
**OCCURRENCE-BASED STUDENT NURSE PRACTITIONER/REGISTERED
NURSE/PHYSICIAN ASSISTANT/ADVANCED PRACTICE REGISTERED NURSE
PROFESSIONAL AND BUSINESS LIABILITY POLICY - NEW YORK**

NOTICE: THIS POLICY PROVIDES OCCURRENCE-BASED COVERAGE. A LOWER LIMIT OF LIABILITY APPLIES TO JUDGMENTS OR SETTLEMENTS WHEN THERE ARE ALLEGATIONS OF SEXUAL MISCONDUCT (SEE SECTION V.(C), "MAXIMUM LIMIT OF LIABILITY - SEXUAL MISCONDUCT" IN THE POLICY). PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR LEGAL OR INSURANCE ADVISOR.

In consideration of the payment of the premium and in reliance upon the application submitted in connection with the underwriting of this Policy, which shall be deemed to be attached to, incorporated into, and made a part of this Policy, the **Insurer** and the first **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Nurse Practitioner/Registered Nurse/Physician Assistant/Advanced Practice Registered Nurse Professional Liability

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of Liability, the **Damages** arising from a **Claim** made against the **Insured** for a **Professional Incident**, and reported to the **Insurer** in accordance with the terms of this Policy. The **Professional Incident** must take place during the **Policy Period**.

With respect to any **Claim** for which coverage is provided, in whole or in part, under Insuring Agreement A., the **Insurer** has the right and duty to defend such **Claim**, at the **Insurer's** expense and using counsel selected by the **Insurer**, even if any of the allegations in the **Claim** is groundless, false or fraudulent.

B. General Business Liability

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of Liability, the **Damages** arising from a **Claim** made against the **Insured** for **Bodily Injury** or **Property Damage**, where such **Bodily Injury** or **Property Damage** was caused by an **Occurrence**, and reported to the **Insurer** in accordance with the terms of this Policy. The **Occurrence** must take place during the **Policy Period** and must arise out of the student's participation in activities that are a part of and a requirement of the student's curriculum or, upon graduation, services rendered while employed as a Nurse Practitioner, Registered Nurse, Physician Assistant, or Advanced Registered Nurse.

With respect to any **Claim** for which coverage is provided, in whole or in part, under Insuring Agreement B., the **Insurer** has the right and duty to defend such **Claim**, at the **Insurer's** expense and using counsel selected by the **Insurer**, even if any of the allegations in the **Claim** is groundless, false or fraudulent.

C. **Supplemental Privacy Coverage**

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of Liability, the costs incurred by the **Insured** in notifying the **Insured's** patients or clients of a **Privacy Wrongful Act** as mandated by any U.S. federal or state privacy protection statutes or regulations, but only if such **Privacy Wrongful Act** is reported to the **Insurer** in accordance with the terms of this Policy. The **Privacy Wrongful Act** must take place during the **Policy Period**.

Coverage under this Insuring Agreement C. shall be the sole and exclusive coverage for **Privacy Wrongful Acts** under this Policy. **ADDITIONAL COVERAGES**

A. **Defense Expenses for Claims**

The **Insurer** will pay on behalf of the **Insured** the **Defense Expenses** incurred by the **Insured** arising from any **Claim** covered under Insuring Agreements A. or B.

B. **Insured's Costs For Claims**

The **Insurer** will pay on behalf of the **Insured** the reasonable costs, other than loss of earnings, incurred by the **Insured**, at the **Insurer's** request, in connection with defending any **Claim** covered under this Policy.

C. **Legal Bonds for Claims**

The **Insurer** will pay the premiums for appeal bonds, or bonds to release property used to secure a legal obligation, if required with respect to a **Claim** covered under this Policy. However, the **Insurer** will only pay such premiums to the extent that the face or principal amount of the bond is within the applicable Limits of Liability of this Policy. The **Insurer** shall have no obligation to appeal any decision or to obtain these bonds.

D. **Defense Expenses for Proceedings**

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of Liability, **Defense Expenses** only, which arise from a **Proceeding** first brought during the **Policy Period** and reported to the **Insurer** in accordance with the terms of this Policy.

E. **Medical Payments**

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of

Liability, the **Medical Payments** arising from any **Bodily Injury** where such **Bodily Injury** was caused by an **Occurrence** and is reported to the **Insurer** in accordance with the terms of this Policy. The **Occurrence** must take place during the **Policy Period** and:

- (1) while on the premises owned by or rented to the **Insured** with the permission of the **Insured**; or
- (2) while elsewhere if such **Bodily Injury**:
 - (a) arises out of the premises owned by or rented to the **Insured** or a condition in the ways immediately adjoining; or
 - (b) is caused by the activities of the **Insured**; or
 - (c) is caused by the activities of, or is sustained by, a residence employee while engaged in the employment of the **Insured**.

