

# CARE RISK RETENTION GROUP, INC.

## NOTICES

**This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.**

THIS IS A CLAIMS MADE AND REPORTED FORM

### **PROFESSIONAL LIABILITY INSURANCE POLICY CLAIMS MADE – DEFENSE COSTS AND DAMAGES WITHIN LIMITS**

**THIS IS A CLAIMS MADE POLICY WITH DEFENSE COSTS INCLUDED WITHIN THE LIMITS OF LIABILITY. THE COVERAGE PROVIDED BY THIS POLICY IS LIMITED ONLY TO THOSE CLAIMS WHICH ARISE FROM PROFESSIONAL SERVICES RENDERED AFTER THE RETROACTIVE DATE STATED IN THE DECLARATIONS AND WHICH ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO US DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD.**

**THIS POLICY MAY DIFFER SUBSTANTIALLY FROM OTHER POLICIES THAT YOU MAY HAVE HAD PREVIOUSLY AND MUST BE READ VERY CAREFULLY.**

The coverage provided under this **Policy** is limited to liability for **Claims** first made against the **Insured** for **Bodily Injury** arising from an **Occurrence** subsequent to the **Retroactive Date** stated in the Declarations, which are first made against the **Insured** during the **Policy Period** and reported to CARE Risk Retention Group, Inc. (the “**Company**”) during the **Policy Period**. **Defense Costs** are included in the limits of liability and in the deductible stated in the Declarations.

**Defense Costs** incurred hereunder reduce the amount of coverage available to you to pay **Claims** unless this **Policy** is specifically endorsed to the contrary.

Various provisions in this **Policy** restrict coverage. Read the entire **Policy** carefully to determine rights, duties, and what is and is not covered.

Throughout this **Policy** the words “you” and “your” refer to the **Primary Insured** shown in the Declarations. The words “we,” “us,” “our,” and the “Company” refer to CARE Risk Retention Group, Inc. which is the insurance company covering you under this insurance policy. The word “**Insured**” means any person or organization qualifying as such under the definition of **Insured** as defined in Section 2 of the Terms and Conditions. Other words and phrases that appear in **bold** (other than captions) have special meaning as described in such definitions.

In consideration of payment of the premium and in reliance upon the statements made in the **Application**, which is made a part of and deemed attached to this **Policy** and which you as the **Insured** warrant as being true, complete and accurate, and subject to the Declarations and the limitations, conditions, provisions and other terms of this **Policy**, the **Insureds** and we agree as follows:

## COVERAGE SECTION

### A. INSURING AGREEMENT – PROFESSIONAL LIABILITY

We will pay all **Damages** and **Medical Payments** that an **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury** first made against such **Insured** during the **Policy Period** and reported to us during the **Policy Period** in accordance with the terms of this **Policy**.

Provided always that the **Occurrence** giving rise to such **Claim** takes place in the **Coverage Territory** subsequent to the **Retroactive Date** stated in the Declarations and first occurs:

1. during the **Policy Period**; or
2. prior to the **Policy Period**, provided that on the effective date of this **Policy** the **Insured**:
  - (i) had no knowledge of such **Occurrence**, or
  - (ii) could not reasonably have expected such **Occurrence** to result in a **Claim** against the **Insured** or any other party, whether baseless or not, and there is no prior policy or policies which provide insurance to the **Insured** for such liability or **Claim** resulting from such **Occurrence**, whether or not the available limits of liability of such prior policy or policies are sufficient to pay any **Defense Costs**, **Damages**, judgments, settlements, loss, indemnity or **Medical Payments**, or whether or not the deductible provisions and amount of such prior policy or policies are different from this **Policy**, and whether or not such prior policy or policies are collectible in whole or in part.

### B. SUPPLEMENTAL PAYMENTS

We will pay, with respect to any covered **Claim**:

1. The cost of bond(s) to release attachments, but only for bond amounts within the applicable limits of liability. We do not furnish these bonds.
2. All reasonable costs and expenses we expressly ask you to incur in writing, other than loss of earnings, while helping us to defend a **Claim**. We will also pay up to \$100 per day for loss of earnings, with a maximum of \$5,000 for each **Claim**, if you are away from your business at our written request to help us defend a **Claim**.
3. Prejudgment interest awarded against the **Insured** on the part of any judgment we pay.
4. All interest on the full amount of any covered judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited such payment in court.

These payments reduce the limits of liability and in no event would any of these payments serve to increase the limits of liability or call for payments by us, in the aggregate, that exceed the limits of liability.

## TERMS AND CONDITIONS

These Terms and Conditions are intended to modify, limit, and otherwise specify the coverage potentially available pursuant to the Insuring Agreement(s) located in the Coverage Section of this **Policy**.

### 1. Defense and Settlement

We have the right and duty to defend any **Claim** covered by the **Policy** and such obligation is limited to the payment of amounts constituting **Defense Costs**. We will appoint an attorney for you. We have the right, but not the duty or obligation, to investigate any **Occurrence** and the costs of any such investigation will be deemed **Defense Costs**, even if incurred prior to the existence of a **Claim**.

Our obligations under the **Policy**, including but not limited to our duty to defend any **Claim** will end once the limits of liability, as stated in the Declarations, is exhausted by the payment of covered judgments, settlements, or **Defense Costs**. Our duty to defend any **Claim** also will end when and if, solely at our option, we tender to you, to any plaintiff or plaintiffs, or into any court of competent jurisdiction, the applicable limits of liability under the **Policy**. Such tender will not only end our duty to defend, but will constitute full satisfaction of all of our duties and obligations under the **Policy** with respect to that **Claim**. If our duty to defend ends with respect to any **Claim**, we will notify you so that you can arrange to take control of the defense of the **Insureds**. We will take whatever reasonable steps are necessary to avoid a default judgment during a transfer of control of the defense of any such **Claim**. If we do so, you agree to repay the reasonable fees, costs, and expenses incurred by us in excess of the applicable limits of liability during the transfer and further agree that, in undertaking the steps necessary to avoid a default judgment during the transfer, we have not waived any rights under the **Policy**.

We will not settle any **Claim** without your consent. We may, with your written consent in a form acceptable to us, settle any **Claim** for any monetary amount that we consider reasonable. If you do not give your consent to such settlement, our maximum liability for any judgment or settlement on account of such **Claim** will not exceed the amount for which we could have settled such **Claim** and our right and duty to defend that **Claim** will end upon your refusal to give such consent. You and/or the **Insureds** will then have the duty to defend such **Claim**.

