

# PRIVATE CHOICE PREMIER<sup>SM</sup> POLICY

## FOR HEALTHCARE ORGANIZATIONS

### DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART

#### I. INSURING AGREEMENTS

##### (A) Insured Person Liability

The Insurer shall pay **Loss** on behalf of the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**, except for **Loss** that an **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.

##### (B) Corporate Reimbursement

The Insurer shall pay **Loss** on behalf of an **Insured Entity** that such **Insured Entity** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

##### (C) Entity Liability (Elective)

If Entity Liability Coverage is included in ITEM 5 of the Declarations, the Insurer shall pay **Loss** on behalf of an **Insured Entity** resulting from an **Entity Claim** first made against such **Insured Entity** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by an **Insured Entity**.

This Insuring Agreement shall be subject to the Entity Liability Coverage Retention and Prior or Pending Date in ITEM 5 of the Declarations.

##### (D) Derivative Demands

The Insurer shall pay **Investigation Costs** on behalf of an **Insured Entity** that such **Insured Entity** incurs resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to a Sub-limit of Liability of \$500,000. Such Sub-limit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sub-limit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Retention shall apply to this Insuring Agreement.

#### II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

- **“Anti-Trust Claim”** means any **Claim** that includes any allegation(s) of price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, Robinson-Patman Act, Hart-Scott Rodino Anti-trust Improvements Act or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, regardless of whether such **Claim** includes other allegations.

- **“Claim”** means any:
  - (1) **Insured Person Claim**;
  - (2) **Entity Claim**; or
  - (3) **Derivative Demand**.
- **“Damages”** means the amounts, other than **Defense Costs**, that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including:
  - (1) compensatory damages;
  - (2) settlement amounts;
  - (3) pre- and post-judgment interest;
  - (4) costs awarded pursuant to judgments;
  - (5) regarding Insuring Agreement (D), **Investigation Costs**;
  - (6) punitive and exemplary damages;
  - (7) the multiple portion of any multiplied damage award; or
  - (8) where permissible by law, and notwithstanding sub-paragraph (a) below: (i) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-2(g)(2)(B)); and (ii) **Health Operational Costs** if elected in ITEM 5 of the Declarations.

However, **Damages** shall not include:

- (a) taxes, fines or penalties imposed by law, including, without limitation, **Data Privacy Regulatory Expenses**;
  - (b) non-monetary relief;
  - (c) any matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive and exemplary damages, or the multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages;
  - (d) **Notification and Credit Monitoring Expenses**; and
  - (e) costs incurred in testing for, abating, monitoring, cleaning-up, removing, containing, treating, detoxing or neutralizing **Pollutants**, nuclear material or nuclear waste.
- **“Data Privacy Event”** means any **Insured Entity’s** negligent and improper dissemination of **Nonpublic Personal Information**.
  - **“Data Privacy Laws”** means any U.S. federal, state, territorial and local statutes and regulations governing the confidentiality, control and use of **Nonpublic Personal Information** including but not limited to:

- (1) Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA");
- (2) Gramm-Leach-Bliley of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999;
- (3) State privacy protection laws, including but not limited to the California Database Protection Act of 2003 (Cal. SB 1386) and Cal. Civ. Code §1798.82, that require commercial internet sites or on-line services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and adopt specific privacy controls or to notify those impacted by identity or data thief, abuse or misuse;
- (4) Federal and state consumer credit reporting laws, including but not limited to the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA); or
- (5) The Fair and Accurate Credit Transaction Act of 2003 (FACTA).

However, **Data Privacy Laws** shall not include any foreign law, regulation or statute.

- **"Data Privacy Regulatory Expenses"** means fines or penalties incurred by an **Insured Entity** and assessed pursuant to a **Data Privacy Laws** in a **Data Privacy Regulatory Proceeding**.
- **"Data Privacy Regulatory Proceeding"** means a civil, formal administrative or formal regulatory proceeding against an **Insured** by a U.S. federal, state or local governmental authority alleging violation of any **Data Privacy Laws**.
- **"Derivative Action"** means any civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** made on behalf of, or in the name or the right of, an **Insured Entity** by any security holders of such **Insured Entity**, in their capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Manager**.
- **"Derivative Demand"** means any written demand by any security holders of an **Insured Entity**, in their capacity as such, upon the board of directors or managers of such **Insured Entity** to bring a civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** if such demand is made without the assistance, participation or solicitation of any **Manager**. A **Derivative Demand** shall be deemed commenced by the receipt of such demand.
- **"Disqualified Person"** means a "disqualified person" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended
- **"EMTALA Costs"** means the civil penalties levied against an **Insured** for a violation of the Emergency Medical Treatment and Active Labor Act, as amended.
- **"Entity Claim"** means any:
  - (1) written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand;
  - (2) civil proceeding, including an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or