The injured person must submit to examination, as often as required by the **Insurer**, by physicians of the **Insurer's** choice and at the **Insurer's** expense.

III. DEFINITIONS

- A. **"Bodily Injury"** means bodily harm, sickness or disease, including any resulting death, and mental anguish or emotional distress resulting therefrom.
- B. **"Claim"** means any:
 - (1) written demand for monetary relief made against an **Insured**;
 - (2) judicial proceeding which is commenced against an **Insured** by service of a civil complaint, notice of charges or similar pleading; or
 - (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration.

Multiple demands, proceedings or investigations arising out of the same **Professional Incident** or **Occurrence** shall be deemed a single **Claim**.

- C. **"Damages"** means:
 - (1) settlements or judgments;
 - (2) pre-judgment; and
 - (3) costs or fees awarded in favor of the claimant.

Damages do not include:

- (a) amounts for which the **Insureds** are not legally liable;
- (b) amounts which are without legal recourse to the **Insureds**;

- (c) taxes;
- (d) the return, restitution, refund or disgorgement of fees, profits or amounts charged, held or retained by the **Insured** in connection with the rendering of **Professional Services**;
- (e) fines or penalties, except as provided for in Section V.D. ; or
- (f) amounts deemed uninsurable under applicable law.

D. **“Defense Expenses”** means reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim** or a **Proceeding**.

Defense Expenses do not include:

- (1) amounts incurred prior to the date a **Claim** is first made, or a **Proceeding** is first brought, and reported to the **Insurer**;
- (2) compensation or benefits of any natural person **Insured** or any overhead expenses of any **Insured** organization;
- (3) fines or penalties; or
- (4) any costs, fees or expenses to comply with a determination or decision made by a regulatory body, licensing board, agency or other organization in a **Proceeding**.

E. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), as amended, and any regulations promulgated thereunder.

F. **“Insured(s)”** means a student in a Nurse Practitioner, Registered Nurse, Physician Assistant or Advanced Registered Nurse program, but only while said student is participating in activities that are a part of and a requirement of the student’s curriculum or, upon graduation, services rendered while employed as a Nurse Practitioner, Registered Nurse, Physician Assistant or Advanced Registered Nurse.

G. **“Insurer”** means the Insurer specified in the Declarations.

H. **“Medical Payments”** means reasonable payments for:

- (1) first aid administered at the time of an accident;
- (2) necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) necessary ambulance, hospital, professional medical and nursing and funeral services,

provided that such treatment and services are rendered within one year of the

Occurrence that caused the **Bodily Injury**.

- I. “**Named Insured**” means the natural person(s) or organization(s) named in Item 1(a) or 1(b) of the Declarations.
- J. “**Occurrence**” means: as respects **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general harmful conditions will be deemed to arise out of the same **Occurrence**.

Occurrence does not include the rendering of **Professional Services** or a **Privacy Wrongful Act**.

- K. “**Personally Identifiable Information**” means:
 - (1) information from which an individual may be uniquely and reliably identified, including, but not limited to an individual’s name, address, telephone number, email address, in combination with their social security number, account relationships, account numbers, passwords, PIN numbers, credit card numbers or biometric information; or
 - (2) personal information as defined in any U.S. federal or state privacy protection law governing the control and use of an individual’s personal and confidential information, including any regulations promulgated thereunder, or any similar or related laws or regulations of any foreign jurisdiction, including but not limited to:
 - (a) “nonpublic personal information” as defined by Title V of the Gramm-Leach-Bliley Act of 1999, as amended, and any regulations promulgated thereto;
 - (b) “protected health information” as defined by **HIPAA**.
- L. “**Policy Period**” means the period commencing on the inception date shown in Item 3 of the Declarations. This period ends on the earlier of either the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this Policy.
- M. “**Pollutant**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- N. “**Privacy Wrongful Act**” means any actual or alleged act, error, or omission committed by any **Insured**, solely in connection with the rendering of **Professional Services**, which results in:
 - (1) the misappropriation or disclosure of **Personally Identifiable Information**;
 - (2) a breach or violation of U.S. federal or state law or regulations associated with the control and use of **Personally Identifiable Information**;

Privacy Wrongful Act shall not include any breach or violation of any U.S. federal or state law if such breach or violation is not the result of the actual or potential unauthorized disclosure of, or access to **Personally Identifiable Information**.

All such acts, errors or omissions, as referenced in this definition, that are actually or allegedly caused, committed, or attempted by or claimed against one or more **Insureds** arising out of the same or relating to the same or series of related facts, circumstances, situations, transactions or events shall be deemed to be the same **Privacy Wrongful Act**. **Privacy Wrongful Act** does not include an **Occurrence** or **Professional Incident**.

