



7701 France Avenue South, Suite 500  
Minneapolis, MN 55435-5288  
800.328.5532 • Fax 952.838.6808  
MMICgroup.com

**Transaction Summary**

**This is not a bill. Premium amounts will be billed on your next billing invoice.**

Policy Number: MFP000231

Effective Date of Policy Transaction: 07/01/2013

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Insured: Polk County Health Department  
Address: 1907 Carpenter Ave  
Des Moines, IA 50314

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**Transaction: Manual Renewal**

Policy No: MFP000231

Issue Date: 06/17/2013



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## Healthcare System Liability Protection Policy

### MMIC Insurance, Inc.

#### Declarations

Policy No: MFP000231

Item 1. Named Insured: Polk County Health Department

Item 2. Address: 1907 Carpenter Ave  
Des Moines, IA 50314

Item 3. Limits of Liability:

Coverage A: Healthcare System Medical Professional Liability

Retroactive Date: 08/15/2009

\$1,000,000 each claim

\$3,000,000 aggregate

\$0 each claim deductible

\$0 aggregate deductible

Coverage B: Healthcare System General Liability

Retroactive Date: N/A

\$1,000,000 each occurrence

\$3,000,000 aggregate

\$0 each occurrence deductible

\$0 aggregate deductible

Coverage C: Healthcare System Employee Benefits Administration Liability

Retroactive Date: 01/01/1975

\$1,000,000 each wrongful act

\$3,000,000 aggregate

\$1,000 deductible each wrongful act

Item 4.

Item 5. Policy Period: From 07/01/2013 to 07/01/2014  
12:01 a.m., central standard time at the address of the **named insured** as stated herein.

Item 6. Forms and Endorsements forming a part of the Policy at issue:

<u>Form Name</u>	<u>Form Id</u>
Healthcare System Dec Page	HSDC109H
Certificate Holders as Additional Insured Endorsement	CHAI109H
Coverage Limitation Endorsement	LIMT103H
Cyber Solutions	CYBR213
Healthcare System Administrative Proceeding Defense Coverage	FRAM110H
Iowa Amendatory Endorsement	IAAM109H
Part-Time Coverage Endorsement	PRTT109H
Physician Coverage Endorsement Separate Limits of Liability	PHSE110H
Healthcare System Liability Protection	HCSYP109H



William J. McDonough - President & CEO

Policy No: MFP000231  
Effective Date: 07/01/2013  
Issue Date: 06/17/2013



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Effective Date: 07/01/2013

### **Certificate Holders as Additional Insured Endorsement**

#### **Endorsement to Coverage B - Healthcare System General Liability**

It is agreed that the individuals or organizations named as additional **insured** on certificates of insurance, which are on file and approved by MMIC are hereby included as additional **insureds** under this Policy, but only for covered **claims** arising out of actions of an **insured** while acting within the scope of their employment duties.

It is further agreed that the inclusion of the additional **insured** does not increase the limits of liability as stated on the Declarations Page.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.

William J. McDonough - President & CEO

Policy No: MFP000231  
Issue Date: 06/17/2013



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Effective Date: 07/01/2013

### Coverage Limitation Endorsement

#### Endorsement to Section I. - Insuring Agreement

In consideration of the premium charged, it is agreed that coverage for the **insured** listed below is limited to **professional services** rendered or which should have been rendered for or on the behalf of the **named insured**.

Insured

Carlos Alacon MD  
Gregory A Schmunk MD  
Kevin M Rahner DO

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.

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Issue Date: 06/17/2013



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Effective Date: 07/01/2013

### Coverage Limitation Endorsement

#### Endorsement to Section I. - Insuring Agreement

In consideration of the premium charged, it is agreed that coverage for the insured listed below is limited to professional services rendered or which should have been rendered for or on the behalf of the named insured.

Insured

Carlos Alarcon MD  
Gregory A Schmunk MD  
Kevin M Rahner DO

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.

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Effective Date: 07/01/2013

**Physician Coverage Endorsement**  
*Separate Limits of Liability*

**Endorsement to Coverage A - Healthcare System Medical Professional Liability**

In consideration of the premium charged, the definition of "Insured" as respects Coverage A- Healthcare System Medical Professional Liability, is amended to include the following individuals.

The retroactive dates listed below replace the retroactive dates listed on the Declarations Page for the individuals covered by this Endorsement.

It is further agreed that the limits of liability as stated on the Declarations Page and defined in Section II. of the Policy, shall apply separately to each of the individual insureds included in this Endorsement.

<u>Individual</u>	<u>Classification</u>	<u>Retroactive Date</u>
Carlos Alarcon	80420	08/15/2009
Gregory A. Schmunk MD	80240	08/15/2009
Kevin M. Rahner DO	80420	09/01/2011

Coverage A is amended as follows for the employed individuals covered by this Policy.

**Limits of Liability-Reporting Endorsement**

**Section II.- Limits of Liability, Reporting Endorsement,** "aggregate" limits of liability is deleted and replaced with the following.

Subject to the above provisions respecting "each claim" and the limits of liability stated on the reporting endorsement, the "aggregate" limits for the reporting endorsement applies separately to each of the following reporting periods:

- The first 12 months following the date coverage was cancelled or not renewed
- The second 12 months following the date coverage was cancelled or not renewed
- Any remaining policy period the reporting endorsement is in effect.

**Supplementary Payments**

**Section III.- Supplementary Payments** is amended to include the following:

(H) the reasonable legal fees incurred by an insured physician or surgeon defending a complaint from a governmental body responsible for licensure, regulation or professional discipline of physicians and surgeons which alleges improper or inadequate performance of medical professional services on or after the retroactive date by an insured. To be eligible for this supplementary payment, the insured must receive notice of the complaint and provide notice of the complaint to MMIC during the policy period. The maximum payment under the provision by

MMIC shall not exceed: 1) \$5,000 for one complaint, regardless of the number of **policy periods** required to resolve the complaint, or 2) \$5,000 for each **insured** for any one **policy periods**, regardless of the number of complaints alleged

#### **Definition of Insured**

**Section IV.-Definitions, "Insured"** is amended to include a locum tenens.

Locum tenens means a healthcare worker temporarily employed by the **named insured** and serving in the place of an individual **insured** scheduled on this endorsement, provided that the locum tenens does not provide **medical professional services** at the same time as the **insured** a healthcare worker being replaced.

#### **Inspection and Audit**

**Section V.- General Conditions, Inspection and Audit** is amended to include the following:

The **named insured** agrees to keep and maintain records of all locum tenens employed to permit MMIC to verify coverage.

#### **Reporting Endorsement**

**Section V.- General Conditions, Reporting Endorsement** is amended to include the following:

#### **Waiver or Reduction of Reporting Endorsement Premium**

- (1) In the event of an **insured** physician, surgeon or dentist's death during the **policy period**, a reporting endorsement will be issued for that physician, surgeon or dentist without premium charge. MMIC may require and the **insured's** personal representative agrees to furnish a written application for the reporting endorsement and proof of death within thirty (30) days.
- (2) MMIC will provide a reporting endorsement without charge to an **insured** physician, surgeon or dentist who, during the **policy period**, becomes totally and permanently disabled as a result of **bodily injury**, mental illness or disease.

"Totally and permanently disabled as a result of **bodily injury**, mental illness, or disease" means being wholly prevented from performing the material and substantial duties of the **insured's** occupation as a physician, surgeon or dentist for a continuous period of not less than six (6) months and which is expected to be continuous and permanent thereafter.

**Bodily injury**, mental illness and disease shall not include:

- (a) intentionally self-inflicted injuries;
- (b) suicide, or attempted suicide;
- (c) neurosis, psychoneurosis, psychopathy or any other type of mental or emotional disease or disorder unless an **insured** physician, surgeon or dentist is required to be confined continuously as an inpatient in a hospital or other institution licensed to provide care and treatment for such condition for a minimum of eight (8) consecutive weeks;
- (d) or any disease or illness arising out of the use of addictive or habituating drugs, chemicals, or substances.

The **insured** physician, surgeon or dentist agrees to provide complete evidence, satisfactory to MMIC, of total disability. Such evidence shall include, at a minimum, a written report from an independent medical exam performed by a physician who is not you, a member of your family or a member of your practice. The **insured** shall furnish upon request any other information that is required for MMIC to evaluate the **insured** physician, surgeon or dentist's disability including, without limitation, hospital records and other medical reports.

(3) If an insured individually scheduled on the Declarations Page chooses during the coverage period to terminate coverage for any reason meets one of the following conditions, MMIC will issue a reporting endorsement without charge:

1. Has been continuously insured with MMIC for a minimum of fifteen (15) years and is at least sixty (60) years old.
2. Has been continuously insured with MMIC for a minimum of ten (10) years and is at least sixty-two (62) years old.
3. Retires permanently from the practice of medicine during the coverage period and has been insured with MMIC for a minimum of five (5) continuous years.

Insureds individually scheduled on the Declarations Page choosing to retire permanently from the practice of medicine who have been continuously insured with MMIC for less than five (5) continuous years are eligible to purchase a reporting endorsement at a reduced premium. The reduction in premium shall be twenty percent (20%) for each full year of coverage. Requests for free or reduced premium reporting endorsements must be made to MMIC by the insured within thirty (30) days after retirement.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



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Effective Date: 07/01/2013

**Cyber Solutions™  
(Claims-Made and Reported Coverage)**

**NOTICE**

This Endorsement provides Claims-Made and Reported Coverage. Various provisions in this Endorsement restrict coverage. Read the entire Endorsement carefully to determine **your** rights and duties and what is and is not covered. All words and phrases in this Endorsement that appear in bold print shall have the meanings set forth in the Definitions Section of this Endorsement. All terms and conditions of the Policy remain unchanged and apply in full force and effect to this Endorsement, unless this Endorsement states otherwise.

The limits of liability for the coverage provided under this Endorsement are specified in Section III of this Endorsement and are in addition to, and do not erode, the limits of liability under the Policy. **Defense costs** are paid within the limits of liability.

**SECTION I - COVERAGE AGREEMENTS**

In consideration of the premium charged and subject to all terms, conditions, definitions, exclusions and other provisions of this Endorsement, MMIC agrees as follows:

- A. **Multimedia Liability Coverage:** Subject to the limits of liability specified in Section III of this Endorsement, MMIC will pay **damages** which **you** become legally obligated to pay, including liability **assumed under contract** and related **defense costs**, as a result of a **claim** for any actual or alleged **multimedia peril(s)**, provided that:
  - a. Such **claim** is first made against **you** during the **policy period**; and
  - b. **You** report such **claim** in writing to MMIC during the **policy period**.
  
- B. **Security and Privacy Liability Coverage:** Subject to the limits of liability specified in Section III of this Endorsement, MMIC will pay **damages** which **you** become legally obligated to pay, and related **defense costs**, as a result of a **claim** for any actual or alleged **security and privacy wrongful act** that directly results from a **security breach** or **privacy breach**, provided that:
  - a. Such **claim** is first made against **you** during the **policy period**; and
  - b. **You** report such **claim** in writing to MMIC during the **policy period**.
  
- C. **Privacy Regulatory Defense and Penalties Coverage (to the extent insurable by law):** Subject to the limits of liability specified in Section III of this Endorsement, MMIC will pay **regulatory fines and penalties** and/or any **regulatory compensatory award** and related **defense costs**, which **you** become legally obligated to pay because of a **claim** directly resulting from a **security breach** or **privacy breach**, provided that:
  - a. Such **claim** is first made against **you** during the **policy period**; and
  - b. **You** report such **claim** in writing to MMIC during the **policy period**.
  
- D. **Privacy Breach Response Costs, Patient Notification Expenses and Patient Support and Credit Monitoring Expenses Coverage:** Subject to the limits of liability specified in Section III of this Endorsement, MMIC will pay reasonable

**privacy breach response costs, patient notification expenses and/or patient support and credit monitoring expenses** which you incur during the **policy period** as a direct result of a **security breach** or **privacy breach**, provided that:

- a. You report the **security breach** or **privacy breach** in writing to MMIC no later than 60 days from the date the **security breach** or **privacy breach** is first discovered; and
- b. The **security breach** or **privacy breach** occurs or first commences during the **policy period**.

E. Network Asset Protection Coverage:

1. Loss of Digital Assets

Subject to the limits of liability specified in Section III of this Endorsement, MMIC will reimburse you for **digital assets loss** and/or **special expenses** which you incur during the **policy period** as a direct result of damage, alteration, corruption, distortion, theft, misuse or destruction of **your digital assets**, provided that:

- a. Such damage, alteration, corruption, distortion, theft, misuse or destruction of **your digital assets** is directly caused by a **covered cause of loss**;
- b. You provide clear evidence that the **digital assets loss** and/or **special expenses** directly resulted from a **covered cause of loss**;
- c. The **covered cause of loss** occurs or first commences during the **policy period**; and
- d. You report the **covered cause of loss** in writing to MMIC no later than 60 days from the date the **covered cause of loss** is first discovered.

**Digital assets loss** and/or **special expenses** will be reimbursed for a period of up to twelve (12) months following the discovery of the damage, alteration, corruption, distortion, theft, misuse or destruction of **your digital assets**.

2. Non-Physical Business Interruption and Extra Expense

Subject to the limits of liability specified in Section III of this Endorsement, MMIC will reimburse you for **income loss, interruption expenses** and/or **special expenses** which you incur during the **period of restoration** as a direct result of the total or partial interruption, degradation in service or failure of **your computer system**, provided that:

- a. Such total or partial interruption, degradation in service or failure of **your computer system** is directly caused by a **covered cause of loss**;
- b. You provide clear evidence that the **income loss, interruption expenses** and/or **special expenses** directly resulted from a **covered cause of loss**;
- c. The **covered cause of loss** occurs or first commences during the **policy period**;
- d. You report the **covered cause of loss** in writing to MMIC no later than 60 days from the date the **covered cause of loss** is first discovered; and
- e. The total or partial interruption, degradation in service or failure of **your computer system** exceeds the **waiting period**.

