

LEXINGTON INSURANCE COMPANY
100 Summer Street
Boston, Massachusetts 02110

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY
INSURANCE POLICY**
Including Employment Practices and Securities Liability

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 the **Loss** of each and every **Individual Insured** of the **Company** arising from a **Claim** first made against such **Insureds** 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 their respective capacities as **Individual Insureds** of the **Company** except when and to the extent that the **Company** has indemnified such **Insureds**. The **Insurer** shall, in accordance with and subject to Clause 8, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE B: PRIVATE COMPANY INSURANCE

This policy shall pay the **Loss** of the **Company** arising from a:

- (i) **Claim** first made against the **Company**, or
- (ii) **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**, but, in the case of (ii) above, only when and to the extent that the **Company** has indemnified the **Individual Insured** for such **Loss** pursuant to law, common or statutory, or contract, or the Charter or By-laws of the **Company** 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.

2. DEFINITIONS

- (a) “**Affiliate**” means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.

- (b) **“Claim”** means:
- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
 - (2) a civil, criminal, administrative, regulatory or arbitration 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.
 - (3) an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (“EEOC”) (or similar state, local or foreign agency) which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

The term **“Claim”** shall include an **Employment Practices Claim** and a **Securities Claim**.

However, 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) **“Company”** means the **Named Entity** and any **Subsidiary** thereof.
- (d) **“Continuity Date”** means the date set forth in the Declarations.
- (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) “**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 Entity** or its **Subsidiaries**.
- (g) “**Employee(s)**” means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the **Company** shall also be an **Employee**, but only if the **Company** provides indemnification to such leased individual in the same manner as is provided to the **Company’s** employees. Any other individual who is contracted to perform work for the **Company**, or who is an independent contractor for the **Company** shall also be an **Employee**, but only if the **Company** provides indemnification to such individual in the same manner as that provided to the **Company’s** employees, and such individual is scheduled by written endorsement attached hereto and the **Company** pays any additional premium required by the **Insurer** relating to such individual.
- (h) “**Employment Practices Claim**” means a **Claim** alleging an **Employment Practices Violation(s)**.
- (i) “**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 **Company**;
 - (6) employment-related libel, slander, humiliation, defamation, invasion of privacy;
 - (7) wrongful failure to employ or promote;
 - (8) wrongful deprivation of career opportunity with the **Company**, 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;
- (11) failure to provide or enforce adequate or consistent corporate policies and procedure 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 **Employee(s)**, or applicant for employment with the **Company** or an **Outside Entity**, whether direct, indirect, intentional or unintentional.

With respect to any customer or client of the **Company**, whether individually or as a class or group, **Employment Practices Violation** shall mean only any actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

(j) "**Individual Insured(s)**" means:

- (1) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the **Company**, but only in their capacities as such. Coverage will automatically apply to all new directors, officers, management committee members or members of the Board of Managers of the **Company** after the inception date of this policy;
- (2) any past, present or future duly elected or appointed directors, officers, management committee members or members of the Board of Managers of the **Company** serving in the capacity as director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the specific written request or direction of the **Company**;
- (3) in the event the **Company** operates outside the United States, then the terms director, officer, management committee member or member of the Board of Managers shall also mean those titles, positions or capacities in such foreign **Company** which are equivalent to such positions in an organization incorporated or formed within the United States;
- (4) any **Employee(s)** of the **Company**; and
- (5) 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 **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered to be an independent contractor.

(k) “**Insured(s)**” means:

(1) an **Individual Insured**; and

(2) the **Company**.

(l) “**Loss**” means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest and **Defense Costs**; however, **Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiple damages; (5) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (6) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (7) 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 (8) 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 coverage for 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 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 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.

The term “**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: 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) “**Named Entity**” means the organization stated in Item 1 of the Declarations whether a corporation, association, limited liability company or other type of business organization.
- (n) “**Outside Entity**” means:
 - (1) a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended); or
 - (2) any other corporation, partnership, joint venture or other organization listed by endorsement to this policy.
- (o) “**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.
- (p) “**Related Wrongful Acts**” shall mean **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.

- (q) **“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 act 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.
- (r) **“Securities Claim”** means a **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities & Exchange Commission) made against an **Insured** anywhere in the world alleging a violation of any law, regulation or rule, whether statutory or common law, which is:
- (1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the **Company**; or
 - (2) brought by a securities holder of the **Company**, whether directly, by class action, or derivatively on the behalf of the **Company**, or otherwise, alleging any **Wrongful Act** of an **Insured**.
- (s) **“Subsidiary”** means:
- (1) any for-profit organization which, on or before the inception of the **Policy Period**, is more than 50% owned by the **Named Entity**, either directly, or indirectly through one or more of its **Subsidiaries**;
 - (2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the **Company** as of the inception date of this policy which becomes a **Subsidiary** during the **Policy Period**. The **Named Entity** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or
 - (3) an organization which becomes a **Subsidiary** during the **Policy Period** (other than a for-profit organization described in paragraph (2) above), but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Named Entity** 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, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.