O. “**Proceeding**” means any:

- (1) hearing, investigation, complaint or disciplinary action before any school grievance committee or academic disciplinary board incurred as a result of notice or notices received by the **Insured** during the **Policy Period** arising from or related to a **Professional Incident**; or
- (2) hearing, investigation, complaint or disciplinary action before any regulatory body, licensing board, agency or other organization responsible for monitoring, licensing or regulating the **Insured’s** conduct as respects the rendering of **Professional Services**, but only if such hearing or action is the direct result of a **Professional Incident**, and such **Professional Incident** took place during the **Policy Period**.

P. “**Professional Incident**” means any actual or alleged negligent act, error or omission, solely in the performance of, or actual or alleged failure to perform, **Professional Services**.

All such acts, errors or omissions, as referenced in this definition, that are actually or allegedly caused, committed, or attempted by or claimed against one or more **Insureds** arising out of the same or relating to the same or series of related facts, circumstances, situations, transactions or events shall be deemed to be the same **Professional Incident**. A **Professional Incident** does not include an **Occurrence** or a **Privacy Wrongful Act**.

Q. “**Professional Services**” means medical services rendered by the **Insured** as a student Nurse Practitioner, Registered Nurse, Physician Assistant or Advanced Practice Registered Nurse, provided such services are supervised by a licensed medical doctor, practicum supervisor or licensed nurse practitioner, if required by law in the jurisdiction in which the **Insured** renders such services.

Professional Services includes, but is not limited to the following:

- (1) services directly related to evaluating, diagnosing or treating a medical condition or providing routine medical care;
- (2) medical services as described in paragraph (1) above, when performed in the context of a clinical trial; or

- (3) the rendering of emergency medical treatment without the expectation of compensation.
- R. **“Property Damage”** means physical injury to or destruction of tangible property, including loss of use of it, or loss of use of tangible property which has not been physically injured or destroyed.
- S. **“Regulator”** means any federal, state or local governmental authority, including but not limited to any regulatory body, licensing board, agency or other organization responsible for monitoring, overseeing or licensing the rendering of **Professional Services**.
- T. **“Sexual Misconduct”** means any type of actual, alleged, attempted or proposed physical touching or caressing, or suggestion thereof, whether in person or electronically, by the **Insured** or any person for whom the **Insured** may be legally responsible, with or to any of the **Insured’s** past or present patients or clients, or with or to any relative or any person who regularly resides with any such patient or client, or with or to any person with whom such patient or client or relative has an affectionate personal relationship, which could be considered sexual in nature and/or inappropriate to any **Professional Services** being rendered.

IV. EXCLUSIONS

- A. This Policy shall not cover any **Defense Expenses** or **Damages** in connection with any **Claim** or **Proceeding**:
 - (1) alleging, arising out of, based upon or attributable to an **Insured’s** dishonest, fraudulent, criminal or malicious act, error or omission, or that of any person for whose acts the **Insured** is legally responsible.

In determining the applicability of Exclusion A.(1), the facts pertaining to, the knowledge possessed by, or any **Professional Incident** or **Occurrence** committed by, any **Insured** shall not be imputed to any other **Insured**.
 - (2) alleging, arising out of, based upon or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim, including but not limited to any wage-hour claim, or claim of discrimination or harassment by any party who is not an employee of the **Insured**;
 - (3) for any act, error or omission of a managerial or administrative nature;
 - (4) alleging, arising out of, based upon or attributable to the **Insured’s** ownership or operation of a hospital or other similar facility, or any other facility which provides bed and board or in-patient care, or a laboratory;

- (5) brought by, or on behalf of, any **Insured**, or for injury or damage sustained by any spouse or person who regularly resides in the home of any **Insured**;
- (6) for **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, use, operation or entrustment to others of any automobile, watercraft, aircraft or motor vehicle, or the loading or unloading thereof;
- (7) for **Bodily Injury** or damage to the **Insured's** employee or any independent contractor or employee of any independent contractor working for such **Insured**, arising out of the course of his or her work for such **Insured**, or to the spouse or relative of such employee or independent contractor as a consequence of injury or damage to the employee or independent contractor;
- (8) alleging, arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;
- (9) arising out of any intentional act of plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets;
- (10) alleging, arising out of, based upon or attributable to **Property Damage** to property the **Insured** owns, rents, occupies, borrows or uses, or is in the **Insured's** care, or to premises the **Insured** has sold, given away or abandoned;
- (11) alleging, arising out of, based upon or attributable to any business relationship between the **Insured** and any past or present patient or client;
- (12) alleging, arising out of, based upon or attributable to any **Professional Incident** committed with the knowledge that it was a **Professional Incident**, or which, before the effective date of this Policy, the **Insured** was aware of and could reasonably have foreseen might result in a **Claim** or a **Proceeding**;
- (13) alleging, arising out of, based upon or attributable to any **Professional Service** that is not allowable after the **Insured's** professional license or registration to practice medicine or prescribe controlled substances has suspended, revoked, terminated, or surrendered;
- (14) caused directly or indirectly by war or any act of war, invasion, act of foreign enemy, hostilities (whether or not war is declared), strike, riot or civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power;
- (15) alleging, arising out of, based upon or attributable to the design, manufacture, use, distribution, promotion, or sale of any medication, device