F. Cyber Extortion Coverage: Subject to the limits of liability specified in Section III of this Endorsement, MMIC will indemnify you for **cyber extortion expenses** and/or **cyber extortion monies** paid by you as a direct result of a **cyber extortion threat**, including a demand for **cyber extortion monies**, provided that:

- a. Such **cyber extortion threat** is first made against you during the **policy period**;
- b. You provide clear evidence that the **cyber extortion expenses** and/or **cyber extortion monies** directly resulted from a **cyber extortion threat**; and
- c. You report the **cyber extortion threat** in writing to MMIC no later than 60 days from the date the **cyber extortion threat** is made against you.

**Cyber extortion expenses** and/or **cyber extortion monies** shall not be paid without MMIC's prior consultation and written authorization. You must make every reasonable effort to notify the local law enforcement authorities and the Federal Bureau of Investigation or similar equivalent foreign agency before surrendering any **cyber extortion monies** in response to a **cyber extortion threat**.

G. **Cyber Terrorism Coverage:** Subject to the limits of liability specified in Section III of this Endorsement, MMIC will reimburse **you** for **income loss, interruption expenses** and/or **special expenses** which **you** incur during the **period of restoration** as a direct result of the total or partial interruption, degradation in service or failure of **your computer system**, provided that:

- a. Such total or partial interruption, degradation in service or failure of **your computer system** is directly caused by an **act of terrorism**;
- b. **You** provide clear evidence that the **income loss, interruption expenses** and/or **special expenses** directly resulted from an **act of terrorism**;
- c. The **act of terrorism** occurs or first commences during the **policy period**;
- d. **You** report the **act of terrorism** in writing to MMIC no later than 60 days from the date the **act of terrorism** is discovered; and
- e. The total or partial interruption, degradation in service or failure of **your computer system** exceeds the **waiting period**.

MMIC shall have the right and duty to defend any **claim**, even if the allegations of the **claim** are groundless, false or fraudulent and may investigate or settle any **claim** at its sole discretion. However, MMIC shall not be obligated to pay or defend any **claim** after the applicable limit of MMIC's liability hereunder has been exhausted.

## SECTION II - EXCLUSIONS

This Endorsement does not apply to:

A. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any **multimedia peril, security and privacy wrongful act, security breach, privacy breach, covered cause of loss, cyber extortion threat, act of terrorism** or any fact, circumstance, or situation:

1. Which was the subject of written notice to any insurer given under any other policy of insurance prior to the effective date of this Endorsement;
2. Which was the subject of any prior and/or pending written demand for monetary damages, administrative or arbitration proceeding or litigation commenced against **you** prior to the effective date of this Endorsement, or the same or substantially the same fact, circumstance, or situation underlying or alleged in such prior matter;
3. Which was identified in any summary or statement of claims or potential claims submitted in connection with **your** application for insurance for the Policy;
4. Which **you** had knowledge of prior to the effective date of this Endorsement and which could reasonably be expected to give rise to a **claim**

B. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste. For purposes of this exclusion, "pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including mold, 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, material to be recycled, reconditioned or reclaimed;

C. Any **claim** alleging liability assumed by **you** under any oral or written contract or agreement, except where such liability would otherwise apply apart from such contract or agreement and which is otherwise covered by this Endorsement. With respect to any **multimedia peril, security breach** or **privacy breach**, this exclusion shall not apply to any liability assumed by **you** in the form of a written hold harmless or indemnity agreement that predates such **multimedia peril, security breach** or **privacy breach**.

D. Any **claim** alleging breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, except where such liability would otherwise apply apart from such contract or agreement and which is otherwise

covered by this Endorsement. This exclusion shall not apply to any **claim** alleging breach of **your** privacy policy.

- E. Any **claim** which is covered under any General Liability, Comprehensive General Liability or Professional Liability Insurance Policy;
- F. Any **claim** alleging violations of the False Claims Act or any similar federal or state law, rule or regulation concerning billing errors or fraudulent billing practices or abuse;
- G. Any **claim** alleging infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret;
- H. Any **claim** alleging unfair competition, price fixing, deceptive trade practices, restraint of trade or violation of any anti-trust laws;
- I. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:
  - 1. any employment or employment-related matters, including employer-employee relations, policies, acts or omissions;
  - 2. any actual or alleged refusal to employ any person or any other actual or alleged misconduct with respect to employees; or
  - 3. any actual or alleged obligations of the **insured** under any workers' compensation, unemployment insurance, social security, disability benefits or other similar law.
- J. **Bodily Injury or Property Damage;**
- K. Any **claim** alleging harassment or discrimination, including, but not limited to, harassment or discrimination because of, or relating to, race, creed, color, age, sex, sexual orientation or preference, national origin, religion, handicap, disability, political affiliation, marital status or any other basis prohibited by federal, state or local law;
- L. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:
  - 1. Satellite failures;
  - 2. electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout, or blackout; or
  - 3. outages to gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under **your** operational control and such **claim** is otherwise covered under Coverage Agreement E or Coverage Agreement G;
- M. Any **claim** alleging violation of any of United States of America's economic or trade sanctions, including but not limited to, sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC");
- N. Any **claim** alleging medical malpractice or arising out of the rendering of or failure to render professional services;
- O. Any **criminal proceeding;**
- P. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:
  - 1. Any willful, deliberately dishonest, malicious, fraudulent or criminal act, error or omission;
  - 2. Any intentional violation of the law or of **your** privacy policy; or
  - 3. The gaining in fact of any profit, remuneration or financial advantage to which **you** were not legally entitled,

if committed by any **insured**, whether acting alone or in collusion with other persons. Notwithstanding the foregoing, the insurance afforded by the Endorsement shall apply to **defense costs** incurred in defending any such **claim** until such time as there is a judgment or other final adjudication adverse to the **insured** establishing such criminal, dishonest, fraudulent or malicious conduct. MMIC will have the right to recover **defense costs** incurred in defending such **claim** from those parties found to have committed such criminal, dishonest, fraudulent or malicious conduct.

This exclusion shall not apply to:

1. Any **insured** that did not commit, participate in, or have knowledge of any such criminal, dishonest, fraudulent or malicious conduct described in this exclusion; or
  2. With respect to Coverage Agreement E, Network Asset Protection, a **claim** resulting from employee sabotage.
- Q. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any business, joint venture or enterprise not named in the Declarations Page, which is owned, controlled, operated or managed in whole or in part by an **insured**;
- R. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any conduct, act, error or omission of any individual serving in any capacity other than as **your** administrator, trustee, officer, director, employee or volunteer worker;
- S. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving an **insured's** insolvency or bankruptcy; the insolvency or bankruptcy of any other individual or entity; or the failure, inability or unwillingness to make payments because of the insolvency, liquidation or bankruptcy of any individual or entity;
- T. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the wear and tear, drop in performance, progressive deterioration or aging of **your** electronic equipment or **computer hardware**;
- U. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the failure of overheard transmission and distribution lines;
- V. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the gradual deterioration of subterranean insulation;
- W. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, force majeure or any other physical event however caused, unless such **claim** is otherwise covered under Coverage Agreement E or Coverage Agreement G;
- X. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:
1. the gradual deterioration, wear and tear, latent or time-delayed damage of **your computer system**; or
  2. **your** failure, or the failure of those acting on **your** behalf, to maintain any computer, **computer system** or network, **computer software** or any other equipment;
- Y. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the actual or alleged inaccurate, inadequate or incomplete description of the price of goods, products or services;
- Z. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving cost guarantees, cost representations, contract price or cost estimates being exceeded;
- AA. Any **claim** brought by or on behalf of:
1. any **insured** against another **insured**;
  2. any entity which is owned, in whole or in part, by an **insured**, or any entity directly or indirectly controlled, operated or managed by an **insured**;
  3. any entity which is a parent, affiliate or subsidiary of any entity in which an **insured** is a partner or joint venturer; or
  4. any individual or entity who is a partner or joint venturer of any entity in which an **insured** is also a partner or joint venturer.

This exclusion shall not apply to an otherwise covered **claim** under Coverage B, which is brought by **your** past, present or future employee alleging a **security and privacy wrongful act**, but only if such employee or any of **your** past or present officers, directors or trustees did not commit, participate in or contribute to such **security and**

**privacy wrong act or any security breach or privacy breach;**

BB. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving unauthorized trading. For purposes of this exclusion, "unauthorized trading" means trading by an **insured**, which at the time of the trade is:

1. In excess of permitted financial limits, or
2. Outside of permitted product lines;

CC. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:

1. the actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities;
2. the loss of value of any securities; or
3. Any actual or alleged violation of any securities law such as the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002 or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including 'Blue Sky' laws, whether such law is statutory, regulatory or common law;

DD. Any **claim** alleging violation of the Organized Crime Control Act of 1970 (commonly known as 'Racketeer Influenced And Corrupt Organizations Act' or 'RICO'), as amended, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such law is statutory, regulatory or common law;

EE. Any **claim** against **you** which is brought by the Federal Trade Commission, the Federal Communications Commission or any other federal, state or local governmental entity, in such entity's regulatory or official capacity. This exclusion does not apply to an otherwise covered **claim** under Coverage Agreement C.

FF. Any **claim** alleging:

1. The violation of any pension, healthcare, welfare, profit sharing or mutual or investment plans, funds or trusts; or
2. The violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments and/or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling or order issued pursuant thereto;

GG. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:

1. Strikes or similar labor actions, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;
2. The confiscation, nationalization, requisition or destruction of, or damage to, property by or under the order of any government or public or local authority; or
3. Any action taken in controlling, preventing, suppressing or in any way relating to 1 or 2 above.

This exclusion shall not apply to an **act of terrorism**;

HH. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving **your** commercial decision to cease providing a particular product or service, but only if **you** are contractually obligated to continue providing such products or services;

II. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving:

1. Gambling or pornography;
2. Prizes, awards or coupons; or
3. The sale or provision of prohibited, restricted or regulated items such as alcoholic beverages, tobacco or drugs;

JJ. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any fine or penalty

arising out of:

1. Any agreement by **you** to comply with or follow the Payment Card Industry Standard or any Payment Card Company Rules;
2. The implementation, maintenance or compliance with any security measures or standards related to any payment card data, such as any fine or penalty imposed by a payment card company on a merchant bank or payment processor that **you** have paid or agreed to reimburse or indemnify.

This exclusion shall not apply to **regulatory fines and penalties** to the extent insurable by law and if resulting from an otherwise covered **claim** under Coverage Agreement C;

- KK. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the use of programs that are not **operational programs** or **delivered programs**;
- LL. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving any **insured's** intentional use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection;
- MM. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the confiscation, commandeering, requisition, destruction of, or damage to **computer hardware** by order of a government *de jure* or *de facto* or by any public authority for whatever reason;
- NN. Any **claim** based upon, arising out of, resulting from, in consequence of, or in any way involving the existence, emission or discharge of any **electromagnetic field**, **electromagnetic radiation** or **electromagnetism** that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any property.
- OO. With respect to Coverage Agreement E (1):
1. Any amount incurred in restoring, updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
  2. Physical damage to the **computer hardware** or **data** center, other than that covered under **covered cause of loss**, paragraph 1(a);
  3. Contractual penalties or consequential damages;
  4. Any liability to third parties for whatever reason, including legal costs and expenses of any type;
  5. Fines or penalties imposed by law;
  6. The economic or market value of **digital assets**, unless MMIC has agreed by endorsement to reimburse **you** based upon an agreed value amount for defined categories or specific **digital assets**;
  7. Costs or expenses incurred to identify, patch or remediate software program errors or **computer system** vulnerabilities;
  8. Costs to upgrade, redesign, reconfigure or maintain **your computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**; or
  9. Any losses paid under Coverage Agreement E(2), Non-Physical Business Interruption and Extra Expense.
- PP. With respect to Coverage E(2):
1. Any loss arising out of a physical cause or natural peril, including, but not limited to fire, wind, water, flood, subsidence or earthquake, which results in physical damage to **computer hardware** and/or any **data** center;
  2. Any loss expense arising out of updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
  3. Contractual penalties or consequential damages;
  4. Any liability to third parties for whatever reason, including legal costs and expenses of any type;
  5. Fines or penalties imposed by law;
  6. Costs or expenses incurred to identify, patch or remediate software program errors or **computer system** vulnerabilities;
  7. Loss of goodwill and reputational harm;
  8. Costs to upgrade, redesign, reconfigure or maintain **your computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**; or

9. Any losses paid under Coverage E (1), Loss of Digital Assets.

### SECTION III - LIMITS OF LIABILITY AND DEDUCTIBLE

A. With respect to the coverage provided under this Endorsement, the limits of liability are as follows:

1. Multimedia Liability Coverage:	\$100,000 each <b>Claim</b>
2. Security and Privacy Liability Coverage:	\$100,000 each <b>Claim</b>
3. Privacy Regulatory Defense & Penalties Coverage:	\$100,000 each <b>Claim</b>
4. Privacy Breach Response Costs, Patient Notification Expenses And Patient Support & Credit Monitoring Expenses Coverage:	\$100,000 each <b>Claim</b>
5. Network Asset Protection Coverage:	\$100,000 each <b>Claim</b>
6. Cyber Extortion Coverage:	\$100,000 each <b>Claim</b>
7. Cyber Terrorism Coverage:	\$100,000 each <b>Claim</b>
8. Aggregate Limit:	\$100,000
9. Deductible	\$0 each <b>Claim</b>

B. The limits of liability stated in items 1-7 above as applicable to "each **claim**" is the maximum amount MMIC will pay for each **claim**, including **defense costs** where applicable, regardless of the number of Coverage Agreements that apply.

C. Subject to the provisions respecting the "aggregate limit," the "each **claim**" limits of liability stated in items 1-4 above shall apply separately to each **insured**.

D. Subject to the provisions respecting "each **claim**," the limits of liability stated in item 8 above as the "aggregate limit" is the total amount of MMIC's liability for all **claims** first made during the **policy period** under all Coverage Agreements of this Endorsement combined. The "aggregate limit" includes **defense costs** where applicable.

E. If the "Aggregate Limit" stated in item 8 above is exhausted, then MMIC's obligations under this Endorsement shall be deemed completely fulfilled and extinguished.

F. All related **claims** shall be considered a single **claim**, subject to one Limit of Liability and one deductible. Such **claim** shall be deemed to have been first made on the date the earliest of the related **claims** was first made and shall be deemed to have been first reported to MMIC on the date the earliest of the related **claims** was first reported to MMIC in writing. Appeals and any post-trial proceedings shall be considered to be part of the original **claim**. **Claims** will be deemed related if they are logically or causally connected by any common fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

G. The limits of liability for an extended reporting period, if any, shall be part of, and not in addition to, the "aggregate limit" stated in item 8 above, and the existence of an extended reporting period shall not increase or reinstate such limits of liability.

