

LEXINGTON INSURANCE COMPANY
100 Summer Street
Boston, Massachusetts 02110

**NOT-FOR-PROFIT INDIVIDUAL AND ORGANIZATION INSURANCE POLICY
INCLUDING EMPLOYMENT PRACTICES LIABILITY INSURANCE**

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application forming a part hereof and its attachments and the material incorporated therein, LEXINGTON INSURANCE COMPANY, herein called the "**Insurer**", agrees as follows:

1. INSURING AGREEMENTS

COVERAGE A: INDIVIDUAL INSURED INSURANCE

This policy shall pay on behalf of each and every **Individual Insured**, **Loss** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act** in his/her respective capacities as an **Individual Insured** of the **Organization**, except when and to the extent that the **Organization** has indemnified the **Individual Insured**. The **Insurer** shall, in accordance with and subject to Clause 8, advance **Defense Costs** of such **Claim** prior to its final disposition.

**COVERAGE B: ORGANIZATION INDEMNIFICATION
REIMBURSEMENT INSURANCE**

This policy shall pay on behalf of the **Organization**, **Loss** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act** in his/her respective capacities as an **Individual Insured** of the **Organization**, but only when and to the extent that the **Organization** has indemnified such **Individual Insured** for such **Loss** pursuant to law, common or statutory, or contract, or the Charter or By-laws of the **Organization** duly effective under such law which determines and defines such rights of indemnity. The **Insurer** shall, in accordance with and subject to Clause 8, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE C: ORGANIZATION ENTITY COVERAGE

This policy shall pay on behalf of the **Organization**, **Loss** arising from a **Claim** first made against the **Organization** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act** of the **Organization**. The **Insurer** shall, in accordance with and subject to Clause 8, advance **Defense Costs** of such **Claim** prior to its final disposition.

2. DEFINITIONS

- (a) “**Affiliate**” means any not for profit organization other than a **Subsidiary** which:
- (1) the **Named Organization** or any **Subsidiary** controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions; or
 - (2) is granted by contract the right to control the financial or managerial decisions of the **Organization** or any **Subsidiary**.

Provided, however that such coverage as is provided by sections (1) and (2) above shall be limited solely to **Wrongful Acts** occurring in the course of the exercise of such control of financial or managerial decisions.

- (b) “**Claim**” means:
- (1) a written demand for monetary relief; or
 - (2) a civil, criminal, regulatory or administrative proceeding for monetary or non-monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) return of an indictment (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges; or
 - (3) any request to toll or waive any statute of limitations.

The term “**Claim**” shall include an **Employment Practices Claim**, provided however, that in no event shall the term “**Claim**” include any labor or grievance proceeding which is subject to a collective bargaining agreement.

The term “**Claim**” shall also include a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act (“**EMTALA**”). 42 U.S.C., 1396dd et seq., and any similar state or local statute (herein “**EMTALA Claim(s)**”); provided that a sublimit of liability in the amount of \$150,000 shall apply to all **Loss** in the aggregate arising from all **EMTALA Claims** made and reported during the **Policy Period** or **Discovery Period** (if applicable) combined (hereinafter “**EMTALA Sublimit of Liability**”). This **EMTALA Sublimit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** stated in the Item of the Declarations entitled **Limit of Liability**.

- (c) “**Continuity Date**” means the date set forth in the Declarations.

- (d) **“Domestic Partner”** means any individual person qualifying as such, either: (1) under the provisions of any applicable federal, state or local law; or (2) under the provisions of any formal program established by the **Named Organization** or its **Subsidiaries**.
- (e) **“Defense Costs”** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but excluding compensation of **Individual Insureds**.
- (f) **“Employee(s)”** means any past, present or future employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary **Employee** of the **Organization** in his or her capacity as such. An individual who is leased to the **Organization** shall also be an **Employee**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization’s** employees.
- (g) **“Employment Practices Claim”** means a **Claim** alleging an **Employment Practices Violation**.
- (h) **“Employment Practices Violation(s)”** means any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
 - (2) harassment (including sexual harassment whether “quid pro quo”, hostile work environment or otherwise);
 - (3) discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
 - (4) **Retaliation**;
 - (5) employment-related misrepresentation(s) to an **Employee** or applicant for employment with the **Organization**;
 - (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
 - (7) wrongful failure to employ or promote;
 - (8) wrongful deprivation of career opportunity with the **Organization**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an employee reference;