or equipment, or protocols; provided, however, that this Exclusion shall not apply to any **Claim** or **Proceeding** arising from: (1) the prescription of an FDA approved medication to a patient in the rendering of **Professional Services**; or (2) the rendering of **Professional Services** in a clinical trial as described in Definition R.(2) provided that such clinical trial has been reviewed and approved by the FDA or an Institutional Review Board;

- (16) alleging, arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or any liability or obligation to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, whether or not any of the foregoing are to be performed by or on behalf of the **Insured**.
- (17) alleging, arising out of, based upon or attributable to any procedure, treatment, course of treatment, or diagnosis that is outside the scope of the **Insured's** specialty or training;
- (18) alleging, arising out of, based upon or attributable to:
 - (a) any actual or alleged Medicare/Medicaid fraud or abuse or any other actual or alleged fraud against the government; or
 - (b) any improper or excessive billing for the cost of the **Insured's** goods or services or any other type of billing or fee dispute.
- (19) This Policy shall not cover any **Defense Expenses** or **Damages** in connection with any **Claim** or **Proceeding** arising out of any allegation of **Sexual Misconduct** if it is determined that the Insured: (1) participated in; (ii) directed; or (iii) knowingly allowed any act of **Sexual Misconduct**.

B. This Policy shall not cover any notification costs from a **Privacy Wrongful Act** based upon, arising out of, directly or indirectly resulting from or in any way involving any of the following:

- (1) unsolicited electronic dissemination of faxes, emails, text messages or similar communications to any prospective or actual patient of the **Insured** or to any other third party, including but not limited to any violation of the Telephone Consumer Protection Act, any federal or state anti-spam statute or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion.
- (2) failure, interruption or reduction in supply of utility service or infrastructure including without limitation electrical, gas, water, telephone, Internet, cable, satellite or telecommunications;
- (3) any wireless network that is not protected by either Wi-Fi Protected Access ("WPA") or any other security protocol that provides equal or greater protections than WPA;

- (4) the use of a laptop computer, portable computer or other portable electronic device that does not employ whole disc encryption;
- (5) back-up tapes, optical media or any other form of portable back-up media which are not encrypted; or
- (6) expiration or withdrawal of technical support by a software vendor.

V. LIMITS OF LIABILITY

A. Maximum Limits of Liability - Insuring Agreements:

- (1) The Limits of Liability for the Insuring Agreements as set forth in this Section V.A. are part of, and not in addition to, the Aggregate Limit of Liability shown in Item 4(c) of the Declarations.
- (2) As respects Insuring Agreement A., the amount set forth in Item 4(a) of the Declarations (“Per Claim - Insuring Agreement A.”) is the most the **Insurer** will be liable to pay for **Damages** for any **Claim** under this Insuring Agreement. **Defense Expenses** are not part of, and are in addition to, the amount shown in Item 4(a) of the Declarations.
- (3) As respects Insuring Agreement B., the amount set forth in Item 4(b) of the Declarations (“Per Claim - Insuring Agreements B.”) is the most the **Insurer** will be liable to pay for **Damages** for any **Claim** under these Insuring Agreements. **Defense Expenses** are not part of, and are in addition to, the amount shown in Item 4(b) of the Declarations.
- (4) As respects Insuring Agreement C., \$25,000 is the most the **Insurer** will be liable to pay for all notification costs arising from a **Privacy Wrongful Act** under this Insuring Agreement, regardless of the number of such **Privacy Wrongful Acts**. Such **Defense Expenses** are part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 4(c) of the Declarations.
- (5) If the **Insurer** has named an additional **Named Insured** in Item 1(b) of the Declarations, the applicable Limits of Liability will apply separately to each such additional **Named Insured**, but only with respect to the coverage provided under Insuring Agreement A.
- (6) In the event that a **Claim** is made against the **Insureds** for which coverage may be provided under both Insuring Agreement A. and Insuring Agreement B. of this Policy, coverage shall only be provided under one Insuring Agreement and such **Claim** shall be subject to only “each Claim” Limit of Liability.