- (3) criminal proceeding commenced by the return of an indictment, or formal administrative or regulatory proceeding commenced by the filing of a notice of charges, or similar document;

against an **Insured Entity**.

**Entity Claim** also means a written request to an **Insured Entity** to toll or waive a statute of limitations regarding a potential **Entity Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

- **“Excess Benefit Transaction Costs”** means any excise tax imposed by the Internal Revenue Service on an **Organization Manager** that is not a **Disqualified Person** as a result of such **Organization Manager’s** participation in an “excess benefit transaction” as that term is defined in Section 4958 of the Internal Revenue Code of 1986 as amended.
- **“Handling or Adjusting Healthcare Claims”** means the handling or adjusting of any claim for benefits or coverage under any healthcare plan, workers compensation plan or indemnity healthcare insurance contract, including any credit-related, investigatory, rescission, cancellation, termination, or subrogation activities in connection therewith.
- **“Health Operational Cost(s)”** means:
  - (1) **EMTALA Costs**; or
  - (2) **Excess Benefit Transaction Costs**; or
  - (3) **HIPAA/HITECH Costs**; or
  - (4) **Internal Revenue Code Costs**.

Only those **Health Operational Costs** elected in ITEM 5 of the Declarations are covered.

- **“HIPAA/HITECH Costs”** means the civil penalties levied against an **Insured** for a violation of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or the Health Information Technology for Economic and Clinical Health of 2009 (“HITECH”).
- **“Insurance Program or Contract”** means any written agreement, policy, or express or implied contract of insurance, reinsurance, suretyship, bond, annuity, endowment, or pension, including any similar contract, agreement or binder of any of the foregoing in connection with any self-insurance program, insurance or reinsurance pool, or similar risk transfer, sharing or retention program.
- **“Insured Person”** means any:
  - (1) **Manager**; or
  - (2) **Employee**; or
  - (3) natural person who is:
    - (a) neither a **Manager** nor an **Employee**, but is a member of the medical staff or faculty that provides **Medical Professional Services** on behalf, and under the direction, of an **Insured Entity**, while acting in such capacity; or

- (b) an independent contractor who has an express contract or agreement with an **Insured Entity** setting forth the terms of his/her service on behalf, and under the direction, of such **Insured Entity**, while acting in such capacity;

provided, however, with respect to any such **Insured Person** as described by this subparagraph (3), the **Insured Entity** must, as a condition precedent to coverage, within thirty (30) days of a **Claim** having been made against such natural person, agree in writing to indemnify him/her for any **Loss** arising out of such **Claim**.

- “**Insured Person Claim**” means any:
  - (1) written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand against an **Insured Person**;
  - (2) civil proceeding, including an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading against an **Insured Person**;
  - (3) criminal proceeding commenced by the return of an indictment, or formal administrative or regulatory proceeding commenced by the filing of a notice of charges, or similar document against an **Insured Person**; or
  - (4) formal civil, criminal, administrative or regulatory investigation of an **Insured Person** in which such **Insured Person** is being investigated pursuant to a Wells Notice, target letter (within the meaning of Title 9, §11.151 of the U.S. Attorney's Manual), subpoena or similar document, as someone against whom a proceeding as set forth above may be brought.

**Insured Person Claim** also means a written request to an **Insured Person** to toll or waive a statute of limitations regarding a potential **Insured Person Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

Solely with regard to coverage provided under Insuring Agreement A, **Insured Person Claim** also means the service of a subpoena or other similar written request upon an **Insured Person** requiring the **Insured Person** to provide testimony or documents in connection with a covered **Claim**. However, in such situation the Insurer shall pay the **Defense Costs** which are incurred solely by the **Insured Person** who receives such subpoena or written request.