- (9) wrongful discipline;
- (10) failure to grant tenure or practice privileges;
- (11) failure to provide or enforce adequate or consistent organization policies or procedures relating to any **Employment Practices Violation**;
- (12) violation of an individual's civil rights relating to any of the above,

but only if the **Employment Practices Violation** relates to an **Individual Insured**, or applicant for employment, with the **Organization** or an **Outside Entity**, whether direct, indirect, intentional or unintentional.

- (i) "**Financial Insolvency**" means: (1) entering into proceedings in bankruptcy; or (2) becoming a debtor in possession; or (3) the taking of control, the supervision of, or the managing or liquidating the financial affairs of such entities by a receiver, conservator, liquidator, trustee, rehabilitator, or similar official.
- (j) "**Individual Insured(s)**" means a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, committee member (of a duly constituted committee of the **Organization**), staff or faculty member (salaried or non-salaried), **Employee**, intern or volunteer of the **Organization**. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this policy.

"**Individual Insured(s)**" shall also include any past, present or future member of any duly constituted committee ("**Committee Member**"); any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to peer review or credentialing decision concerning an individual physician ("**Outside Expert**"); any individual in charge of any operational department ("**Department Head**") or any medical director, staff physician or faculty member of the **Organization**, regardless of whether or not such person is directly employed by the **Organization** or is considered to be an independent contractor.

- (k) "**Insured(s)**" means the **Organization** and all **Individual Insureds**.
- (l) "**Loss**" means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest, the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act and **Defense Costs**; however, **Loss** shall not include: (1) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (2) punitive or exemplary damages; (3) the multiplied portion of multiple damages; (4) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (5) any liability or costs incurred by any **Insured** to modify any building or property in order to make said

building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to an **Employment Practices Claim**; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

“**Loss**” shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986 (as amended):

- Section 4911 (tax on excess expenditures to influence legislation);
- Section 4940(a);
- Section 4941 (taxes on self-dealing);
- Section 4942 (taxes on failure to distribute income);
- Section 4943 (taxes on excess business holding);
- Section 4944 (taxes on investments which jeopardize charitable purpose);
- Section 4945 (taxes on taxable expenditures);
- Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registration statements);
- Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
- Section 6656 (a) and (b) (penalties for failure to make deposit of taxes)

“**Loss**” shall also include the civil fines and penalties assessed pursuant to an **EMTALA Claim**, as defined within the Definition of **Claim** and subject to the **EMTALA Sublimit of Liability** as stated therein.

“**Loss**” shall also include any “**Excess Benefits**” penalty assessed in the amount of ten percent (10%) by the Internal Revenue Service (“**IRS**”) against any **Insured(s)** for management’s involvement in the award of an “**Excess Benefit**” and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any twenty-five percent (25%) penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events, the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. As used herein, “**Excess Benefits**” means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.

“**Loss**” shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds; provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this policy shall pay **Defense Costs** up to an amount not to exceed \$1,000,000 (“**Government Funding Defense Costs Sublimit**”). This **Sublimit of Liability** shall be part of and not in addition to the

aggregate **Limit of Liability** stated in the Item of the Declarations entitled **Limit of Liability**. With respect to any **Defense Costs** coverage afforded pursuant to this paragraph, it is understood that: (i) the **Insurer** shall be liable to pay 50% of such **Defense Costs**, excess of a retention in the amount of \$1,000,000, up to the **Government Funding Defense Costs Sublimit**, and subject to the **Limit of Liability** listed on the Declarations. It being a condition of this insurance that the remaining 50% of such **Defense Costs** shall be carried by the **Insureds** at their own risk and be uninsured.