B. Aggregate Limit of Liability:

The amount set forth in Item 4(c) of the Declarations (“Aggregate”) is the maximum total amount the **Insurer** will be liable to pay for:

- (1) **Damages** for all **Claims** under Insuring Agreements A. and B.; and
- (2) Notification costs under Insuring Agreement C.,

regardless of the number of **Claims** under all Insuring Agreements, including **Claims** involving, or at any time involving, any allegation of **Sexual Misconduct**.

C. **Maximum Limit of Liability - Sexual Misconduct:**

\$25,000 is the most the **Insurer** will be liable to pay for all **Claims** against the **Insured** involving any **Sexual Misconduct** by the **Insured** or by any person for whom the **Insured** may be legally responsible. If any **Sexual Misconduct** is alleged at any stage during a **Claim**, all allegations in that **Claim** which arise out of the same or related professional treatment or relationship will be subject to that \$25,000 maximum. If the **Insurer** has paid this \$25,000 maximum, it will no longer have any duty to defend any **Claim** involving any **Sexual Misconduct**. This \$25,000 maximum is part of, and not in addition to, the Limits of Liability shown in Items 4(a) and 4(c) of the Declarations.

D. **Maximum Limits of Liability - Additional Coverages:**

- (1) The Limits of Liability applicable to Section II., Additional Coverages, are in addition to, and not part of, the Limits of Liability applicable to Section I., Insuring Agreements.
- (2) As respects Additional Coverage D., the amount set forth in Item 4(d) of the Declarations ("Per Proceeding") is the most the **Insurer** will be liable to pay for **Defense Expenses** incurred with respect to each **Proceeding**.
- (3) As respects Additional Coverage E., \$100,000 is the most the **Insurer** will be liable to pay for **Medical Payments** caused by an **Occurrence**, regardless of the number of such **Occurrences**.
- (4) If the **Insurer** has named an additional **Named Insured** in Item 1(b) of the Declarations, the Limits of Liability shown in the Declarations will apply separately to each such additional **Named Insured**, but only with respect to the coverage provided under Additional Coverage D.

E. **Effect of Paying Limits of Liability:**

- (1) If the **Insurer** fully pays the Sexual Misconduct Limit of Liability set forth in paragraph C. of this Section V., it will have no duty to pay any additional amount(s) in connection with any **Claim** involving, or that at any time involved, any allegation of **Sexual Misconduct**.
- (2) If the **Insurer** fully pays the Supplemental Privacy Coverage Limit of Liability set forth in paragraph A.(4) of this Section V., it will have no duty to pay any additional notification costs arising from a **Privacy Wrongful Act**.

- (3) If the **Insurer** fully pays the Limit of Liability applicable to a particular **Claim** under Insuring Agreements A., B. or C., it will have no duty to pay any additional amount(s) under Additional Coverages A., B. or C. in the event such Additional Coverages would otherwise apply to such **Claim**.
- (4) If the **Insurer** fully pays the Aggregate Limit of Liability set forth in Item 4(c) of the Declarations, it will have no duty to: (i) pay any additional amount(s) in connection with any **Claim**, whether or not the Limit of Liability applicable to such **Claim** has been exhausted; (ii) defend any **Claim**; (iii) pay any additional amount(s) under Insuring Agreement C.; or (iv) pay any additional amount(s) under Section II. Additional Coverages.

VI. NOTICE PROVISIONS

A. The **Insured** must give the **Insurer** or its authorized agent written notice of any:

- (1) **Claim** as soon as practicable after it is first made; or
- (2) **Proceeding** as soon as practicable after it is first brought.

Notice given by or on behalf of the **Insured**, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the **Insurer** in the state of New York, with particulars sufficient to identify the **Insured**, shall be deemed notice to the **Insurer**.

- B. The **Insured** must also, as soon as possible, record and notify the **Insurer** of the specifics of the **Claim** or **Proceeding** and the date the **Insured** first received notice of it.
- C. The **Insured** must provide the **Insurer** or its authorized agent with a copy of all demands or legal papers the **Insured** receives as respects a **Claim** or **Proceeding**.
- D. If, during the **Policy Period**, the **Insured** first becomes aware of a **Professional Incident** or **Occurrence** which the **Insured** believes may give rise to a **Claim**, in order for any resulting **Claim** to be covered, the **Insured** must give the **Insurer** or its authorized agent written notice as soon as practicable of such **Professional Incident** or **Occurrence**. Such notice must state when and where the **Professional Incident** or **Occurrence** took place, the names and addresses of any witnesses and/or injured people, and the nature and location of any injury or damage.
- E. Solely as respects “notification costs” coverage under Insuring Agreement C., the **Insured** must give the **Insurer** or its authorized agent written notice of the **Privacy Wrongful Act** as soon as practicable and obtain the **Insurer’s** prior written approval before incurring notification costs as respects such **Privacy Wrongful Act**.
- F. Solely as respects **Medical Payments** coverage under Additional Coverage E.,

the **Insured** must give the **Insurer** or its authorized agent written notice of the **Occurrence** as soon as practicable after it takes place. In addition, such **Medical Payments** must be reported to the **Insurer** within ninety (90) days from the date such medical treatment or service was rendered.