An organization becomes a **Subsidiary** when the **Named Entity** owns more than a 50% ownership interest in such **Subsidiary**, either directly, or indirectly through one or more of its **Subsidiaries**. An organization ceases to be a **Subsidiary** when the **Named Entity** ceases to own more than a 50% ownership in such **Subsidiary**, either directly, or indirectly through one or more of its **Subsidiaries**.

In all events, coverage as is afforded under this policy with respect to a **Claim** made against **Individual Insureds** or a **Claim** made against any **Subsidiary**, shall only apply to **Claims** 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 their respective capacities as such, or any matter claimed against such **Insured** solely by reason of their status as **Individual Insureds** of the **Company**;
 - (2) with respect to the **Company**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**;
 - (3) with respect to service on an **Outside Entity**, any matter claimed against an **Individual Insured** as defined in definition (j)(2) arising out of his or her serving as a director, officer, trustee or governor of an **Outside Entity** in such capacity, but only if such service is at the specific written request or direction of the **Company**.

With respect to an **Employment Practices Claim**, the term “**Wrongful Act**” shall include any **Employment Practices Violation**.

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 incompetency, insolvency or bankruptcy, who were **Individual Insureds** at the time the **Wrongful Act** 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: (1) profits in fact made from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or (2) payments to an **Insured** of any remuneration without the previous approval of the stockholders of the **Company**, which payment without such previous approval shall be held to have been illegal;
- (c) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act, or any willful violation of any statute, rule or law;

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

- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same as or a **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;
- (e) 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** had notice, or alleging any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Insured** serving in any capacity, other than a director, officer,

management committee member, member of the Board of Managers or **Employee** of the **Company**, or as a director, officer, trustee or governor of an **Outside Entity**;

- (g) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or a director, officer, trustee or governor thereof;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under any express contract or agreement; provided, however, that with respect to **Employment Practice Claims**, this exclusion shall not apply to the extent any liability does not arise under such express contract or agreement;
- (i) which is brought by any **Insured** or by the **Company**; or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured**; provided, however, this exclusion shall not apply to:
 - (1) any **Claim** brought by an **Individual Insured** where such **Claim** is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded by the terms of this policy; or
 - (2) an **Employment Practices Claim** brought by an **Employee** of the **Company** other than an **Employee** who is or was a director, member of the Board of Managers or management committee member of the **Named Entity**;
- (j) alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an **Affiliate** or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, that this exclusion will not apply to any public offering of securities, as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (i) the **Named Entity** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto; and (ii) the **Named Entity** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Named Entity** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
- (k) alleging, arising out of, based upon or attributable to the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within thirty (30) days prior to

it becoming an **Affiliate** or **Subsidiary**, the **Named Entity** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a “publicly traded entity” if any securities of such entity have previously been subject to a public offering;

- (l) 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; provided, however, that this exclusion shall not apply to **Securities Claims**;
- (m) for emotional distress, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**;
- (n) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, any actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or for any direction or request to test, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants; provided, however this exclusion shall not apply to any **Claim** brought by a securities holder of the **Company** in its capacity as such or to any **Employment Practices Claim**;
- (o) 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; provided, however, there is 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**;
- (p) 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**;

- (q) which is brought by any individual(s) or entity(ies) that own or control (whether beneficially, directly or indirectly) **5%** or more of the outstanding voting stock (hereinafter "**Major Shareholder**"); or by any security holder of the **Company** whether directly or derivatively, unless such security holder's **Claim(s)** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of any **Major Shareholder**;
- (r) alleging, arising out of, based upon or attributable to any failure or omission on the part of the **Insureds** or the **Company** to effect or maintain adequate insurance;
- (s) alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly: (1) any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, price fixing, price discriminations, unfair competition, tortious interference in another's business or contractual relationships, unfair or deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto; (2) any plagiarism, misappropriation, infringement or patent, copyright, trademark, service mark, trade secret, trade name or any other intellectual property rights; 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;
- (t) alleging, arising out of, based upon or attributable to the **Insureds** performance or rendering of or failure 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**;
- (u) 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;

- (v) with respect to Coverage B(i) only:
 - (1) for the rendering or failure to render any service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any:
 - (i) **Claim** solely alleging **Employment Practices Violations**;
 - (ii) **Securities Claim**; or
 - (iii) **Claim** for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this policy by written endorsement attached hereto;

- (2) seeking fines or penalties or non-monetary relief against the **Company**; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.

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

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 applicable Limit of Liability for Loss.

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 and Coverage B combined, arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and the **Discovery Period** (if applicable); however, the **Limit of Liability** for the **Discovery Period** (if applicable) shall be part of, and not in addition to, the **Limit of Liability** for the **Policy Period**. Further, a **Claim** which is made subsequent to the **Policy Period** or **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 aggregate **Limit of Liability** stated in Item 4 of the Declarations.