- (m) “**Non-Employment Discrimination**” means any actual or alleged sexual harassment or unlawful discrimination, as described in paragraphs (2) and (3) of the definition of **Employment Practices Violation**, or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured**, or applicant for employment with the **Organization** or an **Outside Entity**, including, but not limited to: students, patients, members, customers and suppliers.
- (n) “**Organization**” means: (1) the **Named Organization** designated in Item 1 of the Declarations; (2) any **Subsidiary** thereof; and (3) any **Affiliate** thereof listed by endorsement to this policy.
- (o) “**Outside Entity**” means a not-for-profit organization, other than a **Subsidiary** or listed **Affiliate**, on which an **Individual Insured** serves, at the specific written request of the **Organization**, as a director, trustee, trustee emeritus or governor. Such coverage as is provided by this policy shall be specifically excess of any insurance in force as respects such **Outside Entity** and any indemnification provided by such **Outside Entity**.
- (p) “**Policy Period**” means the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (q) “**Related Wrongful Acts**” means **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- (r) “**Retaliation**” means a retaliatory **Wrongful Act** of an **Insured** alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker’s compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim by an **Employee** under the Federal False Claims Act or any other federal, state, local or foreign “whistle-blower” law; or (4) **Employee** strikes.

(s) “**Subsidiary**” means:

- (1) any organization which, on or before the inception of the **Policy Period**, the **Organization** owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has, on or before the inception of the **Policy Period**, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its **Subsidiaries**;
- (2) automatically any not for profit organization which becomes a **Subsidiary** during the **Policy Period** and where the book value of such entity’s assets determined in accordance with Generally Accepted Accounting Principles (“GAAP”) totals less than thirty percent (30%) of the similarly calculated assets of the **Named Organization** as of the inception date of the **Policy Period**; or
- (3) any for profit organization which becomes a **Subsidiary** during the **Policy Period** and where the book value of such entity’s assets determined in accordance with “GAAP” totals less than twenty percent (20%) of the similarly calculated assets of the **Named Organization** as of the inception date of the **Policy Period**.

With regard to paragraphs (2) and (3) above, the **Named Organization** shall provide the **Insurer** with full particulars of the **Subsidiary** before the end of the **Policy Period**.

Any organization which becomes a **Subsidiary** during the **Policy Period** but exceeds the asset limitations stated in (2) or (3) above, (hereinafter “**New Subsidiary**”) shall be provided coverage under this policy, but only upon the condition that within ninety (90) days after the date of its becoming a **Subsidiary**, the **Named Organization** shall have provided the **Insurer** with full particulars of the **New Subsidiary** and agreed to any additional premium or amendment of the provisions of this policy required by the **Insurer** relating to such **New Subsidiary**. Further, such coverage as shall be afforded to the **New Subsidiary** is conditioned upon the **Named Organization** paying when due any additional premium required by the **Insurer** relating to such **New Subsidiary**.

An organization becomes a **Subsidiary** when the **Named Organization** owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has, on or before the inception of the **Policy Period**, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its **Subsidiaries**.

In all events, such coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary**, or any **Individual Insured** of a **Subsidiary**, shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

(t) “**Wrongful Act**” means:

- (1) with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in his/her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his/her status as **Individual Insureds** of the **Organization**;
- (2) with respect to the **Organization** under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of the **Organization**;
- (3) with respect to service on an **Outside Entity**, any matter claimed against such **Individual Insureds** arising out of such **Insured** serving as a director, trustee, trustee emeritus or governor of an **Outside Entity** in such capacity, but only if such service is at the specific written request or direction of the **Organization**;
- (4) with respect to both the **Individual Insureds** and the **Organization** and subject to paragraphs 1, 2 and 3 above, “**Wrongful Act**” shall specifically include:
 - (a) **Employment Practices Claims**;
 - (b) **Non-Employment Discrimination**;
 - (c) libel, slander, defamation or publication or utterance in violation of an individual’s right of privacy;
 - (d) wrongful entry or eviction or other invasion of the right of occupancy;
 - (e) false arrest or wrongful detention;
 - (f) plagiarism.

3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover **Loss** arising from any **Claims** made against the estates, heirs, or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of an **Individual Insured’s** incompetency, insolvency or bankruptcy, who were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed.