- “**Insured(s)**” means any:
  - (1) **Insured Entity**; or
  - (2) **Insured Person**.
- “**Internal Revenue Code Costs**” means the civil fines and penalties levied against an **Insured Entity** or the **Insured Persons** thereof, but only if such **Insured Entity** is exempt from federal income tax as an organization described in Section 501(c)(3) or an entity organized for a religious or charitable purpose under any not-for-profit statute, for the violation of any provision (other than Section 4958) of the Internal Revenue Code of 1986 as amended. Further, such fines and penalties will only qualify as **Internal Revenue Code Costs** hereunder if, and to the extent, such **Insureds** relied upon, with respect to the matters giving rise to such violation:
  - (1) a written “more likely than not” or “will” opinion of licensed (in the United States) tax counsel, Certified Public Accountant or accounting firm, or
  - (2) a tax return prepared by a licensed Certified Public Accountant or accounting firm duly

appointed by the Board of Trustees of such **Insured Entity**.

- **“Investigation Costs”** means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand** by an **Insured Entity**, including its board of directors, board of managers, or any committee thereof, provided that **Investigation Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.
- **“Legal Services Wrongful Act”** means professional legal services and notarizing services rendered to an **Insured Entity** by an **Insured Person** solely while acting in their capacity as an **Insured Person**.
- **“Managed Care Professional Activities”** means the following services or activities in connection with any healthcare plan, workers compensation plan or indemnity healthcare insurance contract:
  - (1) administrative or management services;
  - (2) establishing healthcare provider networks, including tiered networks;
  - (3) providing information with respect to tiered networks or consumer directed healthcare plans, including cost and quality information regarding specific providers;
  - (4) providing quality assurance or quality assurance review of **Medical Professional Services**;
  - (5) case management; wellness or health promotional education;
  - (6) development or implementation of clinical guidelines, practice parameters or protocols;
  - (7) triage for payment of **Medical Professional Services**;
  - (8) **Utilization Review**;
  - (9) **Handling or Adjusting Healthcare Claims**;
  - (10) **Marketing of Healthcare Services**; or
  - (11) any actuarial review, opinion, or determination of loss reserves or pricing adequacy.
- **“Marketing of Healthcare Services”** means:
  - (1) any advertising, marketing, selling or enrollment activity for any healthcare plan, workers’ compensation plan or indemnity healthcare insurance contract; or
  - (2) any conduct by a person or entity in their capacity as an insurance agent or broker.
- **“Nonpublic Personal Information”** means a natural person’s first name and last name in combination with any one or more of the following:
  - (1) social security number;
  - (2) medical or healthcare information or data;
  - (3) drivers license number or state identification number; or

- (4) financial account information that would permit access to that individual's financial account.
- **"Notice Manager"** means the natural persons in the offices of the chief executive officer, chief financial officer, or any equivalent position to the foregoing, of the **Named Entity**.
- **"Notification and Credit Monitoring Expenses"** means the amount of reasonable and necessary expenses incurred by the **Insured Entity**:
  - (1) to notify its customers or clients of a **Data Privacy Event** to comply with **Notification Laws**;
  - (2) for credit monitoring services offered by the **Insured Entity** to individuals after a **Data Privacy Event** to comply with **Notification Laws**; or
  - (3) to provide courtesy notifications to individuals when such notifications are not mandated by **Notification Laws** but are reasonably necessary to preserve the reputation and good name of the **Insured Entity**.
- **"Notification Laws"** means any U.S. statute or regulation that, at the time of a **Data Privacy Event**, requires an **Insured Entity** storing **Nonpublic Personal Information** on a computer system to provide notice to specified individuals of any actual or potential **Data Privacy Event**. However, **Notification Laws** shall not include any foreign law, regulation or statute.
- **"Organization Manager"** means an organization manager as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
- **"Outside Capacity"** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of an **Insured Entity**.
- **"Outside Entity"** means any:
  - (1) not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3), 501(c)(4), 501(c)(7), & 501(c)(10) of the Internal Revenue Code of 1986,
  - (2) entity organized for a religious or charitable purpose under any not-for-profit statute, or
  - (3) entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy,
 that is not an **Insured Entity**.
- **"Specified Regulatory Wrongful Act"** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty involving a(n):
  - (1) failure to properly perform any billing, procedure coding, or any submission of any claim, data or report with respect to Medicare or Medicaid under the Social Security Act, as amended, or any similar law;
  - (2) offer, acceptance, payment or credit in exchange for any patient or other business referral(s) in violation of any federal, state, or local law;
  - (3) offer, acceptance, payment or credit in violation of any anti-kickback, self-referral or

healthcare fraud and abuse law, or any similar or related federal, state or local law or regulation;

- (4) violation of the responsibilities, duties or obligations imposed by the Federal False Claims Act or any similar law; or

any related matter that is claimed against an person solely by reason of her/his service for or on behalf of any entity.