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 **Company** or the **Insureds** and shall remain uninsured, with regard to all **Loss** under: (1) Coverage A or B(ii) for which the **Company** has indemnified or is permitted or required to indemnify the **Individual Insured(s)** ("**Indemnifiable Loss**"), or (2) Coverage B(i). A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or a **Related Wrongful Act**.

Subject to the above paragraph, the Retention amounts stated in Item 5 of the Declarations shall apply. In the event a **Claim** triggers more than one amount stated in Item 5 of the Declarations, only the highest such amount shall apply, which amount shall apply to all **Loss** under such **Claim**.

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 Company on the behalf of any Insured or by the Insurer, whichever comes first.

- (a) The **Company** or 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 a **Related Wrongful Act** to the **Claim** for 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 **Company** or 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 **Related Wrongful Act** to 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 both Coverage A and Coverage B 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** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** 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 **Company** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Company** and 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 **Insured'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**.

Furthermore, in the event the **Insureds** do not consent to the first **Settlement Opportunity** within the time prescribed, then, subject to the applicable **Limit of Liability**, 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**, it being a condition of this insurance that the remaining 50% of such **Loss** excess of the **Settlement Opportunity Amount** shall be carried by the **Company** and the **Insureds** at their own risk and be uninsured. 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 9 applies to all Claims.

Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms ("**Panel Counsel Firms**") from which a selection of legal counsel shall be made to conduct the defense of all **Claims** made 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 Entity** is located. In such instance, however, the **Insurer** shall, at the written request of the **Named Entity**, 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 Entity**.

10. DISCOVERY CLAUSE

Except as indicated below, if the **Insurer** or the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this policy, the **Named Entity** shall have the right to a period of either one, two or three years following the effective date of such cancellation or nonrenewal upon payment of the respective "**Additional Premium Amount**" described below (herein referred to as the "**Discovery Period**") in which to give to the **Insurer** written notice of **Claims** first made against the **Insureds** during said **Discovery 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** 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 150% of the "full annual premium"; (2) two and three years shall be a premium 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 Entity** 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 three years or for such longer or shorter period as the **Named Entity** 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 Entity** 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 Entity**, 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 Entity** 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 or by mailing to the **Named Entity**, at the **Named Entity'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.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

12. CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

- a. the **Named Entity** 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; or
- b. any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the **Named Entity**, or acquires the voting rights of such an amount of such securities;

(either 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 Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 10 of the policy.

The **Named Entity** 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 **Company's** and the **Insureds'** rights of recovery thereof, and the **Company** 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 the **Company** or the **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, fraudulent act or willful violation of any statute, rule or law, 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 other valid and collectible insurance. This policy specifically shall be 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 an **Insured** arising out of his or her service as a director, officer, trustee or governor of an **Outside Entity** or an **Employment Practices Claim** against a leased **Employee** as described in definition (g) of Clause 2, coverage as is afforded by this policy shall be specifically excess of indemnification provided by such **Outside Entity** or such leasing company and any insurance provided to such **Outside Entity** or such leasing company.

Further, in the event other insurance is provided to the **Outside Entity** or leasing company referenced in the above paragraph, or is provided under any pension trust or employee benefit plan fiduciary liability insurance policy, and such other insurance is provided 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 Entity** shall act on behalf of the **Subsidiaries** and all **Insureds** with respect to the giving of notice of a **Claim**, the giving and receiving of 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 of the right 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. DISPUTE RESOLUTION PROCESS

The **Insured** shall have the option, in its sole discretion, to submit all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, to the alternative dispute resolution process (“ADR”) set forth in this clause.

The **Insureds** may elect the type of ADR discussed below. The **Insurer** agrees to submit to the ADR process chosen by the **Insured**. Once elected, the ADR cannot be terminated prior to a determination without the consent of the **Insured** and the **Insurer**.

There shall be two choices of ADR: (1) non-binding mediation administered by the American Arbitration Association, in which the **Insurer** and **Insureds** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association under or in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall be composed of three disinterested individuals. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator(s) or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Entity** is incorporated or formed in the construction or interpretation of the provisions of this policy; provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the

termination of the mediation. In all events, each party shall share equally the expenses of the ADR.

Either choice of ADR may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations page as the mailing address for the **Named Entity**. The **Named Entity** shall act on behalf of all **Insureds** in deciding to proceed with ADR under this clause.

18. ACTION AGAINST INSURER

Except as provided in Clause 17 of the policy, 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** or the **Company** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or the **Company** or their legal representatives. Bankruptcy or insolvency of the **Company** or the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

19. 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**, except for those person or persons who executed the application, 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, then this policy will be void as to all **Insureds** other than **Individual Insureds** who are “non-employee Directors” of the **Company** and who did not personally know the statement or representation to be inaccurate or incomplete. (The term “non-employee Director” shall have the meaning described in Securities & Exchange Commission rules or regulations promulgated pursuant to Section 16 of the Securities Exchange Act of 1934).

20. 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 20 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.

21. 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.

22. HEADINGS

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