- F. Solely as respects **Medical Payments** coverage under Additional Coverage E., the **Insured** must give the **Insurer** or its authorized representative written notice of the **Occurrence** as soon as practicable after it takes place. In addition, such **Medical Payments** must be reported to the **Insurer** within ninety (90) days from the date such medical treatment or service was rendered.

Failure to give any notice required to be given by the Policy within the time prescribed herein shall not invalidate any **Claim** made by the **Insured** if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter.

A failure to give any notice required to be given by the Policy within the time prescribed herein shall not invalidate any **Claim** made by the **Insured**, injured person or any other claimant unless the failure to provide timely notice has prejudiced the **Insurer**, except as provided in the paragraph above.

With respect to a **Claim** arising out of death or personal injury of any person, if the **Insurer** disclaims liability or denies coverage based on failure to provide timely notice, then the injured person or other claimant may maintain an action directly against such **Insurer**, in which the sole question is the **Insurer's** disclaimer or denial based on the failure to provide timely notice, unless within sixty (60) days following such disclaimer or denial, the **Insured** or the **Insurer**:

- (a) Initiates an action to declare the rights of the parties under the insurance policy; and
- (b) Names the injured person or other claimant as a party to the action.

VII. DEFENSE OF CLAIMS AND PROCEEDINGS, AND SETTLEMENT

With respect to **Claims** under Insuring Agreements A. and B., the **Insurer** has the right and duty to defend, at the **Insurer's** expense and using counsel selected by the **Insurer**, any **Claim** against the **Insured** covered under such Insuring Agreements, even if the **Claim** is groundless, false or fraudulent. The **Insurer** also has the right to investigate any **Claim** and, with the **Insured's** written consent, to settle any **Claim** if the **Insurer** believes that settlement is proper.

With respect to **Proceedings** under Additional Coverage D., the **Insurer** has the right and duty to defend, subject to the Limits of Liability and using counsel selected by the **Insurer**, any **Proceeding** against the **Insured** covered under such Additional Coverage.

The **Insureds** agree to give the **Insurer** full cooperation and provide such information as the **Insurer** may reasonably require relating to the defense of any **Claim** or **Proceeding**, the settlement of any **Claim** and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of any indemnification or contribution rights.

The **Insured** shall not admit or assume any liability, incur any **Defense Expenses**, offer to settle any matter, enter into any settlement agreement or stipulate to any judgment without the **Insurer's** prior written consent, such consent not to be unreasonably withheld. Any amounts incurred by the **Insured** or any settlements or judgments agreed to by the **Insured** without such consent shall not be covered by this Policy.

VIII. OTHER INSURANCE

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, self-insurance plan or self-funded vehicle whether such other insurance, plan or vehicle is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance, plan or vehicle is written specifically as excess insurance over the applicable Limits of Liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Damages** or **Defense Expenses**. This Policy shall not be subject to the terms and conditions of any other insurance policy.

IX. REPRESENTATIONS

By accepting this Policy, the **Insured** agrees that the particulars and statements in the application submitted in connection with the underwriting of this Policy are true and that they are the **Insured's** agreements and representations.

The **Insured** acknowledges that this Policy is issued in reliance upon the truth of those particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy and which are the basis for this Policy.

X. CANCELLATION, NONRENEWAL AND CONDITIONAL RENEWAL

- A. The first **Named Insured** may cancel this Policy at any time by mailing or delivering to the **Insurer** advance written notice of cancellation.
- B. If this Policy has been in effect for sixty (60) days or less, the **Insurer** may cancel this Policy by mailing or delivering to the first **Named Insured** and the agent of record, at the address indicated in Item 1 of the Declarations, advance written notice of cancellation at least (20) days before the effective date of cancellation.
- C. If this Policy has been in effect for more than sixty (60) days, or if this Policy is a renewal or continuation of Policy the **Insurer** issued, the **Insurer** may cancel this Policy by mailing or delivering to the first **Named Insured** and the agent of record, at the address indicated in Item 1 of the Declarations, written notice of cancellation:
 - (1) at least ninety (90) days before the effective date of cancellation if the **Insurer** cancels for any of the following reasons: (except non-payment of premium) including any of the following:
 - (a) Conviction of a crime arising out of acts increasing the hazard insured against;