- **“Utilization Review”** means the process of evaluating the appropriateness, necessity or cost of services for the purpose of determining whether payment or coverage for such services will be authorized or paid under any health insurance plan, including any prospective review to authorize treatment or expenses, concurrent review to assess continued patient care, and retrospective review to assess services already rendered.
- **“Whistleblowing”** means an **Insured Person’s** lawful act of providing information, causing information to be provided, or otherwise assisting in an investigation regarding any conduct which the **Insured Person** reasonable believes constitutes a violation of any federal, state or foreign law.
- **“Wrongful Act”** means any actual or alleged:
  - (1) error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed by an **Insured Person** in their capacity as such or in their **Outside Capacity**, or, with regard to Insuring Agreement (C) an **Insured Entity**; or
  - (2) matter claimed against an **Insured Person**, solely by reason of their serving in such capacity, including service in an **Outside Capacity**.

**Wrongful Act** also includes a **Legal Services Wrongful Act**, which is only covered if elected on the Declarations.

### III. COVERAGE EXTENSIONS

#### (A) OUTSIDE DIRECTORSHIP LIABILITY

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage is afforded for **Loss** resulting from any **Insured Person Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer’s Limit of Liability available under this Policy for such **Claim**.

#### (B) DATA PRIVACY EVENT EXPENSE COVERAGES

If an **Insured Person** first discovers a **Data Privacy Event** during the **Policy Period** and, as conditions precedent, (i) the **Insured Entity** notifies the Insurer in writing of such **Data Privacy Event** within 30 days of such discovery and (ii) at all times endeavors to use its best efforts to mitigate the effect and, if still occurring, duration of such **Data Privacy Event**, then, subject to the Insurer’s prior written consent, such consent not to be unreasonably withheld, the Insurer shall reimburse the **Insured Entity** for **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses** resulting from such **Data Privacy Event**, subject to the following additional terms and conditions:

- (1) All **Data Privacy Events** that have as a common nexus any fact, circumstance, situation,



event, transaction, goal, motive, methodology, or cause or series of causally connected facts, circumstances, situations, events, transactions, goals, motives, methodologies or causes are deemed one **Data Privacy Event** first occurring on the date of the first such dissemination of **Nonpublic Personal Information**.

- (2) All exclusions applicable to **Loss** under this **Liability Coverage Part**, other than exclusion IV.(S), also apply to any **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses**.
- (3) Coverage provided by this extension shall be subject to a Sub-limit of \$50,000. Such Sub-limit shall be the maximum aggregate amount that the Insurer shall pay under this **Liability Coverage Part** for all **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses** from all **Data Privacy Events**. Such Sub-limit shall be part of, and not in addition to, the Aggregate Limit of Liability applicable to this **Liability Coverage Part**.
- (4) Coverage provided by this extension shall not be available for any **Data Privacy Event** that an **Insured** discovers during any Extended Reporting Period.

**(C) HEALTH OPERATIONAL COSTS EXTENSION - (ELECTIVE)**

- (1) Subject to the terms and conditions of this Policy, if coverage for any **Health Operational Costs** is elected in ITEM 5 of the Declarations, the Insurer shall pay such **Health Operational Costs** resulting from an **Insured Person Claim**, or, if Insuring Agreement (C) is elected, an **Entity Claim** for a **Wrongful Act** by that **Insured**.
- (2) As set forth in ITEM 5 of the Declarations, each **Health Operational Cost** for which coverage is elected is subject to the specific Sub-Limit of Liability applicable to such **Health Operational Cost**. Each such Sub-Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Policy for all such **Loss**. Further, all **Health Operational Costs** collectively shall be subject to an Aggregate Sub-Limit of Liability. Such Aggregate Sub-Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Policy for all such **Loss**; it will also be set forth in ITEM 5 of the Declarations. The Sub-limits of Liability and the Aggregate Sub-Limit of Liability shall all be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

**(D) ANTI-TRUST CLAIM EXTENSION - (ELECTIVE)**

Subject to the terms and conditions of this Policy, if coverage for **Anti-Trust Claims** is elected in ITEM 5 of the Declarations, then the Insurer shall pay **Loss** resulting from an **Insured Person Claim**, or, if Insuring Agreement (C) is elected, an **Entity Claim**, for a **Wrongful Act** by an **Insured**, even though such **Claim** is an **Anti-Trust Claim**.