The **Insureds** will not incur any **Defense Costs**, retain defense counsel, settle, or offer to settle any **Claim**, assume any contractual obligation, admit liability, voluntarily make any payment or confess or otherwise consent to any damages or judgments with respect to any **Claim** without our prior written consent, which consent shall not be unreasonably withheld. We will not be liable for any **Defense Costs**, settlement, assumed obligation, admitted liability, voluntary payment, confessed damages or judgments to which we have not consented in writing.

The **Insureds** will provide full cooperation and all information and particulars that we may request to conduct an investigation, defend a **Claim**, or reach a settlement of the **Claim**. The **Insureds** agree that, in the event of an **Occurrence** or a **Claim**, they will do nothing that may increase our liability, compromise any defenses, or prejudice our position or rights of recovery.

### 2. Definitions

- a. **Application** means all applications, including attachments and submitted materials, for this **Policy** or for any policy of which this **Policy** is a renewal or replacement. All such application, attachments and materials are deemed attached to and incorporated into this **Policy** even if not physically attached.
- b. **Bodily Injury** means physical bodily injury, sickness, or disease, not including emotional distress, sustained by a person, including death, resulting from any act, error, or omission in performing or failing to perform **Professional Services**.

c. **Claim** means:

1. a written notice received by an **Insured** alleging that a person or entity has been damaged by an **Insured** and: (i) demanding monetary damages; or (ii) notifying the **Insured** of an intention to hold an **Insured** responsible for an **Occurrence**; or
2. the filing of a civil lawsuit or arbitration proceeding against an **Insured**.

Notifying us of an **Occurrence** that may result in a **Claim** as required under “Section 5 – Notice Provisions” does not constitute a **Claim** first made hereunder unless it incorporates Items 1 or 2 above. A written demand for patient records does not constitute a **Claim** unless it also incorporates Items 1 or 2 above.

d. **Coverage Territory** means anywhere in the world where you are properly licensed, provided the **Claim** is made within the United State of America, its territories or possessions, Puerto Rico or Canada.

e. **Damages** means the sum that the **Insured** becomes legally obligated to pay as a result of a **Claim**.

**Damages** includes:

1. Prejudgment interest awarded against the **Insured** on that part of the judgment covered by this **Policy**;
2. Interest on that part of the judgment covered by this **Policy**, after the entry of the judgment and before we have paid, offered to pay, or deposited in court that part of the judgment that is within our limits of liability; and
3. The cost of a jury bond or an appeal bond required in defense of a **Claim** to which this Policy applies.

**Damages** do not include:

- i. Sanctions;
- ii. Civil, criminal, or administrative fines or penalties, including any attorneys’ fees, attorneys’ expenses, or court costs awarded to a **Claimant**;
- iii. Payment for **Professional Services**, including any refund, withdrawal, or reduction of fees paid to the **Insured**, or
- iv. Punitive damages, treble damages, exemplary damages, non-compensatory damages, or damages representing a multiple of the compensatory amounts.

f. **Deductible** means the amount, if any, stated in Item 4 of the Declarations, which shall apply to both **Damages** and **Defense Costs**.

g. **Defense Costs** means all reasonable and necessary fees, costs, and expenses incurred by us in the investigation and defense of any covered **Claim**.

**Defense Costs** do not include salaries and expenses of our employees, your **Employees**, or of any **Insured**;

- h. **Employee** means only those individuals that are listed on the **Application** form and whose labor or service is engaged by and directed by the **Primary Insured**, including authorized volunteers, students of the health care professions in training programs sponsored by or controlled by the **Primary Insured** and all staff members, whether part-time, full-time, seasonal, or temporary, and including **Leased Employees**.
- i. **General Anesthesia** means a depressed state of consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposely to physical stimulation or verbal command. For purposes of this Policy, **General Anesthesia** applies to any form of anesthetic or anesthesia and includes deep sedation.
- j. **Insured** means:
1. If an individual, you are an **Insured**, but only with respect to the conduct of business of which you are the sole owner.
  2. If a partnership, joint venture, limited liability company or other organization, only the named physician named in the Declarations is an **Insured**. Your shareholders, members, partners, and their spouses are not **Insureds** under this **Policy** unless they are specifically named in the Declarations or by endorsement.  
  
Coverage is not provided for the partnership, joint venture or limited liability company except to the extent that coverage for the **Claim** is or would be provided to the physician named in the Declarations.
  3. **Employees** specifically named in the Declarations.
  4. Other **Employees** not specifically named in the Declarations are **Insureds**, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. Notwithstanding the foregoing, **Employees** not specifically named in the Declarations are not **Insureds** if they are engaged in any medical activity, including but not limited to preparation and delivery of injections, diagnosis or other contact that involves, in any way, the treatment of patients.
- k. **Insured's Profession** means **Professional Services** rendered to patients within the **Insured's** specialty as: a physician, surgeon, general dentist, endodontist, orthodontist, pediatric dentist, periodontist, prosthodontist or oral or maxillofacial surgeon, intern, extern, resident, fellow, optometrist, podiatrist, psychologist or psychiatrist, cardiac perfusionist, certified registered nurse anesthetist, midwife, physician assistant, or nurse practitioner.
- l. **Insured Subsidiary** means any wholly-owned subsidiary of the **Primary Insured** that is identified in the **Application**, the Declarations or an endorsement hereto.
- m. **Interrelated Claims** means all **Claims** arising from an **Occurrence(s)** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes. **Claims** may be **Interrelated Claims** whether or not they involve the same causes of action, damages, patient(s), **Claimant(s)**, **Insured(s)**, or legal theory(ies).
- n. **Leased Employee** or **Locum Tenens** means any **Employee** who is leased to you to perform work at and for the **Primary Insured** and over whom you control the means and manner of their work.