H. The deductible stated in item 9 shall apply separately to each **claim** under each Coverage Agreement of this Endorsement. However, if a **claim** attaches to more than one Coverage Agreement, only one deductible will apply. Your payment of the deductible is a condition precedent to payment by MMIC of any amounts covered under this Endorsement, and MMIC shall only be liable for the covered amount in excess of such deductible, not to exceed the applicable limit of liability and the aggregate limit.

### SECTION IV - DEFINITIONS

When used in this Endorsement:

- A. **Act of Terrorism** means an act, including, but not limited to, the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of, or in connection with any organization(s) or government(s), which is committed for political, religious, ideological, or similar purposes including the intention to influence any government and/or put the public, or any section of the public, in fear.
- B. **Adverse media report** means any unpredictable report or communication of an actual or potential **security breach** or **privacy breach**, which:
1. has been publicized through any media channel including, but not limited to, television, **print media**, radio or electronic networks, the **internet**, and/or electronic mail;
  2. threatens material damage to **your** reputation or **your** brands; and
  3. results in the **insured** incurring **privacy breach response costs**.
- C. **Assumed under contract** means liability for **damages** resulting from a **multimedia peril** where such liability has been assumed by **you** in the form of a written hold harmless or indemnity agreement that predates the first **multimedia peril**.
- D. **BPO service provider** means any third party independent contractor that provides business process outsourcing services for **your** benefit under a written contract with **you**, including, but not limited to, call center services, fulfillment services, and logistical support.
- E. **Bodily injury** means physical injury, sickness, disease, pain or death, and if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or emotional distress sustained by a person at any time.
- F. **Claim** means:
1. with respect to Coverage Agreement A (Multimedia Liability) and Coverage Agreement B (Security & Privacy Liability):
    - (a) any written demand for monetary damages or other non-monetary relief made against **you**;
    - (b) any civil proceeding or arbitration proceeding initiated against **you**, commenced by the service of a complaint or similar pleading or notification; or
    - (c) any written request to toll or waive a statute of limitations relating to a potential **claim** against **you**, including any appeal therefrom;

A **claim** under Coverage Agreement A and Coverage Agreement B will be deemed to be first made when **you** first receive notice of any of 1(a) through 1(c) above.
  2. with respect to Coverage Agreement C (Privacy Regulatory Defense and Penalties), a **government investigation** commenced against **you** by letter notification, complaint or order of investigation. A **claim** under Coverage Agreement C will be deemed to be first made when it is first received by **you**.
  3. with respect to Coverage Agreement D (Privacy Breach Response Costs, Patient Notification Expenses and Patient Support & Credit Monitoring Expenses):
 

**your** written report to MMIC of an actual or potential **security and privacy wrongful act, adverse media report, security breach** or **privacy breach**. A **claim** under Coverage Agreement D will be deemed to be first made when such written report is received by MMIC.
  4. with respect to Coverage Agreement E (Network Asset Protection):
 

**your** written report to MMIC of a **covered cause of loss**. A **claim** under Coverage Agreement E will be deemed to be first made when such written report is received by MMIC.
  5. with respect to Coverage Agreement F (Cyber Extortion):
 

**your** written report to MMIC of a **cyber extortion threat**. A **claim** under Coverage Agreement F will be deemed to be first made when such written report is received by MMIC.

6. with respect to Coverage Agreement G (Cyber Terrorism):

**your** written report to MMIC of an **act of terrorism**. A **claim** under Coverage Agreement G will be deemed to be first made when such written report is received by MMIC.

G. **Computer hardware** means the physical components of any computer system including CPU's, memory, storage devices, storage media, and input/output devices and other peripheral devices and components, including, but not limited to cable, connectors, fiber optics, wire, power supply units, keyboards, display monitors and audio speakers.

H. **Computer program(s)** means an organized set of instructions that, when executed, causes a computer to behave in a predetermined manner. **Computer program(s)** include but are not limited to communications, networking, operating system and related **computer programs** used to create, maintain, process, retrieve, store, and/or transmit electronic **data**.

I. **Computer system(s)** means interconnected electronic, wireless, web, or similar systems (including all **computer hardware** and software) used to process and store **data** or information in an analogue, digital, electronic or wireless format including, but not limited to, **computer programs**, electronic **data**, operating systems, **firmware**, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic **data**), and electronic backup equipment.

J. **Computer virus** means a program that possesses the ability to create replicas of itself (commonly known as 'auto-reproduction' program) within other programs or operating system areas or which is capable of spreading copies of itself wholly or partly to other **computer systems**.

K. **Covered Causes of Loss** means, and is limited to, the following:

1. Accidental Damage or Destruction

- (a) Accidental physical damage or destruction of **electronic media**, so that stored **digital assets** are no longer machine-readable;
- (b) Accidental damage or destruction of **computer hardware**, so that stored **data** is no longer machine-readable;
- (c) Failure in power supply or under/over voltage only if such power supply is under the direct operational control of the **Insured**. Direct operational control includes back-up generators;
- (d) **programming error** of delivered programs; or
- (e) Electrostatic build-up and static electricity.

2. Administrative or Operational Mistakes

An accidental, unintentional, or negligent act, mistake, error or omission by **your** employee, a **BPO service provider** or **outsourced IT service provider** in:

- (a) the entry, or modification of **your** electronic **data**, which causes damage to such **data**; or
- (b) the creation, handling, development, modification or maintenance of **your digital assets**; or
- (c) on-going operation or maintenance of **your computer system**, excluding the design, architecture, or configuration of **your computer system**,

3. Computer Crime and Computer Attacks

An act, mistake or negligent error or omission in the operation of **your computer system** or handling of **your digital assets** by **your** employee, a **BPO service provider** or **outsourced IT service provider**, which fails to prevent or hinder any of the following attacks intended to maliciously cause harm to **your**

**computer system:**

- (a) **a denial of service attack;**
- (b) **Malicious code;**
- (c) **Unauthorized access; or**
- (d) **Unauthorized use.**

- L. **Criminal proceeding** means any governmental action for enforcement of criminal laws, including those offenses for which conviction could result in imprisonment and/or criminal fine.
- M. **Cyber extortion expenses** means all reasonable and necessary costs and expenses which **you** incur, with MMIC's prior written consent, as a direct result of a **cyber extortion threat**, other than **cyber extortion monies**.
- N. **Cyber extortion monies** means any funds or property which **you** pay, with MMIC's prior written consent, to a person(s) or entity(ies) reasonably believed to be responsible for a **cyber extortion threat** insured under Coverage Agreement F, for the purpose of terminating such **cyber extortion threat**.
- O. **Cyber extortion threat** means a credible threat or series of related credible threats, including but not limited to a demand for **cyber extortion monies**, directed at **you** to:
1. Release, divulge, disseminate, destroy or use the confidential information of a third party taken from **you** as a result of **unauthorized access** to, or **unauthorized use** of, **your computer system**;
  2. Introduce **malicious code** into **your computer system**;
  3. Corrupt, damage or destroy **your computer system**;
  4. Restrict or hinder access to **your computer system**, including, but not limited to the threat of a **denial of service attack**; or
  5. Electronically communicate with **your patients** or customers and falsely claim to be **you** or to be acting under **your** direction in order to falsely obtain personal confidential information of **your patients** or customers (also known as "pharming," "phishing," or other types of false communications).
- P. **Damages** means the amount which **you** are legally obligated to pay as a result of a covered **claim** under Coverage Agreement A or Coverage Agreement B, including judgments and any prejudgment or post-judgment interest awarded against **you** on that part of any judgment paid or to be paid by MMIC; legal fees and costs awarded pursuant to such judgments; and settlements negotiated with MMIC's consent.
- Damages** do not include: (1) taxes; (2) any amount for which **you** are absolved from legal responsibility to make payment to a third party; (3) amounts owed under or assumed by any contract; (4) **your** future profits or royalties or any return, withdrawal, restitution or reduction of **your** professional fees, profits or other charges; (5) punitive, liquidated or exemplary damages or the multiplied portion of multiplied damages; (6) fines, sanctions or penalties; (7) any matters that are deemed uninsurable under applicable law; (8) the costs to comply with orders granting injunctive or non-monetary relief, including specific performance or any agreement to provide such relief; (9) disgorgement of any remuneration or financial advantage to which **you** were not legally entitled; or (10) settlements negotiated without MMIC's consent.
- Q. **Data** means any and all information stored, recorded, appearing or present in or on **your computer system**, including, but not limited to, information stored, recorded, appearing or present in or on **your** electronic and computer databases, the **internet**, intranet, extranet and related websites, facsimiles and electronic mail.
- R. **Defense costs** means reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense and appeal of any covered **claim** under Coverage Agreement A or Coverage Agreement B. **Defense costs** shall not include any wages, salaries, fees, overhead or other charges incurred by, or paid to, any **insured** for any time spent in cooperating in the defense and investigation of any **claim** or potential **claim** under this Endorsement.
- S. **Delivered programs** means programs, applications, and software where the development stage has been finalized, having passed all test-runs and been proven successful in a live environment.
- T. **Denial of service attack** means an event caused by unauthorized or unexpected interference or a malicious attack intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of electronic **data** to such **computer system** in order to prevent authorized access to such **computer system**.

- U. **Digital assets** mean **data** and **computer programs** that exist in a **computer system**. **Digital assets** do not include **computer hardware**.
- V. **Digital assets loss** means reasonable and necessary expenses and costs which **you** incur to replace, recreate or restore **digital assets** to the same state and with the same contents immediately before it was **damaged, destroyed, altered, misused, or stolen**, including expenses for **materials and machine time**, as well as costs associated with restoration, recreation and replacement. **Digital Assets Loss** also includes amounts representing employee work time to replace, recreate or restore **digital assets**, which shall be determined on a predefined billable hours or per hour basis as based upon **your** schedule of employee billable hours.
- W. **Electronic media** means floppy disks, CD ROM's, hard drives, magnetic tapes, magnetic discs, or any other media on which electronic data is recorded or stored.
- X. **Firmware** means the fixed programs that internally control basic low-level operations in a device.
- Y. **Government investigation** means a formal investigation instituted against **you** by any federal, state or local government agency or authority as a result of a **security breach** or **privacy breach**.
- Z. **Income Loss** means financial loss **you** sustain, as determined in accordance with the provisions of Coverage Agreement E (2).
- AA. **Insured** means any healthcare entity listed in the Schedule of Insureds. Coverage under this endorsement will also extend to include:
1. any past, present or future executive officer, partner, hospital administrator, stockholder, trustee or governor of the **Insured**;
  2. any member of the board of directors of the **Insured**;
  3. any full-time, part-time, seasonal or temporary employee of the **Insured**, and
  4. any independent contractor of the **Insured**,
- but only while such individuals are acting with the scope of their duties on behalf of the **Insured**. The parties described in AA (1) through AA (4) above shall share in the limits of liability of the **Insured**.
- BB. **Internet** means the worldwide public network of computers which enables the transmission of electronic **data** between different users, including a private communications network existing within a shared or public network platform.
- CC. **Interruption Expenses** means those expenses, excluding **special expenses**, which **you** incur in accordance with the provisions of Coverage Agreement E (2), to:
1. avoid or minimize the suspension of **your** business as a result of the total or partial interruption, degradation in service, or failure of **your computer system** caused directly by a **covered cause of loss**, which **you** would not have incurred had no **covered cause of loss** occurred, including, but not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, use of third party services, or additional staff expenditures or labor costs; and
  2. minimize or avoid a **covered cause of loss** and continue **your** business.
- The amount of **interruption expenses** recoverable under paragraph 1 above shall in no case exceed the amount by which the covered **income loss** is reduced by such incurred expenses.
- DD. **Malicious code** means software intentionally designed to insert itself and **damage a computer system** without the owner's informed consent by a variety of forms including, but not limited to, virus, worm, Trojan horses, spyware, dishonest adware, and crimeware.
- EE. **Multimedia peril(s)** means the release of, or display of, any **electronic media** on **your internet site** or **print media** for which **you** are solely responsible, which directly results in any of the following:

1. any form of defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization, including libel, slander, product disparagement or trade libel, and infliction of emotional distress, mental anguish, outrage or outrageous conduct, if directly resulting from any of the foregoing;
2. Invasion, infringement or interference with an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;
3. Plagiarism, piracy or misappropriation of ideas under an implied contract;
4. Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name; or
5. Domain name infringement or improper deep-linking or framing.

FF. **Operational programs** means programs and software which are ready for operational use, having been fully developed, tested, and accepted by **you**.

GG. **Outsourced IT service provider** means a third party independent contractor that provides information technology services for **your benefit**, under a written contract with **you**. Outsourced services include but are not limited to hosting, security management, co-location, and **data** storage.

HH. **Patient notification expenses** means those reasonable and necessary expenses which **you** incur, with MMIC's prior written consent, to comply with governmental privacy legislation mandating patient or customer notification in the event of a **security breach** or **privacy breach**. **Patient notification expenses** include, but are not limited to: 1) legal expenses; 2) computer forensic and investigation fees; 3) public relations expenses; 4) postage expenses; 5) and related advertising expenses.

II. **Patient support and credit monitoring expenses** means those reasonable and necessary expenses which **you** incur, with MMIC's prior written consent, for the provision of customer support activity, including the provision of credit file monitoring services and identity theft education and assistance for up to a period of twelve (12) months from the date of enrollment in such credit file monitoring services, in the event of a **privacy breach**.

JJ. **Period of Restoration** means the period of time that commences on the date when the interruption, degradation or failure of **your computer system** began and ends on the later of:

1. The date when **your computer system** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality and level of service that existed prior to the **covered cause of loss** plus no more than thirty (30) consecutive days after the restoration of **your computer system** to allow for restoration of **your** business; or
2. One hundred and twenty (120) consecutive days after the notice of **covered cause of loss** is received by MMIC.

KK. **Policy Period** means the period of coverage commencing on the date shown on the Declarations Page attached to the Policy as the Policy Effective Date and ending upon the effective date of termination, expiration or cancellation of coverage under the Policy.