- (b) Discovery of fraud or material misrepresentation in the obtaining of the Policy or in the presentation of a **Claim**;
 - (c) An act or omission, or violation of a policy condition, that substantially and materially increases the hazards insured against, which occurred subsequent to inception of the current **Policy Period**;
 - (d) Material change in the risk;
 - (e) If the Director of Insurance determines that continuation of the Policy would be a violation of the state's insurance laws; would jeopardize the **Insurer's** solvency; or would be hazardous to the interest of the Insurer's policyholders, creditors or the public;
 - (f) If an **Insured's** professional license is revoked or suspended;
 - (g) The **Insured's** failure to comply with underwriting requirements within sixty (60) days of the effective date of coverage; or
- (2) at least fifteen (15) days before the effective date of cancellation if the **Insurer** cancels for non-payment of premium, provided that such notice of cancellation for non-payment of premium will include a statement of the premium amount due.
 - (3) The **Insurer** will mail or deliver the notice, including the reason for cancellation, to the first **Named Insured** at the address shown in the Policy and to the authorized agent or broker. If the Policy is cancelled due to nonpayment of premium, the notice will state the premium amount due.
 - (2) Notice of cancellation will state the effective date of cancellation and the **Policy Period** will end on that date.
- D. If this Policy is cancelled, the **Insurer** will send the first **Named Insured** any premium refund due on or before the effective date of cancellation. If the **Insurer** cancels, the refund will be pro rata. If the first **Named Insured** cancels, the refund may be less than pro rata.
- However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, the **Insurer** will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if the **Insurer** has not made or offered a refund.
- If notice is mailed, proof of mailing will be sufficient proof of notice.
- E. The **Insurer** shall not be required to renew this Policy upon its expiration. If the **Insurer** decides not to renew this Policy, the **Insurer** will send notice as provided in paragraph (b) below along with the reason for non-renewal.

- (1) If the **Insurer** conditionally renews this Policy subject to a:
 - (a) Change of limits;
 - (b) Change in the type of coverage;
 - (c) Reduction of coverage;
 - (d) Increased deductible;
 - (e) Addition of exclusion; or
 - (f) Increased premiums in excess of 10% exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating, or audit,

the **Insurer** will send notice as provided in paragraph 3(c) below.

- (2) Notices of Nonrenewal and Conditional Renewal
 - (a) If the **Insurer** decides not to renew this Policy or to conditionally renew this Policy as provided in paragraph (1) above, the **Insurer** will mail or deliver written notice to the first **Named Insured** at least sixty (60) but not more than one-hundred, twenty (120) days before:
 - (i) The expiration date; or
 - (ii) The anniversary date if this is a continuous policy.
 - (b) Notice will be mailed or delivered to the first **Named Insured** at the address shown in Item 1 of the Declarations and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice. The notice shall include the specific reasons for nonrenewal or conditional renewal, set forth the amount of any premium increase and describe the nature of any other proposed changes to the Policy terms.
 - (c) The **Insurer** will not send the first **Named Insured** notice of nonrenewal or conditional renewal if the first **Named Insured**, the first **Named Insured's** authorized agent or broker, or the first **Named Insured's** new insurer mails or delivers notice to the **Insurer** that the Policy has been replaced or is no longer desired.

F. Every notice mailed or delivered by the **Insurer** under this Section XI shall advise the first **Named Insured** and the agent or broker of record of the availability of loss information from the **Insurer**. Upon written request by the

first **Named Insured** or the agent or broker of record, the **Insurer** shall mail or deliver the following information covering the period of years that this Policy was in force:

- (1) Information on closed **Claims**, including date and description of **Claim**, and any payments;
- (2) Information on open **Claims**, including date and description of **Claim**; and amounts of any payments; and
- (3) Information on notice of any **Occurrences**, including date and description of **Occurrences**.

The **Insurer** may charge the first **Named Insured** or agent or broker of record, a reasonable fee for supplying this information.

XI. AUTHORIZATION AND NOTICES

The **Insureds** agree that the first **Named Insured** named in Item 1(a) of the Declarations shall act on behalf of all **Insureds** with respect to all matters pertaining to this Policy including: (1) giving notice of any **Claim** or circumstance which may result in a **Claim**; (2) giving notice and information regarding any Additional Coverages under Section II.; (3) giving and receiving of all correspondence and information; (4) giving and receiving notice of cancellation; (5) consenting, or withholding consent, to the settlement of a **Claim** recommended by the **Insurer**; (6) payment of premiums; (7) receiving of any return premiums; and (8) receiving and accepting of any endorsements issued to form a part of this Policy.