- o. **Medical Payment** means any payment for **Professional Services** or payment for health care treatment or services, including surgery, rendered by any health care professional other than an **Insured** in connection with a **Claim** or **Interrelated Claims**.
- p. **Occurrence** means any actual or alleged error, omission, or accident in the furnishing of **Professional Services** as a qualified physician in the normal course of activity as a qualified physician, including continuous or repeated exposure to substantially the same general harmful condition; providing that such **Occurrence** first occurred subsequent to the **Retroactive Date** reflected in the Declarations.
- q. **Policy** means, collectively, the Declarations, the **Application** (including any attachments), this **Policy** form, and any endorsements.
- r. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to any prior cancellation described in Section 18 of the Terms and Conditions of this **Policy**.
- s. **Premium Base** means the unit upon which the premium for this **Policy** is derived; whether outpatient visits, hours worked, number of patients, or any other variable used to determine the premium for this **Policy**.
- t. **Primary Insured** means the person(s) or organization(s) listed in Item 1 of the Declarations, whether as an individual, corporation, partnership, joint venture, association or otherwise, and any **Insured Subsidiary**.
- u. **Professional Services** means the rendering or failure to render health care, treatment or services, including surgery, within the **Insured's Profession** that the **Insured** provides to a patient within a doctor-patient relationship or as a consultant thereto. **Professional Services** does not include any advertising or marketing.
- v. **Retroactive Date** means the date specified in Item 5 of the Declarations.
- w. **Person**, or **Persons**, or **Claimant** wherever used in this policy, are to be read to mean one or more human beings who has/have allegedly sustained **Damages** because of an **Occurrence**.

### 3. **Limits of Liability and Deductibles**

- a. The amounts set forth in the Declarations are the maximum limits of liability for any **Claim** and in the aggregate for all **Damages**, judgments, settlements, **Defense Costs** and **Medical Payments** combined on account of any **Claim** and where applicable, all **Claims**, first made hereunder during the **Policy Period**. **Interrelated Claims** shall be deemed to constitute one single **Claim** for the purposes of determining the applicable limits of liability of this **Policy** and shall be deemed first made at the earliest point any such portion of an **Interrelated Claim** is made.
- b. The limits of liability are subject to the aggregate limit of liability specified in Item 4 of the Declarations. As such, any sub-limits for any specific coverages set forth in the Declarations are further limitations of coverage are included within the aggregate limit of liability and do not increase our maximum liability under this **Policy**. If no aggregate limit of liability is specified in the Declarations, then the aggregate limit of liability is a maximum of three times the per **Claim** or **Interrelated Claim** Limits, unless otherwise noted by endorsement.
- c. If the limits of liability for any Coverage Section are exhausted by payment of **Damages**, judgments, settlements, **Defense Costs** or **Medical Payments**, our obligations under this **Policy** shall be deemed completely fulfilled and extinguished.

- d. Our liability under the Coverage Section with respect to all **Defense Costs, Damages, judgments, settlements and Medical Payments** arising from any single **Claim** shall apply only in excess of the Deductible set forth in the Declarations for the Coverage Section. The Deductible amount shall be your uninsured responsibility and shall apply to **Defense Costs**.
  - e. **Defense Costs** paid by us shall be included within each of the limits of liability set forth in Item 4 of the Declarations, and **Defense Costs** shall reduce each such limits of liability unless otherwise noted by endorsement to this **Policy**.
  - f. The limits of liability for the Extended Reporting Period or Periods (as described in Section 16 below), if exercised, shall be part of and not in addition to the applicable limits of liability and aggregate limit of liability for the **Policy Period**. The purchase of the Extended Reporting Period shall not increase or reinstate the limits of liability set forth in the Declarations, which shall be our maximum liability for all **Damages, judgments, settlements, Defense Costs and Medical Payments** on account of all **Claims** first made and reported during such **Policy Period** and Extended Reporting Period. **Defense Costs** will always be included within the limits of liability set forth in Item 4 of the Declarations and **Defense Costs** shall reduce each such limits of liability in respect of any Extended Reporting Period unless otherwise noted by endorsement to this **Policy**.
  - g. It is a condition precedent to any of our obligations under this **Policy** that you pay any amounts due under the Deductible within 10 days of being requested to do so. The total amount(s) due will be determined by the Company. Unless restricted by the laws of the State in which a **Claim** is filed, your failure to timely pay your Deductible in accordance with this paragraph shall be deemed a material breach of this **Policy** and will relieve us of any further obligations in respect of that **Claim**. We may ask you to pay your Deductible at any time, including before we have made any payments under this **Policy**.
  - h. If you have provided security for the payment of your Deductible, we may draw upon that security at any time. You are responsible for payment of your Deductible. We will not reimburse you for your Deductible. The Deductible is included within the **Policy** limits of liability and is not in addition to the **Policy** limits of liability.
  - i. The Deductible is the amount shown in Item 4 of the Declarations and is the amount that shall apply to each and every **Claim** or **Interrelated Claim** during the **Policy Period**. Notice of an **Occurrence** that does not satisfy Section 2(c)1 or 2(c)2 does not constitute notice of a **Claim** under this **Policy**.
  - j. We may elect to incur fees, costs, and expenses upon notice of an **Occurrence**, and any such amounts paid by us will be considered to be part of any future **Claim** in the event that a **Claim** is properly made and reported under this **Policy** (as provided in Section 5 of this **Policy**) with a common nexus to any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes to the **Occurrence**. We may also seek reimbursement for any such fees, costs, and expenses that are or would be part of the Deductible. Notwithstanding the foregoing, we are not obligated to pay any payments or take any actions prior to a **Claim** being made and reported in accordance with this **Policy**.
4. **Coordination of Coverage Sections (Only applies if more than one Coverage Section is specifically stated in the Declarations using the word “Coverage Section”)**

If there is more than one Coverage Section in the Declarations then, in the event that any **Claim** or **Interrelated Claim** is a subject of coverage under more than a single Coverage Section, the terms,

conditions, definitions, and exclusions of each Coverage Section shall be applied separately to that part of the **Claim** covered by each such Coverage Section. The **Primary Insured** and the Company shall use their best efforts to reach agreement on the question of whether more than a single Coverage Section applies to any **Claim**. In the event that more than a single Coverage Section is applicable, the largest applicable limits of liability, and its corresponding Deductible, shall be applied to the entire **Claim** or **Interrelated Claim**. If the largest applicable limits of liability is equal to the limits of liability of another Coverage Section that also applies, then the largest applicable Deductible shall be applied to the **Claim**. Under no circumstances will more than one limit of liability be available to any **Claim** or **Interrelated Claims**.