Subject otherwise to the terms hereof, this policy shall cover **Loss** arising from all **Claims** made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or other legally recognized **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her status as the spouse or other legally recognized **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or other legally recognized **Domestic partner**, or property transferred from the **Individual Insured** to the spouse or other legally recognized **Domestic partner**; provided, however, that this

extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or of the other legally recognized **Domestic Partner**, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against an **Insured**:

- (a) arising out of, based upon or attributable to the gaining in fact of any profit or advantage to which an **Insured** was not legally entitled;
- (b) arising out of, based upon or attributable to the committing in fact of any criminal, or deliberate fraudulent act;

[The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of exclusions 4(a) through 4(b).]

- (c) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Act** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (d) alleging, arising out of, based upon or attributable to as of the **Continuity Date**, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** has notice; or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (e) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Individual Insured** serving in any capacity, other than with the **Organization** or as a director, trustee, trustee emeritus or governor of an **Outside Entity**;
- (f) which is brought by or on behalf of the **Organization** against any **Individual Insured**; provided however, this exclusion shall not apply to any derivative **Claim** made on behalf of the **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or the **Organization** or any **Affiliate** thereof;
- (g) for any **Wrongful Act** arising out of an **Individual Insured** serving as a director, trustee, trustee emeritus or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, trustee, trustee emeritus or governor thereof;

- (h) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (i) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
 - (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
 - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants,

including but not limited to a **Claim** alleging damage to the **Organization** or its members;

Pollutants include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

- (j) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; further, there shall be no coverage provided under this policy for any **Claim** related to, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured(s)** to pay wages or overtime pay for services rendered (hereinafter, "**Earned Wages**") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured(s)** from any **Employee(s)** or purported employee(s), including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay **Earned Wages**, or (ii) any **Claim** seeking **Earned Wages** because any **Employee(s)** or purported employee(s) was improperly classified or mislabeled as "exempt"; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;
- (k) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to **Loss** arising from a **Claim** for **Retaliation**;
- (l) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Organization** or an **Insured** under any express (written or oral) contract

or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that with respect to **Employment Practices Claims** this exclusion shall not apply to the extent that any liability does not arise from such express contract or agreement;

- (m) for any civil or criminal fines imposed by law and any taxes (whether imposed by federal, state, local or other governmental authority);
- (n) alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Named Organization, Subsidiary** or **Affiliate** or **Claims** brought by securities holders of the **Organization** in their capacity as such; provided, however, this exclusion shall not apply to the issuance by the **Organization** of tax exempt bond debt or **Claims** brought by tax exempt bond debt holders;
- (o) alleging, arising out of, based upon or attributable to the **Insureds'** performance or rendering of or failing to perform or render medical or other professional services or treatments for others; provided, however, that this exclusion shall not apply to **Employment Practices Claims**;
- (p) alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly: (1) antitrust violations, price fixing, price discriminations, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto; (2) any infringement or patent, copyright, trademark, service mark or trade name; or (3) any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 USC Sections 1961, et seq, and any amendments thereto or any rules or regulations promulgated thereunder;
- (q) alleging, arising out of, based upon, attributable to any failure or omission on the part of the **Insureds** or the **Organization** to effect or maintain adequate insurance;
- (r) alleging, arising out of, based upon, attributable to or involving, directly or indirectly, the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of any **Insured**, any **Insurer** or any other person, including, but not limited to, **Claims** brought by any insurer guarantee or insolvency fund or any receiver or liquidator of any insurer or any Commissioner or Superintendent of Insurance;
- (s) alleging, arising out of, based upon or attributable to any "**Human Clinical Trial**";

"**Human Clinical Trial**" means any study utilizing humans to provide clinical data for the assessment of a medical treatment, procedure or pharmaceutical.

5. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)

The **Limit of Liability** stated in Item 4 of the Declarations is the limit of the **Insurer's** liability for all **Loss**, under Coverage A, Coverage B and Coverage C combined, arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable); however, the **Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Limit of Liability** for the **Policy Period**. Further, any **Claim** which is made subsequent to the **Policy Period** or the **Discovery Period** (if applicable) which, pursuant to Clause 7(b) or 7(c) is considered made during the **Policy Period** or **Discovery Period** shall also be subject to the one applicable aggregate **Limit of Liability** stated in Item 4 of the Declarations.

Defense Costs are not payable by the Insurer in addition to the Limit of Liability. Defense Costs are part of Loss and as such are subject to the Limit of Liability for Loss.