**(E) SPECIFIED REGULATORY WRONGFUL ACTS DEFENSE COSTS – (ELECTIVE)**

Subject to the terms and conditions of this Policy, if coverage for **Specified Regulatory Wrongful Acts Defense Costs** is elected in ITEM 5 of the Declarations, the Insurer shall pay **Defense Costs** for any **Claim** resulting from an actual or alleged **Specified Regulatory Wrongful Act**.

Notwithstanding any other provision of the Policy providing more favorable coverage to the contrary, with respect to **Defense Costs** covered under this **Liability Coverage Part** which arise from a **Claim** based upon, arising from, or in any way related to any actual or alleged **Specified Regulatory Wrongful Act**, and which are in excess of the applicable Retention, the **Insured** shall bear uninsured a coinsurance amount equal to the coinsurance percentage,

scheduled in ITEM 5 of the Declarations, of such **Loss**. The Insurer's liability shall apply only to the remaining percentage of such **Loss**.

For the purposes of determining if an **Insured Entity** is permitted or required to indemnify an **Insured Person**, as set forth in Insuring Agreement (B), for any such **Defense Costs**, the organizational and corporate governance documents of any **Insured Entity**, including without limitation any certificate of incorporation, articles of organization, or bylaws, as well as any agreements relating to indemnification of **Insured Persons**, shall be presumed to permit indemnification and advancement of **Defense Costs** to the maximum extent permissible under any applicable law, regardless of the actual provisions of such documents. Notwithstanding any other provision of the Policy to the contrary, if any **Insured Entity** is permitted or required by common or statutory law to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on his or her behalf, and fails to do so other than because of **Financial Insolvency**, then the Insurer's liability under Insuring Agreement (A) shall be subject to the Insuring Agreement (B) Retention set forth in the Declaration, and the coinsurance amount referenced above.

Coverage afforded pursuant to this extension shall be subject to the applicable Sub-Limit of Liability set forth in ITEM 5 of the Declarations. Such Sub-Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Policy for all **Defense Cost** in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged **Specified Regulatory Wrongful Act**. Such Sub-Limit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

#### IV. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not pay **Loss**:

(A) in connection with any **Claim** based upon, arising out of, or in any way relating to any:

- (1) bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person; or
- (2) damage to or destruction of any tangible property, including loss of use or diminution of value thereof, or;
- (3) loss of consortium, loss of reputation, libel, slander, oral or written publication of defamatory or disparaging material, or invasion of privacy;

provided that this exclusion shall not apply to **Loss** that directly results from allegations of emotional distress, mental anguish or loss of reputation if, and only to the extent that, such allegations are made by a former, current or prospective member of a medical professional staff as part of a **Claim** relating to **Provider Selection Activity** or, if elected, covered **HIPAA/HITECH Costs** related to an invasion of privacy.

(B) in connection with any **Claim** based upon, arising from, or in any way related to any prior or pending written demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in ITEM 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;

(C) in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance, situation or **Wrongful Act** that, before the Inception Date in ITEM 3 of the Declarations, was the subject of any notice given under any other directors and officers, management liability, or similar insurance policy of which this coverage part is a direct or indirect renewal or replacement if such notice is accepted under such other policy;

(D) in connection with any **Claim** based upon, arising from, or in any way related to any:

- (1) actual or alleged discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
- (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

provided, however, that this exclusion shall not apply to **Loss** otherwise covered under Insuring Agreement A or to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand**.

(E) in connection with any **Claim** based upon, arising from, or in any way related to any:

- (1) claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits or social security benefits;
- (2) actual or alleged violation of the Equal Pay Act, Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, or any similar law; or
- (3) any **Wage and Hour Violation**;

provided, however, that this exclusion shall not apply to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand**.