## 5. Notice Provisions

Once a **Claim** is made against an **Insured**, it is an express condition precedent to any of your rights under this **Policy** that you give us immediate written notice thereof and provide us with copies of all documentation comprising the **Claim** as well as all authorizations, cooperation and assistance we may thereafter request. In no event may written notice to us be made more than 30 calendar days after the earlier of: (a) actual or constructive receipt of a **Claim** by the **Insured**; or (b) the expiration of the Policy Period (or any Extended Reporting Period). Strict adherence to this paragraph is an express condition precedent to any of your rights under this **Policy**, and it shall be presumed that we are materially prejudiced by any deviation from your obligations under this paragraph.

Any notices to us under this **Policy** must be provided by certified mail, overnight delivery, emailed, or acknowledged fax to:

**CARE RISK RETENTION GROUP, INC.**  
**9300 Shelbyville Road, Suite 204**  
**Louisville, Kentucky 40222**  
**Fax Number: 502-895-6406**  
**Email: claims@care-ins.com**

Notices to the **Insured(s)** are deemed effective if sent by U.S. Mail or private delivery service to the **Primary Insured** at the address listed in the Declarations.

## 6. Exclusions

The following exclusions shall be applicable to this **Policy** and all Coverage Sections, unless expressly stated in writing or endorsed to the contrary.

We are not obligated to defend or pay any **Defense Costs, Damages**, judgments, settlements, loss, indemnity or **Medical Payments** on account of any **Claim**:

- a. based on, arising out of, or in any way involving, in whole or in part, any **Occurrence**, fact, circumstance, or situation:
  1. that was the subject of written notice given under any policy this **Policy** succeeded in time, unless such prior policy was issued by the Company and provided that the **Occurrence** occurred subsequent to the **Retroactive Date** of this **Policy**;
  2. that was the subject of any written demand for monetary damages, administrative or arbitration proceeding, or civil or criminal litigation against any **Insured** prior to the original effective date of the **Policy Period**, or that alleges the same or substantially the same fact, circumstance, or situation underlying or alleged in the prior matter;



3. that was reported in the **Application** or was identified in any summary or statement of **Claims** or potential **Claims** submitted in connection with the **Application**;
  4. that was reported before the original effective date of the **Policy Period** of the first policy issued by the Company to you;
  5. of which any **Insured** had actual or constructive knowledge prior to the inception of the first insurance policy issued to you by the Company and continuously renewed by the Company, if such knowledge would cause a reasonable person to believe that a **Claim** might be made; or
  6. arising out of **Professional Services** rendered prior to the **Retroactive Date** of this **Policy**.
- b. based upon, arising out of, or in any way involving, in whole or in part, any **Damages** or injury expected or intended by any **Insured**.
- c. based upon, arising out of, or in any way involving, in whole or in part:
1. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any hazardous substances, wastes or pollutants, regardless whether such was accidental or intentional; or
  2. any error or omission committed or alleged to have been committed by the **Insured** which in any manner related to or arises out of the actual, alleged or threatened discharge, dispersal, release, escape or seepage of any hazardous substances, toxic substances, wastes or pollutants; or
  3. any direction, request, demand, order or voluntary decision to test for, abate monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste;
- Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products and waste, and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, medical waste, material to be recycled, reconditioned or reclaimed;
- d. based upon, arising out of, or attributable to, in whole or in part, the liability of others assumed by an **Insured** under any oral or written contract or agreement, except to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- e. based on, arising out of, or in any way involving, in whole or in part, any conduct, act, error or omission of any **Insured** serving in any capacity other than that specified in the **Application**;
- f. based on, arising out of, or in any way involving, in whole or in part, any **Insured** serving in any capacity in any organization which at the time of such service is not a **Primary Insured**;
- g. based on, arising out of, or in any way involving, in whole or in part, any conduct, act, error or omission by any **Insured** or the **Primary Insured** to the extent the conduct, act, error or omission occurred before the person or organization became an **Insured** or after the person or organization ceased to be an **Insured**;

- h. based on, arising out of, or in any way involving, in whole or in part, any **Insured** or the **Primary Insured** gaining any profit, remuneration or financial advantage to which such party was not legally entitled;
- i. based on, arising out, or in any way involving, in whole or in part, any deliberately dishonest, malicious, criminal, or fraudulent act or omission, or any willful violation of civil law by an **Insured** or at the direction or ratification of an **Insured**; provided, however, this exclusion shall not apply to any **Insured** that did not commit, participate in, or have knowledge of any such act, omission, or violation described in this exclusion.

Also, this **Policy** does not cover any **Claim(s)**, **Defense Costs**, or **Damages** for:

- 1. Criminal fines or penalties;
  - 2. Criminal charges or indictments;
  - 3. Any bail bond;
  - 4. Criminal investigation(s)
  - 5. Criminal proceedings of any kind.
- j. based on, arising out of, or in any way involving, in whole or in part, any obligation of an **Insured** under any workers' compensation, employers liability, disability benefits, unemployment compensation, or similar law;
  - k. based on, arising out of, or in any way involving, in whole or in part, any obligation except that arising out of the provision of **Professional Services**;
  - l. based on, arising out of, or in any way involving, in whole or in part, any damage sustained by or injury to:
    - 1. An **Employee** or an independent contractor (including any employees of an independent contractor) working for you, or which you have supplied to another, arising out of and in the course of employment by the **Insured** or performing duties related, directly or indirectly, to the conduct of the **Insured's** business, including but not limited to any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment related practices; or
    - 2. The spouse, child, parent, brother or sister or any other family member or dependent or assignee of that **Employee**, independent contractor, or employee of an independent contractor as a consequence of paragraph 1. above;

This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of such injury or damage.