LL. **Print media** means newspapers, newsletters, magazines, books and literary works in any form, brochures or other types of publications, and advertising materials, including packaging, photographs, and digital images.

MM. **Privacy breach** means any of the below, whether actual or alleged, but only if committed or allegedly committed by **you** or by others acting on **your** behalf for whom **you** are legally responsible, including **BPO Service Providers** and **Outsourced IT Service Providers**:

1. a common law breach of confidentiality, infringement or violation of any right to privacy, including, but not limited to, a breach of **your** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, or public disclosure of a person's private information; or
2. any breach of privacy regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information, including, but not limited to:

- a. Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191), known as HIPAA, and related state medical privacy laws;
- b. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999;
- c. State and Federal statutes and regulations regarding the security and privacy of consumer information;
- d. Governmental privacy protection regulations or laws associated with the control and use of personal information;
- e. Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
- f. The Health Information Technology for Economic and Clinical Health Act ("HITECH"), Title XIII of the American Recovery and Reinvestment Act ("ARRA") of 2009.

A series of continuing **privacy breaches** or related or repeated **privacy breaches** shall be considered a single **privacy breach** and shall be deemed to have occurred at the time of the first such **privacy breach**.

- NN. **Privacy breach response costs** means those reasonable and necessary fees and expenses which **you** incur, with MMIC's prior written consent, for the employment of a public relations consultant, if **you** reasonably consider such action is necessary in order to avert or mitigate any material damage to **your** reputation or to any of **your** brands which results or reasonably will result from an **adverse media report** that has been timely reported to MMIC.
- OO. **Programming error** means an error which occurs during the development or encoding of a computer program, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer system**.
- PP. **Property Damage** means injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured. **Data** is not considered tangible property.
- QQ. **Regulatory compensatory award** means a sum of money which **you** are legally obligated to pay as an award or fund for affected individuals, including a regulatory agency's monetary award to a third party, due to an adverse judgment or settlement arising out of a **government investigation**. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.
- RR. **Regulatory fines and penalties** mean any civil fines and penalties imposed against **you** as a result of a covered **government investigation**.
- SS. **Security and privacy wrongful act** means any of the below, whether actual or alleged, but only if committed or alleged committed by the **Insured** in his/her/its capacity as such:
  - 1. the failure to prevent or hinder **unauthorized access** to or **unauthorized use of your computer system**, security failures, or social engineering techniques devised to trick the user into surrendering personal information ('phishing' or 'pharming') that in turn result in:
    - a. the alteration, copying, corruption, destruction, deletion, or damage to electronic **data** stored on **your computer system**;
    - b. theft, loss or unauthorized disclosure electronic and non-electronic confidential commercial, corporate, personally identifiable, or private information that is in **your** care, custody or control;
    - c. theft, loss or unauthorized disclosure of electronic and non-electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody or control of a **BPO service provider** or **outsourced IT service provider** that is holding, processing or transferring such information on **your** behalf; provided, however, that the theft, loss or unauthorized disclosure occurs while **your** written contract with such **BPO service provider** or **outsourced IT service provider** is in effect;
    - d. **unauthorized use** of or **unauthorized access** to a **computer system** other than **your computer system**;

2. **your** failure to timely disclose a **security breach** affecting personally identifiable, non-public information, or the failure to dispose of personally identifiable, non-public information within the required time period, in violation of privacy regulations in effect now or in the future;
3. the failure to prevent the transmission of **malicious code** or **computer virus** from **your computer system** to the **computer system** of a third party;
4. a **privacy breach**;
5. the failure to prevent or hinder participation by **your computer system** in a **denial of service attack** directed against **internet** sites or the **computer system** of any third party; or
6. Loss of employee information.

**TT. Security breach** means:

1. **Unauthorized access** to, or **unauthorized use**, of **your computer system**, including **unauthorized access** or **unauthorized use** resulting from the theft of a password from **your computer system** or from any **insured**;
2. A **denial of service attack** against **your computer system**; or
3. Infection of **your computer system** by **malicious code** or the transmission of **malicious code** from **your computer system**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack. A series of continuing **security breaches**, related or repeated **security breaches**, or multiple **security breaches** resulting from a continuing failure of computer security shall be considered a single **security breach** and be deemed to have occurred at the time of the first such **security breach**.

**UU. Special Expenses** means reasonable and necessary costs and expenses which **you** incur to:

1. Prevent, preserve, minimize, or mitigate any further damage to **your digital assets**, including the reasonable and necessary fees and expenses of specialists, outside consultants or forensic experts **you** retain;
2. Preserve critical evidence of any criminal or malicious wrongdoing;
3. Purchase replacement licenses for **computer programs** because the copy protection system and/or access control software was damaged or destroyed by a **covered cause of loss**; or
4. notify patients or customers of a total or partial interruption, degradation in service, or failure of **your computer system** resulting from a **covered cause of loss**.

**VV. Unauthorized access** means the gaining of access to a **computer system** by an unauthorized person or persons.

**WW. Unauthorized use** means the use of a **computer system** by unauthorized persons or authorized persons in an unauthorized manner.

**XX. Waiting Period** means the 8 hour period of time which must elapse before the recovery of loss under Coverage Agreement E (2) or Coverage Agreement G can be considered. The **waiting period** applies to each **period of restoration**.

**YY. You and your** mean the **insured**.

**ZZ. Your computer system** means:

1. a **computer system** operated by and either owned by, or leased to **you**;

2. With respect to Coverage Agreement B only, a **computer system** operated by a **BPO service provider** or **outsourced IT service provider** and used for the sole purpose of providing hosted computer application services to **you** or for processing, maintaining, hosting, or storing **your electronic data**, pursuant to a written contract with **you** for such services.

## SECTION V - NOTICE PROVISIONS

### A. NOTICE OF A CLAIM

- (a) Unless otherwise provided in any Coverage Agreement, **you** shall give MMIC written notice of any **claim** under this Endorsement during the **policy period**.
- (b) **You** shall provide MMIC with copies of all documentation comprising the **claim** as well as all authorization, cooperation, or assistance as MMIC may require.
- (c) MMIC will not be obligated to pay any amounts incurred prior to notification of a **claim** to MMIC or incurred without MMIC's prior written consent.

### B. NOTICE OF A POTENTIAL CLAIM

If, during the **policy period**, **you** first become aware of any facts or circumstances which could give rise to a **claim** covered under this Endorsement, and if **you** provide MMIC with written notice during the **policy period** of:

- (a) The details regarding such facts or circumstances;
- (b) The nature of the alleged or potential damages;
- (c) The identity of the potential claimants involved;
- (d) The manner in which **you** first became aware of the facts or circumstances; and
- (e) The consequences which have resulted or may result,

then any **claim** subsequently arising out of such facts or circumstances will be deemed first made on the date such notice was given to MMIC.

## SECTION VI - LOSS DETERMINATION UNDER COVERAGE AGREEMENT E

### A. LOSS OF DIGITAL ASSETS

For any and all coverage provided under Coverage Agreement E(1), **digital assets loss** will be determined as follows:

1. If the impacted **digital asset** was purchased from a third party, MMIC will pay only the lesser of the original purchase price of the **digital asset** or the reasonable and necessary **digital assets loss**.
2. If it is determined that the **digital assets** cannot be replaced, restored or recreated, then MMIC will only reimburse the actual and necessary **digital assets loss** incurred up to such determination.

### B. NON-PHYSICAL BUSINESS INTERRUPTION AND EXTRA EXPENSE

For any and all coverage provided under Coverage Agreement E (2), **income loss** will be determined as the reduction of **your** income during the **period of restoration**, which is:

1. **your** net income (net profit or loss before income taxes) that would have been reasonably projected, but which has been lost directly as a result of total or partial interruption, degradation in service or failure of **your computer system** caused directly by a **covered cause of loss**. The revenue projection will take into account the prior experience of **your** business during the previous twelve months immediately preceding the date of the **covered cause of loss** and the probable experience had no **covered cause of loss** occurred. Revenues include the amount of money paid or payable to **you** for goods, products or services sold, delivered or rendered in the normal course of **your** business. Revenue projection will be reduced by the extent to which **you** use substitute methods, facilities or personnel to maintain **your** revenue stream.

MMIC will take into consideration **your** documentation of the trends in the business and variations in or other circumstances affecting the business before or after the covered **cause of loss**, which would have affected **your** business had no covered **cause of loss** occurred; and

2. Any fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the **period of restoration**.

#### **SECTION VII - EXTENDED REPORTING PERIOD APPLICABLE TO CLAIMS-MADE POLICIES**

1. In the event of termination of a Claims-Made Policy for any reason other than non-payment of premium, MMIC shall provide an additional reporting period of ninety (90) days in which **claims** otherwise covered by this Endorsement may be reported. The additional reporting period of ninety (90) days begins on the effective date of Policy termination. Such additional reporting period shall only apply to **claims** first made during the additional reporting period, which arise out of:
  - a. Any actual or alleged **multimedia peril, security and privacy wrongful act, security breach or privacy breach** under Coverage Agreement A, B or C, whichever applies, that takes place or first commences during the **policy period**; and
  - b. Any **security breach, privacy breach, covered cause of loss, cyber extortion threat or act of terrorism** under Coverage Agreement D, E, F or G, whichever applies, that takes place or first commences during the **policy period**.
2. In the event of termination of a Claims-Made Policy for any reason other than non-payment of premium, **you** will have the right to purchase an Extended Reporting Period of one (1) year during which **claims** otherwise covered by this Endorsement may be made and reported. The (1) year Extended Reporting Period begins on the effective date of Policy termination. If purchased, the Extended Reporting Period will apply to **claims** first made during the Extended Reporting Period, which arise out of:
  - a. Any actual or alleged **multimedia peril, security and privacy wrongful act, security breach or privacy breach** under Coverage Agreement A, B, or C, whichever applies, that takes place or first commences during the **policy period**; and
  - b. Any **security breach, privacy breach, covered cause of loss, cyber extortion threat, or act of terrorism** under Coverage Agreement D, E, F or G, whichever applies, that takes place or first commences during the **policy period**.

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for the Policy must have been paid. The right to purchase the Extended Reporting Period shall terminate unless written notice, together with full payment of the premium for the Extended Reporting Period, is received by MMIC within thirty (30) days after the effective date of cancellation, or, in the event of non-renewal, within thirty (30) days after the Policy expiration date. If such notice and premium payment is not so given to MMIC, there shall be no right to purchase the Extended Reporting Period. The entire premium for the Extended Reporting Period shall be deemed earned at its commencement.

3. All terms and conditions of this Endorsement, including the Notice Provisions, will continue to apply during any Extended Reporting Period.
4. The existence of an Extended Reporting Period will not increase or reinstate the limits of liability set forth in Section III of this Endorsement.

#### **SECTION VIII - OTHER INSURANCE**

The coverage provided by this Endorsement shall be excess insurance over any other valid and collectible insurance available to **you**, including any self insured retention or deductible portion thereof, whether such insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such insurance specifically applies as excess insurance over this Endorsement.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



William J. McDonough - President & CEO

Policy No: MFP000231  
Issue Date: 06/17/2013



7701 France Avenue South, Suite 500  
Minneapolis, MN 55435-5288  
800.328.5532 • Fax 952.838.6808  
MMICgroup.com

This Endorsement forms a part of Policy No. MFP000231 issued by MMIC Insurance, Inc., and takes effect as of the effective date of said Policy unless another effective date is stated herein.

Effective Date: 07/01/2013

### **Cyber Solutions Clarification Endorsement**

#### **Endorsement to Cyber Solutions**

It is agreed and understood that Cyber Solutions is not covered under the Healthcare System Liability Protection Umbrella/Excess Liability Policy.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.

A handwritten signature in cursive script, reading "William J. McDonough".

William J. McDonough - President & CEO

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## **Excess Employee Benefits Administration Liability-Claims Made**

### **Endorsement to Part Two - Healthcare System Umbrella Liability**

#### **I. INSURING AGREEMENT**

MMIC agrees to pay on behalf of the **insured**, in accordance with the applicable provisions of the **underlying insurance** those sums, in excess for the applicable limits of the **underlying insurance**, which the **insured** shall become legally obligated to pay as **damages**, because of any **claim** or **claims** to which the **underlying insurance** would apply except for the exhaustion of its applicable limit of liability, first made against the **insured** and reported to MMIC during the **policy period** and occurring within the **coverage territory**, arising from the **administration of the named insured's employee benefits program**.

This coverage is subject to all terms, conditions, definitions, agreements and exclusions of the **underlying insurance**, except for any provisions to the contrary contained herein.

#### **Exclusions:**

All exclusions applicable to the underlying insurance are incorporated herein by reference.

#### **II. LIMITS OF LIABILITY**

Regardless of the number of **insureds** under this Policy, number of persons injured, or the number of **claims** made, MMIC's liability is limited as follows:

The limit of liability stated on the Declarations Page as applicable to each wrongful act is the limit of MMIC's liability for loss resulting from all **claims** or suits first made during the **policy period** arising from the **administration of the named insured's employee benefits program**.

Subject to the above provisions respecting each wrongful act the limit of liability stated on the Declarations Page as aggregate is the total limit of MMIC's liability for all **claims** first made during the **policy period**.

If the aggregate limit of liability of the **underlying insurance** has been reduced or exhausted solely as a result of **claims** made after the inception date of this Policy, this Policy shall:

- (a) in the event of reduction, become excess of the reduced **underlying insurance**; or
- (b) in the event of exhaustion, continue in force as **underlying insurance** provided that at the inception of this Policy, the **insured** had no knowledge or could not have reasonably foreseen that such **claims** would be made.

### III. DEFENSE AND SUPPLEMENTARY PAYMENTS

The defense and supplementary payments obligations applicable to the **underlying insurance** are incorporated herein by reference. However, MMIC shall have no obligation to provide such coverage until the limits of liability of the **underlying insurance** have been exhausted.

### IV. DEFINITIONS

The definitions applicable to the **underlying insurance** are incorporated herein by reference including the following:

"**Underlying insurance**" means the Policy(ies) listed on the Schedule of Underlying Insurance of this Policy.