(F) for any actual or alleged violation of **ERISA** or any similar law;

(G) in connection with any **Claim** brought or maintained by or on behalf of any **Insureds** (in any capacity) or any security holder of an **Insured Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from:

- (1) a civil proceeding by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or
- (2) a **Derivative Action** or a **Derivative Demand**;

Note: **Whistleblowing** alone shall not be deemed solicitation, assistance or participation for purposes of paragraphs (1) and (2) above.

- (3) **Provider Selection Activity** where such claim is brought by a member of the medical staff or faculty that provides **Medical Professional Services** on behalf of an **Insured Entity**; or
- (4) an **Insured Person Claim** by or on behalf of an **Employee** who is not a past or present **Manager** if such **Claim** is made without the assistance, participation or solicitation of any **Manager**;
- (5) an **Insured Person Claim** by or on behalf of a **Manager** for wrongful termination of such **Manager**;
- (6) a civil proceeding by or on behalf of a former **Manager** who has not served in such capacity for at least one year prior to such **Claim** being made, provided that such **Claim** is made

without the assistance, participation or solicitation of any current **Manager** or any former **Manager** who has served in such capacity during the one year prior to such **Claim** being made;

- (7) a civil proceeding by or on behalf of an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;
  - (8) an **Insured Person Claim** brought and maintained in a jurisdiction outside the United States of America, Canada, Australia or any other common law country (including territories thereof) by a **Manager** due to a pleading requirement of such jurisdiction;
  - (9) a civil proceeding by any bankruptcy trustee, examiner, receiver, liquidator, creditor(s) committee of the **Insured Entity** or rehabilitator (or any assignee thereof) after such bankruptcy trustee, examiner, receiver, liquidator or rehabilitator has been appointed; or
  - (10) a civil proceeding as a result of **Whistleblowing**, however, notwithstanding (G)(5) above, this carve back shall not apply if such whistleblower is a **Manager** and the proceeding is brought against the **Insured Entity**;
- (H) of an **Insured Person** based upon, arising from, or in any way related to such **Insured Person's** service, at any time, as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Entity** even if such service is at the direction or request of such **Insured Entity**, provided that this exclusion shall not apply to coverage afforded under Section III. of this **Liability Coverage Part** for a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (I) in connection with any **Claim** by or on behalf of any **Outside Entity** upon which an **Insured Person** is serving or has served in an **Outside Capacity**, or any past or present director, officer, trustee, regent, governor or equivalent executive of such **Outside Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from:
- (1) a derivative action made on behalf of an **Outside Entity** by any persons who are not:
    - (a) **Insured Persons**; or
    - (b) directors, officers, trustees, regents, governors or equivalent executives of the **Outside Entity**,  
and who make such **Claim** without the solicitation, assistance or participation of any such persons; or
  - (2) a civil proceeding brought and maintained by any:
    - (a) **Insured Persons**; or
    - (b) directors, officers, trustees, regents, governors or equivalent executives of an **Outside Entity**;  
for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;
- (J) in connection with any **Claim** based upon, arising from, or in any way related to any public listing or offering of securities of an **Insured Entity** or the purchase or sale of such securities subsequent to such public listing or offering; provided that this exclusion shall not apply to that portion of **Loss** directly resulting from:

- (1) a **Wrongful Act** in any private placement of an **Insured Entity's** securities exempted from the registration requirements of the Securities Act of 1933, including such securities exempted pursuant to Title III - CROWDFUNDING of the Jumpstart Our Business Startups Act ("JOBS Act");
  - (2) a civil proceeding brought and maintained by any security holders of an **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of such **Insured Entity**; or
  - (3) a **Wrongful Act** relating to the **Insured Entity's** preparation for any public offering, including any presentations made by the **Insured Entity** and its **Managers** via any medium in connection with such offering, if such public offering does not occur.
- (K) of an **Insured**, based upon, arising from, or in any way related to the gaining of any personal financial profit, remuneration or advantage to which such **Insured** is not legally entitled if a judgment or other non-appealable final adjudication in the underlying action establishes that such a gain did occur; or
- (L) of an **Insured**, based upon, arising from, or in any way related to any criminal or deliberately fraudulent act or omission or any willful violation of law by such **Insured** if a judgment or other non-appealable final adjudication in the underlying action establishes such an act, omission or violation; provided, however, that this exclusion shall only apply to **Insured Entities** under Insuring Agreement (C), if elected, if a past or present chief executive officer, chief financial officer, general counsel or any position equivalent to the foregoing of the **Named Entity** committed such an act, omission or willful violation.