- m. based on, arising out of, or in any way involving, in whole or in part, any actual or alleged discrimination of any kind, including but not limited to allegations of harassment, civil rights violations or any other discrimination based on race, color, creed, age, gender, sexual preference or orientation, national origin, physical handicap, HIV and AIDS status, disability, or marital status, even if such discrimination is related to **Professional Services**;
- n. based on, arising out of, or in any way involving, in whole or in part any damages or injury arising out of the ownership, maintenance, use, loading or unloading, or entrustment to others of any aircraft, auto or watercraft, even if such activities are related to **Professional Services**. For purposes of this paragraph, "use" includes operation, loading, or unloading;

- o. based on, arising out of, or in any way involving, in whole or in part any damage to real or personal property in the care, custody, or control of an **Insured**, or for any damage to real or personal property owned, rented, or occupied by an **Insured**;
- p. by, on behalf of, or with the assistance of, in whole or in part, any:
  - 1. **Insured**;
  - 2. Entity, which at the time of the **Occurrence**, at the time of the **Claim**, or during the pendency of the **Claim**:
    - i. is or was to any extent owned or controlled by any **Insured**;
    - ii. is or was to any extent affiliated with any **Insured** through any common ownership or control; or
    - iii. is or was to any extent acting with any **Insured** as a director, officer, partner, or principal stockholder; or
  - 3. **Employee**, former **Employee**, or job applicant of the **Insured** in their capacity as such;
- q. based on, arising out of, or in any way involving, in whole or in part, any actual or alleged anti-trust law violation, or any agreement or conspiracy to do any unlawful tortuous act, restraint of trade, unfair trade or business practices, abuse of process, slander and/or libel, interference with any contract, statements or acts which allegedly violate state and/or federal anti-trust laws, or unfair competition, even if such activities are related to **Professional Services**;
- r. based on, arising out of, or in any way involving, in whole or in part, any actual or alleged misappropriation of ideas, information or materials, infringement of copyright, trademark, patent, title or slogan, improper gaining or misuse of confidential or proprietary information, materials or trade secrets, advertising injury, interference with actual or prospective business relationships, contracts or contractual relationships, or unfair competition;
- s. based on, arising out of, or in any way involving, in whole or in part, any actual or alleged violation of:
  - 1. The Employee Retirement Income Security Act of 1974. This includes fiduciary liability or liability arising out of the administration of any employee benefit plan;
  - 2. The Securities Act of 1933;
  - 3. The Securities Exchange Act of 1934;
  - 4. Any state Blue Sky or securities law; or
  - 5. The Fair Labor Standards Act, the National Labor Relations Act of 1938, the Worker Adjustment and Retraining Notification Act (Public Law 100-379 of 1988), the Consolidated Omnibus Budget Reconciliation Act of 1985, or the Occupational Safety and Health Act;

This exclusion also applies to any rules or regulations promulgated under any of the foregoing, amendments thereto, or any similar provisions of any federal, state or local laws;

- t. based on, arising out of, or in any way involving, in whole or in part, any return, withdrawal, restitution or reduction of professional fees, profits or other charges, fines sanctions, taxes, penalties, awards or any amounts deemed uninsurable pursuant to any applicable law, or costs or expenses incurred by the **Insured** to comply with any demand for equitable relief or injunctive relief, even if such compliance is compelled as a result of a judgment, award or settlement;

- u. based on, arising out of, or in any way involving, in whole or in part, any act as a member of a formal accreditation or professional review or licensing board, quality control board, or any similar board or committee unless specifically agreed to in writing by us and endorsed on this **Policy**;
- v. based on, arising out of, or in any way involving, in whole or in part, any defective product, including but not limited to any drug or other pharmaceutical product, or delivery system for such product. At our sole option we may defend you until such time as it can be determined that the product is defective and the cause of the injury and the defense is taken over by the manufacturer of the product;
- w. based on, arising out of, or in any way involving, in whole or in part, any allegations of:
  1. malicious prosecution;
  2. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  3. oral or written publication of material that allegedly slanders or libels a person or organization or allegedly disparages a person's or organization's goods, products or services;
  4. oral or written publication of material that allegedly violates a person's right of privacy; or
  5. false arrest, detention or imprisonment;
- x. based on, arising out of, or in any way involving, in whole or in part, any punitive/exemplary damages including:
  1. punitive or exemplary damages;
  2. civil fines or penalties;
  3. criminal fines or penalties;
  4. administrative or other fines or penalties, including any attorneys' fees, attorneys' expenses or court costs awarded to a **Claimant**;
  5. sanctions; or
  6. any portion of any judgment, award or verdict that represents a multiple of compensatory awards or amounts.
- y. based on, arising out of, or in any way involving, in whole or in part, the **Insured's** handling, selling, distribution, disposal, use of, or exposure to asbestos, asbestos dust, asbestos fibers or asbestos products, however caused, or any consequence of any of these;
- z. based on, arising out of, or in any way involving, in whole or in part, any disciplinary proceeding(s) or investigations. We do not provide coverage for fines, penalties, or other costs assessed against the **Insured** arising out of any disciplinary proceeding or investigation before any state licensing board, hospital peer review board, or other similar entity;
- aa. based on, arising out of, or in any way involving, in whole or in part, any acts or omissions of or by any licensed health care provider under written or oral contract with, or employed by, the **Primary Insured** unless such person is specifically named as an **Insured** in Item 1 of the Declarations or in an endorsement attached to this **Policy**;
- bb. to the extent any portion of such **Damages**, judgments, settlements, loss, indemnity or **Medical Payments** represents a multiple of compensatory damages.

- cc. based on, arising out of, or in any way involving, in whole or in part, any acts or omissions of or by any cardiac perfusionist, certified registered nurse anesthetist, midwife, physician assistant or nurse practitioner under any written or oral contract with, or employed by, the **Primary Insured** unless such person is specifically named as an **Insured** in Item 1 of the Declarations or in an endorsement attached to this **Policy**;
- dd. based on, arising out of, or in any way involving, in whole or in part, any employment dispute, **Bodily Injury**, Property Damage (meaning physical injury to, or destruction of tangible property, including all resulting loss of use of such property), concerning any actual or alleged **Employee** of the **Insured**, unless the basis of such **Claim** is the **Insured's** treatment of the **Employee** as a patient;
- ee. based on, arising out of, or in any way involving, in whole or in part, any **Insured's** refusal to employ, refusal to treat, wrongful hiring, wrongful termination of employment or employment practice of any kind and for any reason, including but not limited to: race, color, creed, national origin, physical or other disability, marital status, age, gender, gender identity, sexual preference or orientation, or HIV or AIDS status; further including the alleged creation of a work environment that is intimidating, hostile, or offensive;
- ff. based on, arising out of, or in any way involving, in whole or in part, the administration of any form of anesthetic in a dosage designed to render **General Anesthesia** to the patient, unless performed in a hospital or surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), American Association for Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF), the Canadian Council on Hospital Accreditation in Canada, or a similar industry recognized accreditation board which has been previously approved in writing by the Company;
- gg. for equitable relief, injunctive relief, declaratory relief, non-monetary relief, or any other similar relief;
- hh. based on, arising out of, or in any way involving, in whole or in part, any **Professional Services** which occur:
  - 1. while the **Insured's** professional license to practice is inactive, under suspension, has been revoked, surrendered, or otherwise , terminated;
  - 2. prescribing or dispensing of controlled substances while the **Insured's** license or registration to prescribe or dispense such controlled substances is not in effect; or
  - 3. after the **Insured** retires or becomes permanently disabled;
- ii. based on, arising out of, or in any way involving, in whole or in part, any actual or alleged fraud, abuse, or non-compliance with Medicare/Medicaid regulations even if such activities are related to **Professional Services**;
- jj. based on, arising out of, or in any way involving, in whole or in part, any **Professional Services** rendered while the **Insured** is under the influence of any type of alcohol, narcotic, hallucinogenic agent, or any other type of intoxicant;
- kk. based on, arising out of, or in any way involving, in whole or in part, any **Bodily Injury**, except if such **Claim** or **damages** arise from **Professional Services** rendered in a doctor-patient relationship;