### V. GENERAL CONDITIONS

The general conditions applicable to the **underlying insurance** are incorporated herein by reference including the following:

#### Maintenance of Underlying Insurance

It is a condition of this Policy that while this Policy is in effect, the **insured** shall maintain in force as collectible insurance the **underlying insurance** as shown on the Schedule of Underlying Insurance of this Policy, without alteration of terms or conditions, except for any reduction or exhaustion of the aggregate limit contained therein solely by reason of **claims** first made during the **policy period**. Failure of the **insured** to comply with the foregoing shall not invalidate this Policy but in the event of such failure, MMIC shall be liable had the **insured** complied therewith.

For purposes of this provision, **underlying insurance** shall also include a reporting endorsement.

#### Reporting Endorsement

The reporting endorsement conditions applicable to the **underlying insurance** are incorporated herein by reference except the **insured** may exercise this right only if the **underlying insurance** is maintained.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



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## Healthcare System Administrative Proceeding Defense Coverage Endorsement

### Endorsement to Section III

In consideration of the premium charged, it is hereby agreed and understood that Section III, Supplementary Payments, is amended to include Healthcare System Administrative Proceeding Defense Coverage as per the following:

All words and phrases in this Endorsement that appear in bold print shall have the meanings set forth in the Definitions Section of this Endorsement.

#### WHAT THIS ENDORSEMENT COVERS

MMIC shall pay on behalf of the **insured** the **defense costs** arising out of **administrative proceedings** commenced during the policy period and reported to MMIC during the policy period or extended reporting period. The maximum amount of coverage for **defense costs** provided by this Endorsement shall be as shown below.

#### LIMITS OF LIABILITY

Each Scheduled <b>Insured</b> Limit	\$25,000 Annual Aggregate
<b>Total Policy Limit</b>	\$100,000

The scheduled **insured** limits of liability shall apply separately to each **insured** listed on the Schedule of Insureds. However;

- (1) The limits of liability as shown are the maximum amounts MMIC will pay, regardless of the number of **administrative entities** instituting an **administrative proceeding** against the **insured**.
- (2) Two or more **administrative proceedings** arising out of a single act, or series of related acts, shall be treated as a single **administrative proceeding**. All related **administrative proceedings**, whenever instituted, shall be attributed to the policy period in which the earliest **administrative proceeding** arising out of such acts was instituted and notice of same given by the **insured** to MMIC. All related **administrative proceedings** shall be subject to one limit of liability.
- (3) Any administrative proceeding involving or related to an **insured's** billing or coding practices shall be subject to one **insured** limit of liability, regardless of the number of patients involved or procedures, records, or transactions reviewed.
- (4) Any administrative proceeding involving or related to an **insured's** compliance with regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA, 42 U.S.C. §1301 et seq. ), related to the transmission, security or privacy of protected health information, as amended, shall be subject to one **insured** limit of liability, regardless of the number of patients involved or procedures, records, or transactions reviewed.

- (5) The limits of liability are not cumulative, even if the **administrative proceedings** resulting from related acts span more than one policy period.

#### **EXTENDED REPORTING PERIOD**

In the event of termination of this insurance for any reason other than nonpayment of premium, MMIC shall provide an additional reporting period of ninety (90) days in which **administrative proceedings** otherwise covered by this Endorsement may be reported.

The limit of insurance available to the **insured** for **administrative proceedings** reported during the Extended Reporting Period shall be the unused amount of coverage remaining from the limit of liability available to the **insured** for the policy period immediately preceding the termination of coverage.

#### **DUTIES OF THE INSURED**

As conditions precedent to coverage under this Endorsement, the **insured** agrees:

(a) **Notice of Administrative Proceeding**

The **insured** shall, as soon as reasonably possible, advise MMIC:

- (1) of the receipt by the **insured** of notice from an official representative of an **administrative entity** of the commencement of any **administrative proceeding** against the **insured**; or
- (2) of the receipt by the **insured** of any information from any source that an **administrative proceeding** against the **insured** may be reasonably anticipated; or
- (3) of any other incident or circumstance likely to give rise to any coverage hereunder.

(b) **Selection of Attorneys**

The **insured** shall be represented in the administrative proceeding by **attorneys** appointed by MMIC in its sole discretion.

#### **RIGHT OF THE INSURED TO SETTLE**

Nothing contained in this Endorsement shall be construed to deny or otherwise limit the **insured's** right to effect a settlement of any **administrative proceeding**, or to impede in any way the **insured's** ability to take any action which the **insured** believes is necessary. However, this Endorsement shall not apply to, and MMIC shall not be responsible for, any costs associated with any such action, unless the action is taken at the recommendation of an attorney appointed by MMIC.

#### **DEFINITIONS**

Definitions when used in this Endorsement forming a part hereof:

(a) **"Administrative entity"** means:

- (1) A managed care organization or other third party payer;
- (2) An entity, other than a governmental body responsible for licensure, regulation and professional discipline of healthcare professionals, legally responsible for investigating or enforcing compliance with statutes, regulations or contractual provisions relating to the receipt of payment under any **healthcare benefit program**;

- (3) A governmental entity, other than a body responsible for licensure, regulation and professional discipline of healthcare professionals, responsible for investigating or enforcing compliance with the Emergency Medical Transfer and Active Labor Act (EMTALA, 42 U.S.C. §1395 dd, et. seq.), as amended; and
- (4) A governmental entity, other than a body responsible for licensure, regulation and professional discipline of healthcare professionals, responsible for investigating or enforcing compliance with regulations issued under the Health Insurance Portability and Accountability Act (HIPAA, 42 U.S.C. §1301 et seq), related to the transmission, security or privacy of protected health information, as amended.

Neither an individual nor his/her representative is an **administrative entity**.

(b) **“Administrative proceeding”** means an inquiry, investigation or other action instituted, or reasonably anticipated by the **insured** to be instituted, against the insured by an **administrative entity**:

- (1) For alleged submission of claim(s) for reimbursement in violation of statutes, regulations or contractual provisions applicable to a **healthcare benefit program**;
- (2) For alleged violation of EMTALA, as amended; or
- (3) For alleged violation of regulations issued under HIPAA related to the transmission, security or privacy of protected health information, as amended.

An appeal from a final disposition of an **administrative proceeding** against the **insured** shall be considered part of the **administrative proceeding**, provided that the **insured** has a right of appeal under applicable statute, regulation or contract.

For purposes of coverage under this Endorsement, an **administrative proceeding** is considered to have been instituted at the time notice is given to the **insured** of the inquiry, investigation or other action by an official representative of the **administrative entity**. An **administrative proceeding** is considered to have been “reasonably anticipated by the insured to be instituted” at the time the **insured** obtains reasonably reliable information about a contemplated inquiry, investigation or other action.

(c) **“Attorney”** means:

an individual approved by MMIC and duly licensed to practice law at the time the services are rendered.

(d) **“Defense costs”** means:

reasonable **attorney** fees incurred in the defense of, or in preparation for, a reasonably anticipated need to defend an **administrative proceeding**, and shall include additional customary costs and consultant fees when the consultant is retained by or on the recommendation of the attorney.

(e) **“Healthcare benefit program”** means:

any public or private plan or contract under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item or service for which payment may be made under the plan or contract.

(f) **“Insured”** means:

healthcare entities listed on the Schedule of **Insureds** and any licensed employees thereof.

(g) "Total Policy Limit" means:

the most MMIC will pay for the costs of defending all **insureds** against all **administrative proceedings** in a policy period.

#### EXCLUSIONS

This Endorsement does not cover:

- (a) Any proceeding involving an initial application for licensure or for participation as a provider of services to patients under any **healthcare benefit program**;
- (b) Any proceeding involving **insured's** membership in any professional society or other professional organization, or involving **insured's** certification by any specialty practice board or college of medical practice or any sub-specialty thereof;
- (c) Any **administrative proceeding** of which the **insured** was aware prior to the inception of this Endorsement or any **administrative proceeding** covered by any other policy of insurance;
- (d) Any **defense costs** related to **insured's** indictment for a criminal act;
- (e) Any expenses associated with implementation of any compliance program or policies, procedures or practices relating to participation as a provider of medical services to a managed care organization or under any **healthcare benefit program**, whether initiated voluntarily or pursuant to direction, by order of, or in settlement with any **administrative entity**;
- (f) Any proceeding involving the Nuclear Regulatory Commission or any agency responsible for regulating employment practices, discrimination, disability benefits, unemployment compensation or workers' compensation;
- (g) Any expenses associated with any cost report or other similarly predictable, routine audit, review or accounting conducted by any **administrative entity**.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



William J. McDonough - President & CEO

Policy No: MFP000231  
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## Healthcare System Umbrella/Excess Liability Policy

### MMIC Insurance, Inc.

#### Declarations

Policy No: MFP000231

- Item 1. Named Insured: Polk County Health Department
- Item 2. Address: 1907 Carpenter Ave  
Des Moines, IA 50314
- Item 3. Limits of Liability:
- Part One: Healthcare System Excess Medical Professional Liability  
Retroactive Date: 08/15/2009  
\$1,000,000 each **claim**  
\$1,000,000 aggregate
- Part Two: Healthcare System Umbrella Liability  
\$1,000,000 each occurrence  
\$1,000,000 aggregate
- Retained Limit \$10,000.  
*(Retained Limit applies if not covered by underlying insurance)*
- Item 4. Total Premium: \$5,757
- Item 5. Policy Period: From 07/01/2013 to 07/01/2014  
12:01 a.m., central standard time at the address of the **named insured** as stated herein.

Item 6. Endorsements forming a part of the Policy at issue:

**Form Name**

Healthcare System Umbrella/Excess Liability Policy  
Schedule of Underlying Insurance  
Cyber Solutions Clarification Endorsement  
Excess Employee Benefits Administration Liability  
Healthcare System Liability Protection Umbrella/Excess

**Form Id**

UEDC301H  
SCHE301H  
CYBRCE213H  
EEBL301H  
UXHCP109H



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### Iowa Amendatory Endorsement

#### AMENDMENT TO COVERAGE A - HEALTH SYSTEM MEDICAL PROFESSIONAL LIABILITY AND COVERAGE B - HEALTHCARE SYSTEM GENERAL LIABILITY

##### PART ONE

In consideration of the premium charged, this Policy does not apply to any **claim** against an **insured** for which the **insured**:

- (1) is immune from liability due to the provisions of any statute or where the action based upon such **claim** has been barred or abated by operation of statute or rule of civil procedure; or
- (2) is not immune from liability as described in (1) above but is immune from further liability above any specific statutory limits cap on the maximum liability of the **insured**. However, this item (2) does not apply to the extent (if any) this Policy provides coverage up to the maximum statutory liability limits cap.

**This Endorsement shall not apply if, for any reason, the immunity or maximum liability cap granted by statute or rule of civil procedure is deemed void.**

**The immunities and statutory limits caps referred to in the foregoing paragraphs are those found in Iowa Code Chapter 670, or any succeeding statutory compilation.**

##### PART TWO

#### V. CONDITIONS - Cancellation is deleted and replaced with the following:

This Policy may be cancelled by the named **insured** by surrender thereof to MMIC or any of its authorized representatives or by mailing to MMIC written notice stating when the cancellation shall be effective.

If this Policy has not been previously renewed, this Policy may be cancelled by MMIC for any reason if the Policy has been in effect less than 60 days at the time the notice of cancellation was mailed.

If this Policy has been previously renewed or has been in effect for more than 60 days, this Policy may be cancelled by MMIC if at least one of the following conditions is met:

- a. Nonpayment of premium.
- b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the Policy or contract or in presenting a claim under the Policy or contract.
- c. Actions by the insured which substantially increase or change the risk insured.
- d. Determination by the Commissioner that the continuation of the Policy will jeopardize the insurer's insolvency or will constitute a violation of the law of Iowa or any other state.

- e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a Policy or contract term or condition.

This Policy may be cancelled at any time if MMIC loses reinsurance coverage which provides coverage to MMIC for a significant portion of the underlying risk insured and if the Commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation because of loss of reinsurance coverage is justified, the Commissioner shall consider all of the following factors:

- a. The volatility of the premiums charged for reinsurance in the market.
- b. The number of reinsurers in the market.
- c. The variance in the premiums for reinsurance offered by the reinsurers in the market.
- d. The attempt by the insurer to obtain alternate reinsurance.
- e. Any other factors deemed necessary by the Commissioner.

This Policy may be cancelled by MMIC by mailing to the **named insured** at the address shown in this Policy. A notice of cancellation shall include the reason for cancellation of the Policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured at least ten (10) days prior to the effective date of cancellation. Thirty (30) days notice will be given if the cancellation is due to loss of reinsurance. A post office department certificate of mailing to the named insured at the address shown in the Policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

If the **named insured** cancels this Policy, earned premium shall be computed in accordance with the customary short-rate table and procedures. If MMIC cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practical after cancellation becomes effective, but tender by MMIC of unearned premium is not a condition of cancellation.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



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### Part-Time Coverage Endorsement

#### Endorsement to Coverage A - Healthcare System Medical Professional Liability

The individual **insured** listed below is rated as part-time:

Insured

Gregory A. Schmunk MD

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.

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**Physician Coverage Endorsement**  
*Separate Limits of Liability*

**Endorsement to Coverage A - Healthcare System Medical Professional Liability**

In consideration of the premium charged, the definition of "**Insured**" as respects Coverage A- Healthcare System Medical Professional Liability, is amended to include the following individuals.

The **retroactive dates** listed below replace the **retroactive dates** listed on the Declarations Page for the individuals covered by this Endorsement.

It is further agreed that the limits of liability as stated on the Declarations Page and defined in Section II. of the Policy, shall apply separately to each of the individual **insureds** included in this Endorsement.

<u>Individual</u>	<u>Classification</u>	<u>Retroactive Date</u>
Carlos Alacon	80420	08/15/2009
Gregory A. Schmunk MD	80240	08/15/2009
Kevin M. Rahner DO	80420	09/01/2011

Coverage A is amended as follows for the employed individuals covered by this Policy.

**Limits of Liability-Reporting Endorsement**

**Section II.- Limits of Liability, Reporting Endorsement,** "aggregate" limits of liability is deleted and replaced with the following.

Subject to the above provisions respecting "each **claim**" and the limits of liability stated on the reporting endorsement, the "aggregate" limits for the reporting endorsement applies separately to each of the following reporting periods:

- The first 12 months following the date coverage was cancelled or not renewed
- The second 12 months following the date coverage was cancelled or not renewed
- Any remaining policy period the reporting endorsement is in effect.