XII. TERRITORY

This Policy applies to **Professional Incidents, Privacy Wrongful Acts or Occurrences** taking place anywhere in the world, to the extent permitted by law. However, any **Claim** or **Proceeding** arising from such **Professional Incidents or Occurrences** must be made and brought in the United States of America, its territories and possessions, Puerto Rico or Canada.

XIII. ASSIGNMENT AND CHANGES TO THE POLICY

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

If an **Insured** dies or is declared legally incompetent, such **Insured's** rights and duties will be transferred to such **Insured's** legal representative while acting within the scope of his or her duties as such. Until such **Insured's** legal representative is appointed, anyone having temporary custody of such **Insured's** property will be covered under Insuring Agreement B.

This Policy contains all the agreements between the **Insured** and the **Insurer** or its authorized agents concerning this insurance.

Notice to any agent or knowledge possessed by any agent or person acting on the **Insurer's** behalf, will not result in a waiver or change in any part of this Policy or prevent the **Insurer** from asserting any right under the terms and conditions of this Policy. The terms and conditions of this Policy may only be waived or changed by written endorsement signed by the **Insurer**.

XIV. BANKRUPTCY

The bankruptcy or insolvency of the **Insured** or the **Insured's** estate does not relieve the **Insurer** of its obligations under the Policy.

XV. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the **Insurer** under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured(s)**' rights of recovery. The **Insured(s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights. The **Insurer** shall not exercise its subrogation rights against any natural person **Insured**, unless Exclusion A.(1) above applies to such **Insured**.

XVI. ACTION AGAINST INSURER

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this Policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured**, or by written agreement of the **Insured**, the claimant and the **Insurer**. If any judgment against the **Insured** is not satisfied within thirty (30) days of notice of judgment to the **Insurer**, an action may be brought against the **Insurer**.

XVII. HEADINGS

The descriptions in the headings and any subheading of this Policy, including any titles given to any endorsement attached hereto, are inserted solely for convenience and do not constitute any part of this Policy's terms or conditions.

XVIII. TRANSFER OF DUTIES WHEN A LIMIT OF INSURANCE IS EXHAUSTED

- A. If the **Insurer** concludes that, based on **Occurrences, Professional Incidents, Wrongful Privacy Acts** or any **Claims** or suits which have been reported to the **Insurer** and to which this insurance may apply, that any Limit of Liability (each claim, each incident, each occurrence, aggregate or other) under the Policy is likely to be exhausted in the payment of **Claims**, judgments or settlements, the **Insurer** will notify the first **Named Insured**, in writing, to that effect.
- B. When a Limit of Liability described above has actually been exhausted in the payment of **Claims**, judgments or settlements:
 - (1) The **Insurer** will notify the first **Named Insured**, in writing, as soon as practicable, that:

- (a) Such a Limit of Liability has been exhausted; and
 - (b) The **Insurer's** duty to defend suits seeking **Damages** subject to that Limit of Liability has ended.
 - (2) The **Insurer** will initiate, and cooperate in, the transfer of control, to any appropriate **Insured**, of all **Claims** seeking **Damages** which are subject to that Limit of Liability and which are reported to the **Insurer** before that Limit of Liability is exhausted. That **Insured** must cooperate in the transfer of control of said **Claims**. The **Insurer** agrees to take such steps, as the **Insurer** deems appropriate, to avoid a default in, or continue the defense of, such **Claims** until such transfer is completed, provided the **Insured** is cooperating in completing such transfer. The **Insurer** has no obligation to take any action whatsoever with respect to any **Claim** seeking damages that would have been subject to that Limit of Liability, had it not been exhausted, if the **Claim** is reported to the **Insurer** after that Limit of Liability has exhausted.
 - (3) The **Insured** involved in any **Claim** seeking **Damages** subject to that Limit of Liability, must arrange for the defense of such **Claim** within such time period as agreed to between the **Insured** and the **Insurer**. Absent any such agreement, arrangements for the defense of such **Claim** must be made as soon as practicable.
- C. The **Insured** will reimburse the **Insurer** for expenses the **Insurer** incurs in taking those steps the **Insurer** deems appropriate in accordance with paragraph B. (2) above.
- The duty of the **Insured** to reimburse the **Insurer** for such expenses will begin on:
- (1) The date on which the applicable Limit of Liability is exhausted, if the **Insurer** sent notice in accordance with paragraph 1. above; or
 - (2) The date on which the **Insurer** sent notice in accordance with paragraph B.(2) above, if the **Insurer** did not send notice in accordance with paragraph A. above.
- D. The exhaustion of any Limit of Liability by the payments of **Claims**, judgments or settlements, and the resulting end of the **Insurer's** duty to defend, will not be affected by the **Insurer's** failure to comply with any of the provisions of this Section.