Regarding exclusions (K) and (L) above: The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured**.

- (M) in connection with any **Claim** based upon, arising from, or in any way related to any **Managed Care Professional Activities**; provided that this exclusion shall not apply to the portion of Loss directly resulting from **Provider Selection Activity**.
- (N) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged **Specified Regulatory Wrongful Act**; provided, however, that this exclusion shall not apply to the portion of **Defense Costs** covered under Specified Regulatory Wrongful Act Defense Cost Extension if elected in ITEM 5 of Declarations.
- (O) in connection with any **Claim** based upon, arising from, or in any way related to:
- (1) the terms of, or liability under (including, without limitation, any **Insured's** liability under), any **Insurance Program or Contract**;
  - (2) the purchase, issuance, failure or refusal to renew, or cancellation of any **Insurance Program or Contract**;
  - (3) the failure or refusal to provide for coverage under any **Insurance Program or Contract**;
  - (4) the failure or refusal to settle an claim, suit, or other matter under any **Insurance Program or Contract**;
  - (5) the actual or alleged lack of good faith or fair dealing, or bad faith, by any **Insured** under any **Insurance Program or Contract**;
  - (6) any actual or alleged act, error, omission or refusal to act as an insurance or reinsurance agent or broker;

- (7) the performance of, or failure to perform, any professional services related to, or required under, any **Insurance Program or Contract**, including, without limitation, in any **Insured's** capacity as a/an investment counselor, manager or advisor, investment banker, securities broker or dealer, financial planner or analyst, insurance agent or broker, partnership unit distributor or any similar capacity; or
- (8) the adequacy of the reserves in connection with any **Insurance Program or Contract**.
- (P) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged employment practices of any **Insured**; provided that this exclusion shall not apply to the portion of **Loss** directly resulting from **Provider Selection Activity**.
- (Q) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged discrimination by any **Insured**; provided that this exclusion shall not apply to the portion of **Loss** directly resulting from **Provider Selection Activity**.
- (R) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged physical or sexual assault, battery, abuse or harassment, including, without limitation, unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature.
- (S) in connection with any **Anti-Trust Claim**; provided, however, that if coverage for **Anti-Trust Claims** is elected in ITEM 5 of the Declarations, this exclusion shall not apply.

**V. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (C)**

- (A) The Insurer shall not pay **Loss** under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:
  - (1) liability under any contract or agreement, (other than an **Insurance Program or Contract**), provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
  - (2) false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction; or
  - (3) infringement, dilution or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property;provided, however sub-paragraphs (1) and (3) of this exclusion shall not apply to the portion of **Loss** directly resulting from:
  - (a) a civil proceeding brought and maintained by a security holder(s) of an **Insured Entity**, in their capacity as such; or
  - (b) a **Derivative Action** or a **Derivative Demand**.
- (B) The Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim** based upon, arising from, or in any way related to the actual or alleged payment by an **Insured Entity** of inadequate consideration in connection with an **Insured Entity's** purchase of securities issued by any **Insured Entity**; provided, however, that this exclusion shall not apply to the portion of **Loss** representing **Defense Costs** incurred to defend such allegations.
- (C) The **Insurer** shall not pay **Loss** under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:

- (1) malfunction of any product, or failure of any product to perform in any manner as a result of any deficiency, inadequacy, unfitness, defect or dangerous condition in any product or in its design or manufacture; or
- (2) rendering of, or failure to render, any services for or on behalf of others for a fee, including, without limitation, **Medical Professional Services** performed by or on behalf of the **Insureds** for or on behalf of a customer or client;

provided, however, that this exclusion shall not apply to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand**.

## VI. ADDITIONAL LIMIT OF LIABILITY FOR CLAIMS AGAINST MANAGERS

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, an additional Limit of Liability of \$1,000,000 shall be available for **Loss** resulting from **Insured Person Claims** against **Managers**, provided that:

- (A) such **Claims** are covered under Insuring Agreement A; and
- (B) such additional Limit of Liability shall be excess of all other insurance available to pay **Loss** for such **Claims**, including, without limitation, this Policy, any insurance written specifically as excess over this Policy, and any insurance intended to provide coverage for non-indemnified **Insured Person Claims**, which such insurance must be exhausted prior to this additional Limit of Liability becoming available to pay **Loss**.