**Supplementary Payments**

**Section III.- Supplementary Payments** is amended to include the following:

(H) the reasonable legal fees incurred by an **insured** physician or surgeon defending a complaint from a governmental body responsible for licensure, regulation or professional discipline of physicians and surgeons which alleges improper or inadequate performance of **medical professional services** on or after the **retroactive date** by an **insured**. To be eligible for this supplementary payment, the **insured** must receive notice of the complaint and provide notice of the complaint to MMIC during the **policy period**. The maximum payment under the provision by

MMIC shall not exceed: 1) \$5,000 for one complaint, regardless of the number of **policy periods** required to resolve the complaint, or 2) \$5,000 for each **insured** for any one **policy periods**, regardless of the number of complaints alleged

#### **Definition of Insured**

**Section IV.-Definitions, "Insured"** is amended to include a locum tenens.

Locum tenens means a healthcare worker temporarily employed by the **named insured** and serving in the place of an individual **insured** scheduled on this endorsement, provided that the locum tenens does not provide **medical professional services** at the same time as the **insured** a healthcare worker being replaced.

#### **Inspection and Audit**

**Section V.- General Conditions, Inspection and Audit** is amended to include the following:

The **named insured** agrees to keep and maintain records of all locum tenens employed to permit MMIC to verify coverage.

#### **Reporting Endorsement**

**Section V.- General Conditions, Reporting Endorsement** is amended to include the following:

#### **Waiver or Reduction of Reporting Endorsement Premium**

- (1) In the event of an **insured** physician, surgeon or dentist's death during the **policy period**, a reporting endorsement will be issued for that physician, surgeon or dentist without premium charge. MMIC may require and the **insured's** personal representative agrees to furnish a written application for the reporting endorsement and proof of death within thirty (30) days.
- (2) MMIC will provide a reporting endorsement without charge to an **insured** physician, surgeon or dentist who, during the **policy period**, becomes totally and permanently disabled as a result of **bodily injury**, mental illness or disease.

"Totally and permanently disabled as a result of **bodily injury**, mental illness, or disease" means being wholly prevented from performing the material and substantial duties of the **insured's** occupation as a physician, surgeon or dentist for a continuous period of not less than six (6) months and which is expected to be continuous and permanent thereafter.

**Bodily injury**, mental illness and disease shall not include:

- (a) intentionally self-inflicted injuries;
- (b) suicide, or attempted suicide;
- (c) neurosis, psychoneurosis, psychopathy or any other type of mental or emotional disease or disorder unless an **insured** physician, surgeon or dentist is required to be confined continuously as an inpatient in a hospital or other institution licensed to provide care and treatment for such condition for a minimum of eight (8) consecutive weeks;
- (d) or any disease or illness arising out of the use of addictive or habituating drugs, chemicals, or substances.

The **insured** physician, surgeon or dentist agrees to provide complete evidence, satisfactory to MMIC, of total disability. Such evidence shall include, at a minimum, a written report from an independent medical exam performed by a physician who is not you, a member of your family or a member of your practice. The **insured** shall furnish upon request any other information that is required for MMIC to evaluate the **insured** physician, surgeon or dentist's disability including, without limitation, hospital records and other medical reports.

(3) If an **insured** individually scheduled on the Declarations Page chooses during the coverage period to terminate coverage for any reason meets one of the following conditions, MMIC will issue a reporting endorsement without charge:

1. Has been continuously insured with MMIC for a minimum of fifteen (15) years and is at least sixty (60) years old.
2. Has been continuously insured with MMIC for a minimum of ten (10) years and is at least sixty-two (62) years old.
3. Retires permanently from the practice of medicine during the coverage period and has been insured with MMIC for a minimum of five (5) continuous years.

**Insureds** individually scheduled on the Declarations Page choosing to retire permanently from the practice of medicine who have been continuously insured with MMIC for less than five (5) continuous years are eligible to purchase a reporting endorsement at a reduced premium. The reduction in premium shall be twenty percent (20%) for each full year of coverage. Requests for free or reduced premium reporting endorsements must be made to MMIC by the **insured** within thirty (30) days after retirement.

Nothing herein contained shall be held to vary, waive, alter or extend any of the terms, conditions, agreements or declarations of the Policy, other than as herein stated.

This Endorsement shall not be binding unless countersigned by a duly authorized representative of MMIC; provided that this Endorsement takes effect as of the effective date of the Policy and, at issue of said Policy, forms a part thereof, countersignature of the Declarations Page of said Policy by a duly authorized representative of MMIC shall constitute valid countersignature of this Endorsement.



William J. McDonough - President & CEO

Policy No: MFP000231  
Issue Date: 06/17/2013



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**Healthcare System Excess Medical Professional Liability  
 Schedule of Underlying Insurance**

Insurer: MMIC Insurance, Inc.		Limits of Liability:
Policy Number: MFP000231	\$1,000,000	Each Claim
Policy Period: 07/01/2013 to 07/01/2014	\$3,000,000	Aggregate

**PART TWO  
 HEALTHCARE SYSTEM UMBRELLA LIABILITY**

**Underlying Insurance:**

**General Liability**

Insurer: MMIC Insurance, Inc.		Limits of Liability:
Policy Number: MFP000231	\$1,000,000	Each Occurrence
Policy Period: 07/01/2013 to 07/01/2014	\$3,000,000	Aggregate

**Automobile Liability**

Insurer: not applicable		Limits of Liability:
Policy Number: not applicable	\$not applicable	Bodily Injury and Property Damage
Policy Period: not applicable		Combined Limit

**Employers Liability**

Insurer: not applicable		Limits of Liability:
Policy Number: not applicable	\$not applicable	Each Accident
Policy Period: not applicable	\$not applicable	Policy Limit
	\$not applicable	Each Employee

**Other**

Type of Coverage: Employee Benefits Program Administration Liability

Insurer: MMIC Insurance, Inc.	Limits of Liability
Policy Number: MFP000231	\$1,000,000 each wrongful act
Policy Period: 07/01/2013 to 07/01/2014	\$3,000,000 aggregate



## HEALTHCARE SYSTEM LIABILITY PROTECTION

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Definitions are provided for words in **boldface** type.

In consideration of the payment of the premium, in reliance upon the representations and warranties contained in the Declarations Page made a part hereof, and subject to all terms of this Policy, MMIC Insurance, Inc., hereafter referred to as MMIC, agrees with the **named insured** as follows:

## **I. INSURING AGREEMENTS**

### **COVERAGE A-HEALTHCARE SYSTEM MEDICAL PROFESSIONAL LIABILITY**

MMIC agrees to pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as **damages** because of any **claim** or **claims** first made against and reported to the **insured** during the **policy period** and occurring within the **coverage territory** arising out of the performance of **medical professional services** rendered or which should have been rendered on or after the **retroactive date** by the **insured** or by any person for whose acts or omissions the **insured** is legally responsible.

MMIC shall have the right and duty to defend any suit against the **insured** alleging such **damages**, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation or such settlement of any **claim** or suit at its sole discretion, but MMIC shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of MMIC's liability hereunder has been exhausted by payment of judgments or settlements.

#### **Exclusions:**

Coverage A does not apply to:

- (a) liability arising from alleged violations of any "anti-trust" laws as defined in Section 1 of the Clayton Act, 15 U.S. Code Section 12, the Federal Trade Commission Act, or the laws of any jurisdiction relating to monopolization, restraint of trade, or unfair methods of competition;
- (b) **claims** against an **insured** by any other **insured** covered by this Policy, but this exclusion does not apply to employees who are being treated as patients by an **insured**;
- (c) liability assumed by an **insured** under any oral or written **contract** or agreement. However this exclusion will not apply if the **insured** would have been liable without the **contract** or agreement;
- (d) any willful, fraudulent, dishonest, criminal or malicious act or omission, by or with the knowledge or consent of, or at the direction of, any **insured**.

### **COVERAGE B-HEALTHCARE SYSTEM GENERAL LIABILITY**

MMIC agrees to pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as **damages** because of:

- (a) **bodily injury or property damage** during the **policy period** caused by an **occurrence**;
- (b) **advertising injury or personal injury** caused by an **offense** during the **policy period**; provided the **occurrence** takes place, or the **offense** is committed within the **coverage territory**.

MMIC shall have the right and duty to defend any suit against the **insured** alleging such **damages**, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation or such settlement of any **claim** or suit at its sole discretion, but MMIC shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of MMIC's liability hereunder has been exhausted by payment of judgments or settlements.

**Exclusions:**

Coverage B does not apply to:

- (a) **bodily injury or property damage** arising out of the ownership, entrustment, maintenance, operation, use, loading or unloading of any automobile or aircraft owned or operated by or rented, chartered or loaned to an **insured**, or any other automobile or aircraft operated by any person in the course of employment by an **insured**. However, this exclusion does not apply to the parking of an automobile on any premises owned, rented, leased or borrowed by the **insured**, or on ways next to such premises, if such automobile is not owned by or rented or loaned to an **insured**;
- (b) **bodily injury or property damage** arising out of:
  - (1) the transportation of **mobile equipment** by an automobile owned or operated by or rented or loaned to any **insured**;
  - (2) the use of **mobile equipment** in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity;
- (c) **bodily injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft owned or operated by or rented to any **insured**, or any other watercraft operated by any person in the course of employment by an **insured**. However, this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by an **insured**, or any watercraft under 50 feet in length which is not owned by the **insured** nor used to carry person or property for a charge;
- (d) liability under any worker's compensation, employer's liability, disability benefits, unemployment compensation, or under any similar law. This includes **bodily injury** to an employee arising out of and in the course of his or her employment, as well as **bodily injury** to the spouse, child, parent, brother or sister of that employee as a consequence of the above injury. This exclusion will apply whether the **insured** may be held liable as an employer or in any other capacity such as a property owner or product manufacturer. This exclusion will also apply to any obligation of the **insured** to share **damages** with or repay someone else who must pay **damages** because of **bodily injury** to any employee of the **insured**;
- (e) liability arising out of the performance of **medical professional services**;
- (f) liability assumed by an **insured** under any contract or agreement except a **contract** as defined in Section IV., Definitions;
- (g) any willful, fraudulent, dishonest, criminal or malicious act or omission, by or with the knowledge or consent of, or at the direction of, any **insured**;
- (h) liability arising against an **insured** as the perpetrator of sexual conduct including, but not limited to, sexual abuse, deviant sexual behavior, sexual assault, molestation or sexual harassment;
- (i) **property damage** to:
  - (1) property owned, occupied by or rented to an **insured**;
  - (2) property used by an **insured**; or
  - (3) property in the care, custody or control of an **insured** or property over which an **insured** is for any purpose exercising physical control;
  - (4) premises an **insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (j) liability based upon the Employee Retirement Income Security Act of 1974 (also known as the Pension Reform Act of 1974), as amended in part by Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and amendments to either, or similar provisions of any federal, state or local statutory law or common law;

(k) **property damage to impaired property** or property that has not been physically injured, arising out of:

- (1) a defect, deficiency, inadequacy or dangerous condition in the **insured's products** or the **insured's work**; or
- (2) a delay or failure by the **insured** or anyone acting on behalf of the **insured** to perform a **contract** or agreement in accordance with its terms;

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to the **insured's products** or **insured's work** after it has been put to its intended use;

(l) **damages** claimed for any loss, cost or expense incurred by the **insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **insured's products**;
- (2) **insured's work**;
- (3) **impaired property**;

if such product, **work** or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition;

(m) liability arising from the withdrawal, inspection, repair, replacement or loss of use of an **insured's products** or **work** completed by or for the **insured** or of any property of which such products or **work** form a part, if such products, **work** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(n) **personal injury and advertising injury** arising from any false written or spoken material that the **insured** knew to be false;

(o) **personal injury or advertising injury** arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your advertisement.

However, this exclusion does not apply to infringement in your advertisement of copyright, trade dress or slogan.

(p) **personal injury and advertising injury** arising directly out of any action or omission that violates or is alleged to violate:

- 1. The Telephone Consumer Protection Act (TCPA) including any amendment of or addition to such law; or
- 2. The CAN-SPAM Act of 2003, including any amendment or addition to such law; or
- 3. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material information.

(q) **bodily injury or personal injury** to:

- (1) a prospective, current or former employee arising out of any:
  - (a) refusal to employ that person;
  - (b) termination of that person's employment; or
  - (c) employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at a prospective, current or former employee.

This exclusion applies whether the injury causing event(s) described in paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

- (2) the spouse, child, parent, brother or sister of that prospective, current or former employee, as a consequence of **bodily injury** or **personal injury** to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed;

this exclusion applies:

- (a) whether the **insured** may be liable as an employer or in any other capacity; and
- (b) to any obligation to share **damages** with or repay someone else who must pay **damages because** of the injury;

This exclusion applies whether the injury causing event described in paragraphs (a), (b) and (c) above occurs before employment, during employment or after employment.

