payor;

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

INVESTMENT LOSS

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that Clause **III., EXCLUSIONS**, paragraph I. of the FIDUCIARY LIABILITY CLAUSE is deleted in its entirety and replaced with the following:

- I. for **Benefits** which are or may become due, except to the extent that such sums are payable as a personal obligation of a natural **Insured** because of such natural person **Insured's Wrongful Act**; provided, that this exclusion shall not apply to:
 1. a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to, the securities of the **Company** regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; or
 2. **Defense Costs**;

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

HIPAA ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. For purposes of this endorsement, the term "**HIPAA Wrongful Act**" means (a) a breach of fiduciary duty in the discharge of duties as respects any welfare plan; or (b) any **Wrongful Act** by an **Administrator**; in violation of the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA).
2. Solely with respect to **Claims** for **HIPAA Wrongful Acts**:
 - a. The word "criminal" is deleted from Clause **II. Definitions**, E.2. of the Fiduciary Liability Clause, the term "**Claim**" shall not include any criminal proceeding;
 - b. Clause **II. Definitions**, N.1. of the Fiduciary Liability Clause is amended to include civil fines and penalties;
 - c. Clause **II. Definitions**, S. "**Wrongful Act**" of the Fiduciary Liability Clause is amended to include any **HIPAA Wrongful Act**;
 - d. The Underwriters maximum aggregate limit of liability for all civil fines for violation of HIPAA shall be _____ which shall be part of and not in addition to the Limit of Liability shown in Item 4. of the Declarations;
 - e. The Underwriters shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim** for costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to comply with HIPAA.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative

Effective date of this Endorsement:

This Endorsement is attached to and forms a part of Policy Number:

Beazley Insurance Company, Inc., referred to in this endorsement as either the "Insurer" or the "Underwriters"

502(c) and 507 PENALTIES ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY REMEDY

In consideration of the premium charged for the **Policy**, it is hereby understood and agreed that:

1. Clause **II. Definitions**, N.1. of the Fiduciary Liability Clause shall not apply to civil penalties imposed upon an **Insured** under Section 502(c) of **ERISA** or Section 507 of the Pension Protection Act of 2006 ("502(c)/507 Penalties").
2. The Insurer's maximum aggregate Limit of Liability for all 502(c)/507 Penalties shall be _____, which amount shall be part of and not in addition to the Limit of Liability shown in Item 4. of the Declarations.
3. The Insurer shall not be liable to make any payment for 502(c)/507 Penalties in connection with or resulting from any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - a. any **Wrongful Act** or **Claim** alleging a **Wrongful Act** of which any **Insured** was aware by actual knowledge of the facts or circumstances of such **Wrongful Act** or **Claim** alleging a **Wrongful Act** prior to _____; or
 - b. any **Wrongful Act** which has taken place or is alleged to have taken place, prior to _____.

All other terms and conditions of this **Policy** remain unchanged.

Authorized Representative