The additional Limit of Liability described above shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under this provision.

## VII. SECURITIES OFFERINGS

If any public offering of an **Insured Entity's** securities occurs during the **Policy Period** that is not exempt from registration under the Securities Act of 1933, the Insurer shall furnish the **Insureds** with a quote for insurance coverage of such offering, provided that:

- (A) at least 30 days prior to the effective date of such offering, the **Insureds** shall give the Insurer written notice of such offering together with all information requested by the Insurer;
- (B) such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its absolute discretion, chooses;
- (C) any coverage provided shall be on such forms as are in use by the Insurer for public companies at the time of such offering; and
- (D) if the **Insureds** choose to cancel this Policy to accept a coverage form offered in such quote, unearned premium for this Policy shall be calculated on a pro rata basis.

## VIII. ORDER OF LOSS PAYMENTS

- (A) If **Loss** is incurred that is acknowledged by the Insurer to be covered under this **Liability Coverage Part**, except that such **Loss** exceeds the remaining available Limit of Liability for this **Liability Coverage Part**, the Insurer shall first pay **Loss** covered under Insuring Agreement A prior to paying **Loss** under any other Insuring Agreements.
- (B) If **Loss** is incurred that is acknowledged by the Insurer to be covered under any Insuring Agreement other than Insuring Agreement A, the **Named Entity** shall have the right to direct the Insurer to delay payment of such **Loss** until such time as the **Named Entity** specifies. Any such direction by the **Named Entity** to delay or make payment of **Loss** shall be by written notice to the Insurer. Any such delayed payment of **Loss** shall be available to the Insurer to pay **Loss** covered under Insuring Agreement A. Any payment of **Loss** under Insuring Agreement A out of funds withheld by the Insurer pursuant to this provision shall terminate the Insurer's liability to make a delayed payment of **Loss** under any Insuring Agreement other than A by the amount of the payment under Insuring Agreement A. No interest shall be due regarding any delayed payment of **Loss**. Nothing in this provision shall increase the Insurer's Limit of Liability applicable to this **Liability Coverage Part**.

## IX. RETENTION WAIVER

No Retention shall apply to **Defense Costs** incurred in connection with a **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Retention otherwise applicable to such **Claim**, if a:

- (A) final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
- (B) complete and final settlement with prejudice;

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.

## X. NOTICE OF CLAIM

- (A) As a condition precedent to coverage under this **Liability Coverage Part**, the **Insureds** shall give the Insurer written notice of any **Claim** as soon as practicable after a **Notice Manager** becomes aware of such **Claim**, but in no event later than:

- (1) if this Policy expires or is otherwise terminated without being renewed with the Insurer, ninety (90) days after the effective date of said expiration or termination; or
- (2) the expiration of the Extended Reporting Period, if applicable;

provided, however, that if the Policy is cancelled for non payment of premium, the **Insured** will give the Insurer written notice of such **Claim** prior to the effective date of cancellation.

- (B) If during the **Policy Period** the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and if written notice of such **Wrongful Act** is given to the Insurer during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently made which arises from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period**, and therefore subject to the terms and conditions of this Policy, including, without limitation, Section VII. of the Common Terms and Conditions and the reporting requirements set forth in Section X.(A) above, on the date that the Insurer receives the above notice.



- (C) If, during the **Policy Period**, the **Insureds** first become aware of a **Wrongful Act** by an **Insured** in connection with a qui tam complaint filed under seal pursuant to Section 3730 of The False Claims Act (31 U.S.C. § 3730) that was first made public during the **Policy Period**, and previously unbeknownst to any **Insured** other than the **Whistleblower** who filed such complaint, then any **Claim** subsequently made that arises therefrom shall be deemed to be a **Claim** first made during this **Policy Period** and therefore subject to the terms and conditions of this Policy, including, without limitation, Section VII. of the Common Terms and Conditions and the reporting requirements set forth in Section X.(A) above; provided, however, that such complaint was not the subject of any notice given under any other insurance policy for which this Policy is a renewal or replacement.