6. RETENTION CLAUSE

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the Retention amount stated in Item 5 of the Declarations, such Retention amount to be borne by the **Organization** and shall remain uninsured, with regard to all **Loss** for which the **Organization** has indemnified or is permitted or required to indemnify the **Individual Insureds** (“**Indemnifiable Loss**”) and **Loss** under Coverage C. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.

Except as hereinafter stated, no Retention amount shall apply to a **Claim** in the event of the **Financial Insolvency** of the **Named Organization** and all **Subsidiaries** or **Affiliates** which are permitted or required to indemnify the **Individual Insured** with regard to such **Claim**. Provided, however, the **Organization** hereby agrees to indemnify the **Insureds** to the fullest extent permitted by law taking all steps necessary in furtherance thereto, including the making in good faith of any required application for court approval and the passing of any required corporate resolution or the execution of any contract. The **Named Organization** and all **Subsidiaries** and **Affiliates** will be conclusively deemed to have indemnified the **Individual Insureds** to the extent that the **Organization** is permitted or required to indemnify them pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Organization**.

7. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to Lexington Insurance Company, Claims Department, 100 Summer Street, Boston, Massachusetts 02110. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured, by the Named Organization on the behalf of any Insured or by the Insurer, whichever comes first.

- (a) The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** as soon as practicable and either:
- (1) anytime during the **Policy Period** or during the **Discovery Period** (if applicable); or
 - (2) within thirty (30) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), as long as such **Claim** is reported no later than thirty (30) days after the date such **Claim** was first made against an **Insured**.
- (b) If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause 7(a) above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged in the **Claim** of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the **Policy Period** or during the **Discovery Period** (if applicable) the **Insureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and shall give written notice to the **Insurer** of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

8. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)

Under Coverages A, B and C of this policy, except as hereinafter stated, the **Insurer** shall advance, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Organization** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The Insurer does not, however, under this policy, assume any duty to defend. The Insureds shall defend and contest any Claim made against them. The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer

shall be entitled to effectively associate in the defense and the negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.

The Insurer shall have the right to effectively associate with the Insureds in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the Insureds consent to such settlement, then the Organization's applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

In the event the Insureds do not consent to a Settlement Opportunity within the time prescribed, then, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount subject to the policy's Limit of Liability. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.

9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS

This clause applies to all Claims.

Affixed as Appendix A hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel may be made to conduct the defense of all Claims against an Insured pursuant to the terms set forth below.

The Insureds shall select a Panel Counsel Firm from the list of Panel Counsel Firms designated for the type of Claim and from the jurisdiction in which the Claim is brought. In the event a Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction

to either where the **Claim** is maintained or where the corporate headquarters or state of formation of the **Named Organization** is located. In such instance, however, the **Insurer** shall, at the written request of the **Named Organization**, assign a non-**Panel Counsel Firm** of the **Insurer's** choice in the jurisdiction in which the **Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel Firm** which will function as "lead counsel" in conducting the defense of the **Claim**.

With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel Firm** different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The list of **Panel Counsel Firms** may be amended from time to time by the **Insurer**. However, no change shall be made to the specific list attached to this policy during the **Policy Period** without the consent of the **Named Organization**.

10. DISCOVERY CLAUSE

Except as indicated below, if the **Insurer** or the **Named Organization** shall cancel or the **Insurer** or the **Named Organization** shall refuse to renew this policy, the **Named Organization**, upon payment of the respective "Additional Premium Amount" described below, shall have the right to a period of one, two or three years after the effective date of such cancellation or nonrenewal (herein referred to as the "**Discovery Period**") in which to give to the **Insurer** written notice of **Claims** first made against the **Insureds** during the selected period for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within thirty (30) days of the effective date of cancellation or nonrenewal. The Additional Premium Amount for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**. The **Discovery Period** is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for: (1) one year shall be 100% of the "full annual premium"; (2) two or three years shall be an amount to be determined in the absolute and sole discretion of the **Insurer**. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, as defined in Clause 12, the **Named Organization** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of no less than six years or for such longer or shorter period as the **Named Organization** may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

11. CANCELLATION CLAUSE

This policy may be canceled by the **Named Organization** by surrender of this policy to the **Insurer** or its authorized agent or by delivering or mailing written prior notice to the **Insurer** stating when thereafter such cancellation shall be effective. If this policy is canceled by the **Named Organization**, the **Insurer** shall retain the customary short rate proportion of the premium herein.