- ll. brought by, on behalf of, or with the assistance of any present, former, or prospective **Employee**, partner, officer, director, stockholder, or **Insured** under this **Policy** against any other **Insured** under this **Policy**, except if such **Claim** or **Damages** solely arises from **Professional Services** rendered in a doctor-patient relationship;
- mm. based on, arising out of, or in any way involving, in whole or in part, any hazardous properties of any nuclear material or in connection with any nuclear facility, however caused;
- nn. based on, arising out of, or in any way involving, in whole or in part, any vicarious liability of the **Insured(s)** unless the party through which the **Insured** is allegedly vicariously liable (including but not limited to hospitals, other medical professionals, or staff) is specifically named as an **Insured** in Item 1 of the Declarations or in an endorsement attached to this **Policy**, and it is further specifically understood and agreed that this **Policy** does not provide coverage for, or on behalf of, any person or entity that is not an **Insured**;
- oo. based on, arising out of, or in any way involving, in whole or in part, any circumstances that are covered by or insurable under a fire or general liability policy, whether or not such policy is in place;
- pp. based on, arising out of, or in any way involving, in whole or in part, any circumstances which would might be covered under a products liability policy, whether or not such policy is in place;
- qq. based on, arising out of, or in any way involving, in whole or in part: (i) any surgical procedure which is intended in any manner to affect obesity, fat reduction, weight loss, or weight control, including, but not limited to, the insertion of a gastric bubble or similar device, jejunoileal, jejunocolic, or ileocolic bypass procedure, and gastric restrictive surgery such as gastric stapling, (ii) any sex change operations, (iii) any silicone injections or silicone gel breast implants for augmentation mammoplasty, (iv) any electroshock therapy, (v) any liposuction, suction lipectomy, and/or suction-assisted fat removal procedures, (vi) any Chelation therapy unless FDA approved, or (vii) any abortions except when an abortion involves the immediate threat to the life of the mother;
- rr. based on, arising out of, or in any way involving, in whole or in part, any design, development, manufacture, assembly, sale, trade, advertising, distribution, or handling of any good, materials, products, or devices by the **Insured** or any other entity doing business under the **Insured's** name, ratified by the **Insured**, or with the **Insured's** permission;
- ss. brought against an **Insured** as a proprietor, owner, stockholder, partner, investor, joint-venturer, officer, director, administrator, committee member, superintendent, executive officer, or medical director of a:
  1. Hospital, nursing home, or sanitarium;
  2. Laboratory;
  3. Health maintenance organization, health care service plan, preferred provider organization or any similar health care entity or delivery system; or
  4. Health care supply or support organization, managed care facility, or any other business enterprise, organization or operation, whether or not related to patient care and/or treatment, not named as an **Insured** in item 1 of the Declarations or in an endorsement added to this **Policy**;

- tt. for any actual or attempted sexual act(s), sexual contact or intimacy with a patient, or threatened sexual abuse, sexual molestation, assault, battery, or sexual exploitation of a patient, even if such sexual acts/molestation are/is related to **Professional Services**. Provided that this exclusion shall only apply following a determination, in fact, that the aforementioned acts, or attempted acts, occurred;
- uu. based on, arising out of, or in any way involving, in whole or in part, any **Professional Services** rendered to your spouse, child, parent, grandparent, grandchild, sibling, or any dependent;
- vv. based on, arising out of, or in any way involving, in whole or in part, any guarantee of cure or particular results or outcome of **Professional Services** rendered by the **Insured**;
- ww. based on, arising out of, or in any way involving, in whole or in part, any fee disputes for patient treatment;
- xx. based on, arising out of, or in any way involving, in whole or in part, any experimental or investigational procedures, clinical trial, device(s) or practice protocols;
- yy. based on, arising out of, or in any way involving, in whole or in part, any use, administration, prescription, recommendation, dispensing of, or use of, any drug, pharmaceutical, marijuana and its derivatives, or class 3 medical device disapproved, or not yet approved, by the United States Food and Drug Administration for treatment of natural persons or for any unapproved or "off-label" use;
- zz. based on, arising out of, or in any way involving, in whole or in part, any medical records that have been amended, appended, deleted, corrected, falsified, edited, altered, or modified not in accordance with generally accepted standards by the **Insured**, at the **Insured's** direction, or by any person for whose acts or omissions the **Insured** is legally responsible;
- aaa. based on, arising out of, or in any way involving, in whole or in part, any **Professional Services** by any locum tenens doctor not previously approved in writing by the Company (Locum Tenens coverage will always be on a shared limits basis); or
- bbb. based on, arising out of, or in any way involving, in whole or in part, any:
  - 1. war, including undeclared or civil war;
  - 2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;
  - 3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or
  - 4. terrorism, including any action taken in hindering or defending against an actual or expected incident of terrorism regardless of any other cause or event that contributes concurrently or in any sequence to the professional services, professional incident, injury or damage. Terrorism means activities against persons, organizations, or property of any nature:
    - i. that involve the following or preparation for the following:
      - a. use or threat of force or violence;
      - b. commission or threat of a dangerous act; or
      - c. commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

- ii. when one or both of the following applies:
  - a. the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. it reasonably appears to us that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives, or to express (or express opposition to) a religion, philosophy, or ideology.

This exclusion shall not apply to **Professional Services** rendered in the treatment of those injured by an act of war or terrorism.