- (r) liability based upon, violations of any "anti-trust" laws as defined in Section 1 of the Clayton Act, 15 U.S. Code Section 12, the Federal Trade Commission Act, or the laws of any jurisdiction relating to monopolization, restraint of trade, or unfair methods of competition;
- (s) **property damage** to an **insured's products** or completed **work** that is caused by an **insured's products** or completed **work** itself or any of its parts;
- (t) (1) **bodily injury** or **property damage** and **advertising injury** or **personal injury** arising out of, resulting from, caused by, or contributed to by asbestos, exposure to asbestos or the use of asbestos;
- (2) Any **damages** or any loss, cost or expense arising out of any (i) **claim** or suit by or on behalf of any government authority or any other alleged responsible party because of, or (ii) request, demand, order or statutory or regulatory requirement that any **insured** or any other person or entity should be, or should be responsible for:
- a. Assessing the presence, absence or amount or effects of asbestos;
- b. Identifying, sampling, or testing for, detecting, monitoring, cleaning up, removing, containing treating, detoxifying, neutralizing, abating, disposing of or mitigating asbestos; or
- c. Responding to asbestos in any other way other than described in 2.a. and b. above;
- (3) any supervision, instruction, recommendations, warning or advice given or which should have been given in connection with any of the subsections above; or
- (4) any obligation to share damage with or repay someone else in connection with any of the subsections above.
- (u) (1) **bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
- (a) at or from any premises, site or location which is or was at any time owned or occupied by, or rented, or loaned to, any **insured**. However, this subparagraph does not apply to:
- (i) **Bodily injury** if sustained within a building and caused by smoke, fumes, vapor or soot produced or originating from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.
- (ii) **Bodily injury** or **property damage** arising out of heat, smoke or fumes from a **hostile fire**
- (b) At or from any premises, site or location which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing or treatment of **waste**;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as **waste** by or for:

- (i) Any **insured**; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any **insured** or contractors or subcontractors working directly or indirectly on any **insured's** behalf are performing operations if the **pollutants** are brought on or to the premises, site or locations in connection with such operations by such **insured**, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) **bodily injury** or **property damage** arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of **mobile equipment** or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the **bodily injury** or **property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels lubricants or other operating fluids are brought on to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such **insured**, contractor or subcontractor;
  - (ii) **bodily injury** or **property damage** sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) **bodily injury** or **property damage** arising out of heat, smoke or fumes from a **hostile fire**.
- (e) At or from any premises, site or location on which any **insured** or any contractors or subcontractors working directly or indirectly on any **insured's** behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of the **pollutants**.
- (v) **Bodily injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion, riot or revolution, or to any act or condition resulting from these acts or events.
- (w) (1) injury or death (including all forms of radioactive contamination):
- (a) of an **insured** under this Policy who is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the **hazardous properties** of **nuclear material** and with respect to which any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or an **insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- (2) injury or death (including all forms of radioactive contamination) resulting from the **hazardous properties** of **nuclear material**, if:
- (a) the **nuclear material** is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or has been discharged or dispersed therefrom;
  - (b) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or

- (c) the injury or death arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.
- (x) (1) **Bodily injury, property damage, personal injury, advertising injury** or medical expenses caused by, arising from, relating to, or in any way connected with inhalation of, ingestion of, contact with, or exposure to or manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, or growth of mold, mildew, mycotoxins, fungi, or other **"organic pathogen."**
- (2) Any loss, cost, or expenses caused by, arising from, relating to, or in any way connected with the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of mold, mildew, mycotoxins, fungi, or "other pathogen" by any **insured** or by any other person or entity.

This exclusion applies regardless of any cause or event that contributes concurrently or in any sequence to the loss or damage.

- (y) **Bodily injury, property damage, personal injury and advertising injury** due to the loss of, the loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

#### **COVERAGE C-HEALTHCARE SYSTEM EMPLOYEE BENEFITS ADMINISTRATION LIABILITY**

MMIC agrees to pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as **damages** because of any **claim** or **claims** first made and reported against the **insured** during the **policy period**, occurring within the **coverage territory**, arising from the **administration** of the **named insured's employee benefits program**.

MMIC shall have the right and duty to defend any suit against the **insured** alleging such **damages**, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation or such settlement of any **claim** or suit at its sole discretion, but MMIC shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of MMIC's liability hereunder has been exhausted by payment of judgments or settlements.

#### **Exclusions:**

Coverage C does not apply to:

- (a) **bodily injury, property damage, or personal injury;**
- (b) failure to comply with any law concerning workers compensation, unemployment insurance, social security or disability benefits;
- (c) failure of securities to perform as represented by any **insured**, or the investment or non-investment of employee benefit funds;
- (d) **advice** given by any **insured** to an employee to participate or not participate in stock subscription plans, individual retirement accounts or salary reduction plan;
- (e) failure to provide benefits because they are not properly funded or because of an insurance company's failure to comply with the terms of its policy;
- (f) dishonest, intentionally fraudulent, criminal or malicious acts or omissions by any **insured**;
- (g) termination of any **employee benefits program**;
- (h) fines, taxes or penalties imposed by law or other matters which may be uninsurable under law;
- (i) failure of any **insured** to perform under **contract**;

- (j) liability of an **insured** as a fiduciary under the Employee Retirement Income Security Act of 1974, including any amendments thereof and any similar state or local law.

## **II. LIMITS OF LIABILITY and DEDUCTIBLE**

### **COVERAGE A-HEALTHCARE SYSTEM MEDICAL PROFESSIONAL LIABILITY**

Regardless of the number of **insureds** under this Policy, number of persons injured, or the number of **claims** made, MMIC's liability is limited as follows:

The limits of liability stated on the Declarations Page as applicable to "each **claim**" is the maximum amount of MMIC's liability for losses based on injury to any one person arising out of the same or related professional services provided to that person regardless of the number of claimants seeking recovery.

Subject to the above provisions respecting "each **claim**", the limits of liability stated on the Declarations Page as "aggregate" is the total limits of MMIC's liability for all **claims** first made during the effective **policy period**.

The following special limits of liability will apply to reporting endorsements issued in accordance with Section V. – General Conditions:

The limits of liability and deductible stated on the Declarations Page as applicable to "each **claim**" at the time the Policy is terminated, is the limits of MMIC's liability for loss resulting from all **claims** or suits first made during the **reporting period** because of an injury to or death of any one person.

Subject to the above provisions respecting "each **claim**," the limits of liability and deductible stated on the Declarations Page as "aggregate" is the total limits of MMIC's liability for all **claims** first made during the **reporting period**. If the **reporting period** exceeds one year, the limits and deductible will not reinstate at each renewal period.

If a deductible is shown on the Declarations Page, one deductible will apply to all **claims** for losses based on injury to any one person arising out of the same or related **medical professional service** provided. The deductible shall apply only to money **damages** or settlements and not to any expenses incurred by MMIC in the investigation or defense of **claims**. The aggregate deductible amount shown is the maximum amount of deductible applicable in the policy year.

It is further agreed that when MMIC makes payment of **damages**, all or a portion of which is within the **insured's** deductible, the **insured** agrees to reimburse MMIC within 30 days after notice is given by MMIC to the **insured**.

### **COVERAGE B-HEALTHCARE SYSTEM GENERAL LIABILITY**

Regardless of the number of **insureds** under this Policy, persons or organizations who sustain **bodily injury, personal injury, advertising injury or property damage** or **claims** made or suits brought on account of **bodily injury, personal injury, advertising injury or property damage**, MMIC's liability is limited as follows:

The limit of liability stated on the Declarations Page as applicable to "each **occurrence**" is the limit of MMIC's liability for all **damages** because of **bodily injury or property damage, personal injury or advertising injury** arising out of one **occurrence or offense**. All **bodily injury, personal injury, advertising injury or property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

Subject to the above provisions respecting "each **occurrence**," MMIC's total liability for all **damages** because of all **bodily injury or property damage, personal injury or advertising injury** shall not exceed the limits of liability stated on the Declarations Page as "aggregate."

If a deductible is shown on the Declarations Page, one deductible will apply to each **occurrence**. The deductible shall apply only to money **damages** or settlements and not to any expenses incurred by MMIC in the investigation or defense of **claims**. The aggregate deductible amount shown is the maximum amount of deductible applicable in the policy year.

It is further agreed that when MMIC makes payment of **damages**, all or a portion of which is within the **insured's** deductible, the **insured** agrees to reimburse MMIC within 30 days after notice is given by MMIC to the **insured**.

### **COVERAGE C-HEALTHCARE SYSTEM EMPLOYEE BENEFITS ADMINISTRATION LIABILITY**

Regardless of the number of **insureds** under this Policy, persons or organizations who sustain injury, or the number of **claims** made, MMIC's liability is limited as follows:

The limits of liability stated on the Declarations Page as applicable to "each wrongful act" is the limit of MMIC's liability for loss resulting from all **claims** or suits first made during the **policy period** arising from the **administration** of the **named insured's employee benefits program**.

Subject to the above provisions respecting "each wrongful act," the limits of liability stated on the Declarations Page as "aggregate" is the total limit of MMIC's liability for all **claims** or suits first made during the **policy period** arising from the **administration** of the **named insured's employee benefits program**.

If a deductible is shown on the Declarations Page, one deductible will apply to each wrongful act. The deductible shall apply only to money **damages** or settlements and not to any expenses incurred by MMIC in the investigation or defense of **claims**. The aggregate deductible amount shown is the maximum amount of deductible applicable in the policy year.

It is further agreed that when MMIC makes payment of **damages**, all or a portion of which is within the **insured's** deductible, the **insured** agrees to reimburse MMIC within 30 days after notice is given by MMIC to the **insured**.

When coverage ends by expiration, nonrenewal or cancellation (except cancellation for nonpayment of premium), the **named insured** has the right to purchase a reporting endorsement. This coverage will be added by attaching an endorsement to the policy.

The reporting endorsement will extend time in which the **named insured** may report **claims** otherwise covered by this policy. In order for the coverage to apply under the reporting endorsement, the **claim** must be reported during the period of time the reporting endorsement is in effect.

### **III. SUPPLEMENTARY PAYMENTS**

In addition to the applicable limits of liability, MMIC will pay:

- (a) all expenses incurred by MMIC in the investigation and defense of **claims**, all costs taxed against an **insured** in any suit defended by MMIC and all interest on that part of any judgment which does not exceed the limit of MMIC's liability thereon which accrues after entry of the judgment and before MMIC has paid or tendered or deposited in court such part of the judgment;
- (b) any prejudgment interest awarded against an **insured** on that portion of the judgment paid by MMIC;
- (c) premiums on appeal bonds required in any suit defended and appealed by MMIC and premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limits of liability of this Policy, but MMIC shall have no obligation to apply for or furnish any such bonds;
- (d) under Coverage B, reasonable medical expenses for **bodily injury** sustained by any person (1) which resulted from an **occurrence** on the premises or property owned, rented or leased by the **named insured**, or from activities in connection with the **named insured's** business, regardless of an **insured's** liability for such **bodily injury**, and (2) which were incurred by such person within one year from such **occurrence**; provided however, that payments under this provision shall not exceed \$5,000 per person and \$10,000 per **policy period**.

However, MMIC will not pay any medical expenses arising out of **bodily injury** to the following:

- (1) any **insured** under this Policy;
- (2) an employee, volunteer or contracted worker of an **insured** if the employee or worker is injured on the job while working for the **insured**;

- (3) any tenant at the **insured's** premises or any employee of a tenant while on the job, if the tenant or employee is injured on the part of the premises rented from an **insured**;
  - (4) any person on the **insured's** premises receiving **medical professional services**, if the **medical professional services** caused or contributed, in any way to the injury;
  - (5) any person to whom benefits are payable or required to be provided under any worker's compensation, unemployment compensation or disability benefits law, or any similar law;
  - (6) any person while engaged in maintenance and repair of or alteration, demolition or new construction at the **insured's** premises;
  - (7) any person practicing, teaching, or taking part in physical training, a sport, or any athletic event or contest;
  - (8) any person enrolled in a day care center owned and operated by the **insured**.
- (e) reasonable expenses, not including lost income, incurred by an **insured** for each day or part of a day that an **insured** is required to attend the trial of a civil suit against that **insured** for **damages** resulting from causes of action covered by this policy, not to exceed \$400 per day, \$7,500 aggregate for the policy period;
  - (f) under Coverage B, up to \$2,500 for loss or damage to a patient's property while in the care, custody or control of an **insured**, subject to a deductible of \$250 per patient and a maximum benefit of \$10,000 per **policy period**;
  - (g) under Coverage B, up to \$100,000 per **policy period** because of any **claim** or **claims** in which the **insured** becomes legally obligated to pay as **damages** for **property damage**, caused by fire, to structures or portions thereof it rents or occupies, including fixtures permanently attached thereto.

MMIC shall have no further supplementary payments obligations under this Policy after the applicable limits of liability as stated in the Declarations has been exhausted by the payment of judgments or settlements.

#### IV. DEFINITIONS

When used in this Policy or Endorsements forming a part hereof:

**"Administration"** means the following acts authorized by the **named insured**;

- (a) giving counsel to employees with respect to the **employee benefits program**;
- (b) interpreting the **employee benefits program**;
- (c) handling of records and processing of benefits in connection with the **employee benefits program**;
- (d) enrolling, terminating or canceling employees under the **employee benefits program**.

**"Advertising injury"** means an injury arising out of one or more of the following **offenses** which result from advertising, broadcasting, or telecasting:

- (a) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods or services;
- (b) oral or written publication of material that violates a person's right of privacy;
- (c) misappropriation of advertising ideas or style of doing business; or
- (d) infringement of copyright, title or slogan.

**"Bodily injury"** means death, physical injury, sickness or disease sustained by a person.

**"Claim(s)"** means:

- (a) a demand for money **damages** to which this insurance applies, arising from an injury allegedly caused by the **insured**;
- (b) an act or omission which a reasonable person would believe will result in a demand for money **damages** to which this insurance applies.

**"Contract"** means any of the following agreements:

- (a) lease of premises;
- (b) sidetrack agreement;
- (c) elevator maintenance agreement;
- (d) easement agreement, including any license agreement in connection with vehicle or pedestrian private railroad grade crossings; or
- (e) promise to reimburse a municipality that is required by ordinance except in connection with **work** for the municipality; and
- (f) any other **contract** or agreement under which any **insured** assumes the tort liability of another party to pay for injury or **property damage** to a third person or organization if such **contract** is related to your business and is made before the **bodily injury** or **property damage** occurs. Tort liability means a liability that would be imposed by law in the absence of any **contract** or agreement.

**"Coverage territory"** means anywhere in the world with respect to **damages** because of **bodily injury**, **property damage**, **advertising injury** or **personal injury**, provided the original suit for such **damages** is brought within the United States of America. Coverage provided by this policy applies to **medical professional services** rendered or which should have been rendered anywhere in the world provided that the suit or **claim** is first brought in the United States.

**"Damages"** means all amounts of money which are payable to compensate for loss because of injury to which this insurance applies.

**"Electronic Data"** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**"Employee benefits program"** means pensions and profit sharing plans; individual retirement account (IRA) plans; salary reduction plans under Internal Revenue Code 401(k) or amendments; employee stock subscription plans; savings plans; group plans for life, health, dental, disability, automobile, homeowners, and legal advice insurance; social security system benefit; worker's compensation and unemployment insurance; travel and vacation plans and educational reimbursement plans.

**"Formal Review Board or Committee"** means any **formal review board or committee** of the **named insured** while performing the following activities:

- (a) evaluating the professional qualifications or clinical performance of any provider of medical professional services; or
- (b) promoting and maintaining the quality of **medical professional services** being provided.