This policy may be canceled by or on the behalf of the **Insurer** by mailing written notice to the **Named Organization** at the address shown in Item 1 of the Declarations, not less than sixty (60) days thereafter, such cancellation shall be effective. However, the policy may be cancelled by or on behalf of the **Insurer** in the event of nonpayment of premium by the **Insured(s)** when due, by delivering to or by mailing to the **Named Organization**, at the **Named Organization's** address as shown in Item 1 of the Declarations, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. If this policy is canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the premium herein. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect.

12. CHANGE IN CONTROL OF NAMED ORGANIZATION

If during the **Policy Period**:

- a. the **Named Organization** shall consolidate with or merge into, or sell all or substantially all of its assets to, any other person or entity, or group of persons or entities acting in concert;
- b. any person or entity, or group of persons or entities, acting in concert shall acquire an amount of the voting interest representing more than fifty percent (50%) of the voting power for the election or appointment of directors or trustees of the **Named Organization**, or acquires the voting rights of such an amount of such interest; or
- c. the **Named Organization** shall change from not-for-profit to for-profit status;

(any of the above events herein referred to as the "**Transaction**")

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Transaction**. This policy may not be canceled after the effective time of the **Transaction** and the entire premium for this policy shall be deemed earned as of such time. The **Named Organization** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 10 of the policy.

The **Named Organization** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

13. SUBROGATION

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless such **Insured** has been convicted of a criminal act, or been determined to have committed a dishonest or fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled.

14. OTHER INSURANCE AND INDEMNIFICATION

Such insurance as is provided by this policy shall apply only as excess over any valid and collectible insurance. This policy shall be specifically excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

In the event of a **Claim** against a director, trustee, trustees emeritus or governor arising out of his or her service as a director, trustee, trustees emeritus or governor of an **Outside Entity**, coverage as is afforded by this policy shall be specifically excess of indemnification provided by such **Outside Entity** and any insurance provided to such **Outside Entity** with respect to its directors, trustees, trustees emeriti or governors.

Further, in the event such other insurance is provided to an **Outside Entity** by the **Insurer** or any member company of American International Group, Inc. ("AIG") (or would be provided but for the application of the retention amount, exhaustion of the **Limit of Liability** or failure to submit a notice of a **Claim**) then the **Insurer's** maximum aggregate **Limit of Liability** for all **Losses** combined in connection with a **Claim** covered, in part or in whole, by this policy and such other insurance policy issued by AIG shall not exceed the greater of the **Limit of Liability** of this policy or the limit of liability of such other AIG insurance policy.

15. NOTICE AND AUTHORITY

It is agreed that the **Named Organization** shall act on behalf of the **Subsidiaries** and all **Insureds** with respect to the giving of notice of **Claim** or giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining to tender the defense of a **Claim** to the **Insurer** and the exercising or declining of any right to a **Discovery Period**.

16. ASSIGNMENT

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

17. ACTION AGAINST INSURER

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

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the **Insurer** as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

18. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements and representations shall be deemed to be material to the risk assumed by the **Insurer**, are the basis of this policy and are to be considered as incorporated into this policy.

With respect to such statements and representations, no knowledge or information possessed by any **Individual Insured** shall be imputed to any other **Individual Insured**. If any person who executed the application knew that such statement or representation was inaccurate or incomplete, such statement shall not be imputed to any trustee, trustee emeritus or governor other than such signator and any other **Individual Insureds** who knew such statement or representation was inaccurate or incomplete.

19. SERVICE OF SUIT

It is agreed that in the event of the **Insurer's** failure to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause 19 constitutes, or should be understood to constitute, a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further

agreed that service of process in such suit may be made upon General Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, Massachusetts 02110-2103, or his or her representative, and that in any suit instituted against the **Insurer** upon this contract, the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the **Insurer** hereby designates the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in action, suit, or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

20. WORLDWIDE EXTENSION

Where legally permissible, this policy shall apply to any **Claim** made against any **Insured** anywhere in the world, with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.

21. HEADINGS

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