## 7. **Interrelated Claims**

**Interrelated Claims** shall be deemed to constitute one **Claim**, and shall be deemed to have been first made on the date of the earliest date such **Claim** was in fact first made, regardless of whether such date is before or during the **Policy Period**.

## 8. **Other Insurance**

This **Policy** shall only apply as excess over any other valid and collectible insurance. This **Policy** shall be specifically excess of any other policy pursuant to which any other insurer has a duty or obligation to defend a **Claim** for which this **Policy** may be obligated to pay **Defense Costs, Damages**, judgments, settlements, loss, indemnity or **Medical Payments**.

## 9. **Changes in Exposure**

- a. If the **Primary Insured** acquires or creates another entity or acquires or creates a new operation or facility not specifically scheduled as a Designated Location in Item 3 of the Declarations, coverage will not be available to such entity or operation unless and until we provide our prior written agreement to extend such coverage. We will be entitled to impose such amended terms and conditions and adjust the premium as we may require.
- b. If during the **Policy Period** the **Primary Insured** or any **Insured Subsidiary** is acquired by, or majority control is assumed by, another entity, coverage under this **Policy** will continue but only with respect to any **Occurrence(s)** taking place prior to the effective date of the acquisition or change of control.
- c. If during the **Policy Period** the **Primary Insured** or any **Insured Subsidiary** is acquired by, or control is assumed by, another entity as described (b), above, the **Primary Insured** must give us notice as soon as practicable, but in any event within thirty (30) days. This **Policy** may be cancelled after the effective date of the acquisition or change of control and the premium will be deemed fully earned on such date.

## 10. **Representations and Severability**

In issuing the **Policy**, we relied upon the statements and representations in the **Application**. The **Insureds** warrant that all such statements and representations are true and it is understood and agreed that all such statements and representations are deemed material to the acceptance of the risk or the hazard assumed by us under this **Policy**.



The **Insureds** agree that in the event any such statements or representations are false, this **Policy** will not afford any coverage for any **Claim** with respect to any **Insured** who knew or reasonably should have known of such falsity, whether or not such **Insured** knew that the **Application** contained false information, provided such **Claim** is based upon, arising out of, or in any way involving, in whole or in part such false statement or representation.

In the event that any provision(s) of this **Policy** is determined to be invalid and/or unenforceable, any such provision(s) shall be severable from the remainder of this **Policy** and shall not cause the invalidity or unenforceability of the remaining provisions of this **Policy**.

**11. Authorization Clause**

By acceptance of this **Policy**, the **Primary Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of notices concerning **Occurrences** or **Claims**, cancellation, the payment of premiums, the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements and the giving or receiving of any other notice provided for in this **Policy** and the **Insureds** agree that the **Primary Insured** will act on their behalf.

**12. Subrogation**

In the event of any payment under this **Policy**, we will be subrogated to all the **Insured's** rights of recovery against any person or entity other than an **Employee** of any **Insured**. The **Insured** shall cooperate with us and execute and deliver instruments or papers and do whatever else is necessary to secure and preserve such rights. The **Insured** shall do nothing to waive or prejudice our rights of recovery against any third parties.

**13. Alteration and Assignment**

This **Policy** cannot be changed, modified, altered, amended or assigned without our prior written agreement.

**14. Action Against Us**

No action shall lie against us unless, as an express condition precedent thereto, there has been full compliance with all terms, conditions, and covenants of this **Policy**. No person or organization shall have any right under this **Policy** to join us as a party to any action against **Insureds** to determine the **Insured's** liability, nor shall we be impleaded by the **Insureds** or their legal representatives. No **Claimant** has any rights, express or implied, under this **Policy**, and any such **Claimant** is not an intended third-party beneficiary under this **Policy**.

**15. Mandatory Bilateral Binding Arbitration**

We and the **Insureds** agree that any and all disputes, controversies, or claims arising out of or relating to this **Policy** or its breach, termination, interpretation, or invalidity, shall first be negotiated in a non-binding mediation. Sixty calendar days following the declaration of a mediation impasse, the dispute may be submitted to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot agree, the arbitration shall be administered by JAMS in accordance with its then prevailing Streamlined Arbitration Rules. In the event of arbitration, whether administered by the rules and procedures the parties have agreed, or if the parties cannot agree, as administered by JAMS, the panel shall consist of one arbitrator selected by JAMS, and the arbitrator shall not have the right to award punitive, exemplary, bad faith, or extra-contractual damages. In any arbitration, each party will bear its own legal fees and expenses. Judgment on any award rendered by the arbitrator may be entered in any court having

jurisdiction thereof. We and the **Insureds** agree to waive their right to have any dispute adjudicated in a court of law and agree that final binding arbitration is the sole adjudicatory remedy of any disputes, controversies, or claims arising out of or relating to the Policy. We and the **Insureds** agree that any mediation or arbitration will take place in the state indicated in Item 1 of the Declarations, and will be governed by the substantive laws of the state indicated in Item 1 of the Declarations.

We and all **Insureds** knowingly agree that this provision eliminates the ability to have such disputes adjudicated in a public state or federal court. We and all **Insureds** further agree that, in the event a motion to compel arbitration is necessitated by one party's refusal to adhere to this provision, and if such a motion to compel arbitration is successful, the unsuccessful party shall reimburse and indemnify the successful party for the fees and costs associated with seeking the enforcement of this section.

This Section 15 only applies to the extent not prohibited by the law pursuant to which this **Policy** is interpreted.

## 16. **Extended Reporting Period**

In the event that this **Policy** is not renewed or cancelled and you do not replace this **Policy** with another policy providing the same or similar coverage, **Claims** first made and reported to us during the thirty days following the expiration of this **Policy** shall be covered hereunder provided that they would have otherwise been covered under this **Policy** as of the date of its normal expiration.

In addition, you shall have the right:

- a. upon payment of an additional premium of a maximum of 152% of the premium charged for the non-renewed or cancelled **Policy**, to an extension of the coverage available under this **Policy** for a period of twelve months following the effective date of such non-renewal or cancellation, but only with respect to **Claims** otherwise covered by this **Policy** and only based on **Occurrences** first taking place prior to the effective date of such non-renewal or cancellation.
- b. upon payment of an additional premium of a maximum of 300% of the premium charged for the non-renewed or cancelled **Policy**, to an extension of the coverage available under this **Policy** for a period of forty-eight months following the effective date of such non-renewal or cancellation, but only with respect to **Claims** otherwise covered by this **Policy** and only based on **Occurrences** first taking place prior to the effective date of such non-renewal or cancellation.

A written request for the Extended Reporting Period must be received by us within fifteen days from the effective date of the non-renewal or cancellation. As an express condition precedent to coverage, the premium due for the Extended Reporting Period must be received by us within thirty days of such effective date.

The entire premium for the Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

Any election under a. or b. above may be made an unlimited number of times, with the expiration of each subsequent elected Extended Reporting Period treated as the non-renewal or cancellation of a **Policy**.

**17. Non-Renewal**

If we decide not to renew this **Policy**, we will mail or deliver to the **Primary Insured** written notice of non-renewal not less than thirty days before the expiration date. If the notice is mailed, proof of mailing will be sufficient notice of non-renewal.

**18. Policy Cancellation**

a. Insured's Request

You may cancel this **Policy** at any time by mailing written notice to us stating when, thereafter, such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice. Delivery of such written notice shall be equivalent to mailing. The effective date and hour of cancellation as stated in the notice shall become the end of the **Policy Period**.

If you cancel this **Policy**, we will return 90% of the unearned pro rata per diem premium to the **Primary Insured** subject to a minimum retained earned premium of twenty-five percent of the total premium indicated in Item 6 of the Declarations.

b. Company's Request

The Company may terminate coverage under this **Policy** by mailing notice to the address in item 1 the Declarations or to last known address of the **Primary Insured**, stating the Company's intent to cancel this **Policy** not less than thirty days prior to the effective cancellation date (or longer if required by law). Such notice shall include the effective cancellation date of the **Policy**. Any unearned pro rata per diem premium, if any, will be refunded to the **Primary Insured** subject to the retention by the Company of any minimum earned premium stated in the Declarations.

c. Non Payment of Premium

The policy premium is due and payable on or before the effective date of the **Policy Period**. Non-payment or incomplete payment of the premium owed shall be treated as an election by the **Primary Insured** to cancel the **Policy**. Any unearned pro rata per diem premium, if any, will be refunded to the **Primary Insured** subject to the retention by the Company of any minimum earned premium stated in the Declarations. The Company may refund any unearned premium financed by a third party to, or as directed by, such third party. In the event the **Policy** is cancelled pursuant to this section, the **Insured** will be disqualified from being eligible to exercise the option to purchase an Extended Reporting Period endorsement.

**19. Assessability**

This **Policy** is non-assessable.

**20. Bankruptcy or Insolvency**

Bankruptcy or insolvency of any **Insured** or any **Insured's** estate shall not relieve the Company of any of its obligations under this **Policy**, provided the **Insured** shall provide any reasonable assistance and cooperation necessary to lift any automatic stay or injunction that may apply to the payment of any proceeds of this **Policy**. The bankruptcy or insolvency of any **Insured** shall not modify the obligation to pay any applicable Deductible.

## 21. **Inspection and Audit**

The Company, at its sole discretion, may examine and audit the **Insured's** books and records, at any time. If the **Policy** premium is based on out patient visits, hours worked, number of patients, or on any other variable, the **Insured** agrees to provide completed and notarized audit forms confirming the **Premium Base** within 30 days of receiving the forms from the Company.

## 22. **Cooperation and Assistance**

As an express condition precedent to coverage under this Policy the **Insured** must cooperate and assist the Company, the Company's representatives, and the appointed defense counsel in all aspects of the Company's coverage investigation and the investigation and defense of any **Claim** or **Occurrence**; and shall, upon request and without charge to the Company:

- a. submit to examination under oath by a representative of the Company;
- b. attend hearings, depositions and trials; and
- c. assist in effecting any settlement, securing and giving evidence, and obtaining the attendance of witnesses.

The **Insured** shall cooperate with the Company to do whatever is necessary to secure and affect any rights of indemnity, contribution, or apportionment. Any failure of the **Insured** to cooperate that prejudices our ability to investigate or defend any **Claim**, shall nullify coverage for such **Claim** and disqualify the **Insured** from being eligible to exercise the option to purchase an Extended Reporting Period endorsement.

Upon receipt of a **Claim** for which coverage is sought under this **Policy**, as an express condition precedent to coverage under this Policy, no **Insured** shall without prior consent of the Company communicate orally or in writing with the **Claimant** or the **Claimant's** representative or attorney concerning the circumstances of the **Claim**, unless such communications are necessary for the provision of **Professional Services**.

No **Insured** shall, except solely at his/her/its own expense, make any payment, admit any liability, agree to any settlement of a **Claim**, incur any expenses, or assume any obligations without our prior written consent.

The **Primary Insured** also agrees to cooperate, assist, and consent to the completion and submission of special verdict forms or other written inquiries to the trier of fact for the purpose of determining the basis for the **Insured's** liability and any **Damages** awarded (if any).

## 23. **Changes in Insured's Practice, Licensure, or Privileges**

The **Primary Insured** shall immediately notify the Company:

- a. if your or any **Insured's** license to practice is restricted in any way, suspended, revoked, or terminated;
- b. if your or any **Insured's** hospital staff privileges are restricted in any way, suspended, revoked, or terminated;
- c. if you or any **Insured** becomes aware of any investigation or inquiry, whether formal or informal, which might reasonably result in items a. or b., above; or
- d. of any material changes in your specialty or practice as described in your **Application** for this **Policy**.

The failure to immediately notify the Company of these changes will disqualify the **Primary Insured** from exercising the option to purchase an Extended Reporting Period endorsement.

**24. Non-Stacking of Limits**

If this **Policy** and any other professional liability insurance policy, which we or any affiliated or related company issued to any **Insured** named in the **Declarations** applies to the same **Claim, Interrelated Claims**, or series of **Claims**;

- a. the Company shall not be liable under this Policy for a greater proportion of **Damages, Defense Costs, and Medical Payments** attributable to such **Claim, Interrelated Claims** or series of **Claims** than the applicable limit of liability under this **Policy** bears to the total limits of liability of all such policies, and;
- b. the maximum aggregate amount payable under all such policies shall not exceed the limit of liability of the single policy which reflects the largest applicable limit of liability.

Nothing contained in this Section shall be construed to increase the limit of liability available under this **Policy**.

This condition does not apply to any policy issued by us or any affiliated company specifically identified as excess insurance over this **Policy**.