**"Hazardous properties"** means radioactive, toxic or explosive properties.

**"Hostile fire"** means a fire which becomes uncontrollable or breaks out from where it was intended to be.

**"Impaired property"** means tangible property, other than the **named insured's products** or **named insured's work**, that cannot be used or is less useful because:

- (a) it incorporates the **named insured's products** or **named insured's work**, that is known or thought to be defective, deficient, inadequate or dangerous; or
- (b) the **insured** failed to fulfill the terms of a **contract** or agreement;

if such property can be restored to use by:

- (a) the repair, replacement, adjustment or removal of the **named insured's products** or **named insured's work**; or
- (b) the **insured** fulfilling the terms of the **contract** or agreement.

**"Insured"** means the following:

- (a) the **named insured**;
- (b) any organization of the **named insured** newly acquires or forms, other than a partnership or joint venture, and over which the **named insured** maintains ownership and majority interest, provided there is no similar insurance available to the organization. However:
  - (1) coverage under this provision is afforded only until the 90<sup>th</sup> day after the new organization is acquired or formed or the end of the **policy period**, whichever is earlier;
  - (2) coverage does not apply to **bodily injury** or **property damage**, or **personal injury** or **advertising injury**, that occurs prior to the acquisition or formation of such organization;
- (c) if the **named insured** is designated on the Declarations Page as:
  - (1) a partnership or joint venture, that organization is covered. Individual partners or members including spouses of such are also **insureds**, but only while acting within the scope of their duties.
  - (2) an organization other than a partnership or joint venture, that organization is covered. Executive officers, stockholders, trustees and directors are also **insureds**, but only while acting within the scope of their duties.
- (d) Each of the following is also an **insured**:
  - (1) hospital administrators, members of the Board of Governors, members of the Board of Directors, employees or volunteer workers, but only while acting within the scope of their duties.

However, coverage afforded for employees does not apply to:

- (a) interns, externs, residents and dental, osteopathic, chiropractic, podiatrist or medical doctors unless specifically endorsed onto this Policy;
  - (b) **bodily injury** or **personal injury** to an **insured** or to a co-employee while in the course of employment or to the spouse, child, parent, brother or sister of such co-employee as a consequence of such **bodily injury** or **personal injury**, or for any obligation to share **damages** with or repay someone else who must pay **damages** because of the injury; or
  - (c) **property damage** to property owned or occupied by or rented or loaned to the employee, any other employee or any partner or member of the **named insured**.
- (2) members of any formal accreditation, **formal review board or committee**, or similar board or committee or persons charged with the duty of executing directives of any board or committee of the **named insured** while acting within the scope of their duties;
  - (3) any person enrolled as a student in a training program within the **named insured** facility, but only for liability arising out of the performance of, or failure to perform duties relating to such training program;
  - (4) any person (other than an employee of the **named insured**) or organization while acting as real estate manager for the **named insured**;

- (5) medical directors, but only for administrative duties performed on behalf of the **named insured**.

However, no person or organization is an **insured** with respect to the conduct of any current or past partnership or joint venture that is not listed as a **named insured** in the Declarations.

The insurance afforded applies separately to each **insured** against whom a **claim** is made or suit is brought except with respect to the limits of MMIC's liability as set forth in Section II.

**"Insured's products"** means goods or products manufactured, sold, handled or distributed by the **insured** or by others trading under its name, including any container thereof (other than a vehicle) and the providing of or failure to provide warnings or instructions. An **insured's products** shall not include a vending machine or any property other than such container, rented to or located for use of others.

**"Medical professional services"** means only the following:

- (a) medical, surgical, dental, X-ray, nursing, mental health or other similar professional health care services or treatments relating to the practice of medicine provided in the operation of your health care facility;
- (b) furnishing of food and beverages in connection with providing **medical professional services**;
- (c) dispensing of drugs, medical or dental supplies and appliances;
- (d) performing post-mortem procedures, including autopsies or harvesting of organs;
- (e) evaluating, or responding to an evaluation of, the professional qualifications or performance of any provider of health care professional services, when done by or for any of the **insured's formal review boards** or committees;
- (f) communicating, or failing to communicate, any information to any of the **insured's formal review boards** or committees; or
- (g) carrying out, or failing to carry out, any decision or directive of any of the **insured's formal review boards** or committees.

**"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- (a) forklifts, snow removal equipment, lighting and well servicing equipment, street cleaning and road maintenance, air compressors, pumps, generators, welding, spraying, building cleaning equipment; and
- (b) vehicles maintained for use solely on the premises owned or rented by the **insured** and other vehicles designed for use principally off public roads.

**"Named insured"** means the person(s) or organizations designated as the **named insured** on the Declarations Page of this Policy.

**"Named insured's products"** means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under its name, including any container thereof (other than a vehicle) and the providing of or failure to provide warnings or instructions. A **named insured's products** shall not include a vending machine or any property other than such container, rented to or located for use of others.

**"Nuclear facility"** means any:

- (a) nuclear reactor;
- (b) equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packaging **waste**;

- (c) equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;

and includes the site of which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

“**Nuclear material**” means source material, special **nuclear material** or by-product material.

“**Occurrence**” means an accident, including injurious exposure to conditions, which results in **bodily injury** or **property damage** that is neither expected nor intended from the standpoint of an **insured**.

“**Offense**” means a single act or omission or series of related acts or omissions, which results in **personal injury** or **advertising injury**.

“**Organic pathogen**” means any organic irritant or contaminant including but not limited to mold, fungus, bacteria, or virus and their by-products such as mycotoxins, mildew or biogenic aerosol. Non-exclusive examples of **organic pathogen** include: *Aspergillus*, *Penicillium*, *Stachybotrys chartarum*, *Trichoderma*, *Fusarium*, and *Memnoniella*.

“**Personal injury**” means an injury, other than **bodily injury**, arising out of one or more of the following **offenses**:

- (a) libel or slander;
- (b) false arrest, detention or imprisonment;
- (c) malicious prosecution;
- (d) wrongful entry or eviction;
- (e) invasion of the right of private occupancy of a room, dwelling or premises;
- (f) invasion of a right of privacy;
- (g) interfering with the rights provided to a person by a Patient’s Bill of Rights or any similar law.

“**Policy period**” means the period of coverage commencing on the date shown on the Declarations Page attached to this policy as the effective date and ending upon the effective date of termination, expiration or cancellation of coverage under this policy, and specifically excludes any **reporting period** purchased hereunder. All dates shown begin at 12:01 a.m.

“**Pollutant (s)**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, biological and other etiologic agents or materials, genetically engineered materials, teratogenic, carcinogenic and mutagenic materials and **waste**.

“**Property damage**” means:

- (a) physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - (a) loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.
  - (b) For the purposes of this insurance, **electronic data** is not tangible property.

“**Reporting period**” means the period of time stated in the reporting endorsement for reporting **claims**. Coverage is limited to **claims** reported to MMIC during the **reporting period** arising from:

- (a) under Coverage A, **medical professional services** rendered or which should have been rendered subsequent to the **retroactive date** and prior to the end of the **policy period**;
- (c) under Coverage C, "wrongful acts" which occur prior to the end of the **policy period**.

**"Retroactive date"** is the date listed on the Declarations Page which is the first date that coverage applies to any **medical professional services** covered under this Policy.

**"Spent fuel"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

**"Waste"** means any **waste** material containing by-product material, or resulting from the operation by any person or organization of any **nuclear facility** included within the definition **nuclear facility** under paragraph (a) or (b). **Waste** includes materials to be recycled, reconditioned or reclaimed.

**"Work"** means operations performed by an **insured** or on its behalf and materials, parts or equipment furnished in connection with such operations including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **work** and the providing of or failure to provide warnings or instructions.

## V. GENERAL CONDITIONS

### Premium

All premiums for this Policy shall be computed in accordance with MMIC's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### Policy Period

#### Coverage A

The insurance provided hereby only applies to **medical professional services** rendered or which should have been rendered on or after the **retroactive date** stated on the Declarations Page and then only if a **claim** is first made and reported during the **policy period** or a **reporting period** purchased in accordance with Section V.

#### Coverage B

The insurance provided herein applies only to **bodily injury** or **property damage** during the **policy period** caused by an **occurrence** or **advertising injury** or **personal injury** caused by an **offense** during the **policy period**.

#### Coverage C

The insurance provided hereby only applies to **claims** arising from the **administration** of the **named insured's employee benefits program** on or after the **retroactive date** stated on the Declarations Page and then only if a **claim** is first made and reported during the **policy period** or a **reporting period** purchased in accordance with Section V.

### Insured's Duties in the Event of an Occurrence, Claim or Suit

- (a) Upon an **insured** obtaining knowledge or becoming aware of any **alleged injury** which may subsequently give rise to a **claim**, notice shall be given by or for the **insured** to MMIC or any of its authorized **representatives** as soon as practicable. If further information is required by MMIC to investigate or defend such **claim**, the **insured** shall provide all such information available promptly.
- (b) If **claim** is made or suit is brought against an **insured**, the **insured** shall immediately forward to MMIC every demand, notice, summons or other process received by the **insured** or the **insured's** representative.

- (c) The **insured** shall cooperate with MMIC and, upon MMIC's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or **damages** with respect to which insurance is afforded under this Policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

A **claim** shall be considered to be first made when MMIC first receives notice of the **claim** or of an event which may subsequently give rise to a **claim**.

**For Coverage A and C only:**

A **claim** shall be considered to be "first made during the **policy period**" or "first made during a **reporting period**" only under the following conditions:

- (a) If, during the **policy period** or a **reporting period**, an **insured** shall first have knowledge or become aware of any event arising out of the rendering or failure to render **medical professional services** covered hereby which may subsequently give rise to a **claim** and shall, during the **policy period** or the **reporting period** give written notice thereof to MMIC in accordance with Section V. of this policy, then such notice shall be considered a **claim** hereunder.
- (b) If any **claim** is first made during the **policy period** or a **reporting period** that would be covered under this Policy, any additional **claims** which are made in connection therewith and are brought subsequent to the **policy period** or the **reporting period** shall be considered a part of the **claim** which was first made during the **policy period** or the **reporting period**.

A **claim** shall not be considered to be "first made during the **policy period**" or "first made during a **reporting period**" if any **insured** is aware, or reasonably should be aware, of the existence of a potential **claim** as of the date this policy is issued, regardless of whether or not such **claim** has yet been made or reported to any applicable liability insurer. For purposes of this Section, potential **claim** includes, without limitation, instances where any **insured** has received either an oral or written communication from a patient or the patient's legal representative, and/or a request by a patient or the patient's legal representative for copies of medical records under circumstances reasonably indicative of a potential **claim**.

**Reporting Endorsement**

Under coverages A and C, in the event of termination of insurance either by non-renewal or cancellation (except for cancellation due to non-payment of premium) of this Policy, the **named insured** shall have the right upon the payment of an additional premium (to be computed in accordance with MMIC's rules, rates, rating plans and premiums applicable on the effective date of the reporting endorsement) to have issued an Endorsement providing additional **reporting period(s)** in which **claims** otherwise covered by this Policy, under Coverages A, and C, may be reported.

Such right hereunder must, however, be exercised by the first **named insured** by written notice not later than thirty (30) days after such termination date. Such reporting endorsement may not be cancelled by MMIC except for non-payment of premium.

**Action Against MMIC**

No action shall lie against MMIC unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, not until the amount of an **insured's** obligation to pay shall have been finally determined either by final judgment after expiration of period for appeal against such **insured** after actual trial or by written agreement of the **insured**, the Claimant and MMIC. 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 MMIC as a party to any action against an **insured** to determine the **insured's** liability, nor shall MMIC be impleaded by an **insured** or **insured's** legal representative. Bankruptcy or insolvency of an **insured** or of an **insured's** estate shall not relieve MMIC of its obligations hereunder.

### Other Insurance

- (a) If an **insured** has other insurance against a loss arising from other than peer review services, but covered by this policy, MMIC shall not be liable under this policy for a greater proportion of such loss than the limit of liability stated on the Declarations Page bears to the total limit of liability of all valid and collectible insurance against such loss.
- (b) With respect to loss arising from peer review services, this policy shall apply in excess of any other insurance, self-insurance fund or agreement of indemnification that is applicable to such loss, except that this policy shall be primary insurance for loss arising from any peer review services performed on behalf of MMIC.

### Subrogation

In the event of any payment under this policy, MMIC shall be subrogated to all the **insured's** related rights of recovery therefore against any person or organization and MMIC may require an assignment of such rights from the **insured** to the extent of any payments made under this policy plus reasonable costs of collection. The **insured** shall do nothing either before or after loss to prejudice such rights. The **insured** acknowledges that MMIC's rights under this provision shall be considered as the first priority **claim** against any such person or organization, to be paid before any other **claims** which may exist.

MMIC may, at its option, take such action as may be necessary and appropriate to preserve its rights under this provision, including the right to bring suit in the name of the **insured**. MMIC may, at its option, collect such amounts from the proceeds of any settlement or judgment that may be recovered by the **insured** or the **insured's** legal representative. Any such proceeds of settlement or judgment shall be held in trust by the **insured** for the benefit of MMIC, and MMIC shall be entitled to recover reasonable attorneys' fees from the **insured** incurred in collecting proceeds held by the **insured**.

### Changes

Notice to any representative of MMIC or knowledge possessed by any representative of MMIC or by any other person shall not affect a waiver or a change in any part of this Policy or prevent MMIC from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by Endorsement issued to form a part of this Policy. Failure of MMIC to require performance by an **insured** of any obligations under this Policy shall not affect its right to require performance of such obligation. Any waiver by MMIC or any breach of any provision of this Policy shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Policy.

### Assignment

Assignment of interest under this Policy shall not bind MMIC until its consent is endorsed hereon; if, however, an **insured** shall die, such insurance as is afforded by this Policy shall apply (1) to the **insured's** legal representative, as an **insured**, but only while acting within the scope of duties as such, and (2) with respect to the property of an **insured**, to the person having proper temporary custody thereof, as **insured**, but only until the appointment and qualification of the legal representative.

### Cancellation

This Policy may be canceled by an **insured** by surrender thereof to MMIC or any of its authorized representatives or by mailing to MMIC written notice stating when thereafter the cancellation shall be effective. This Policy may be canceled by MMIC by mailing to the **named insured** at the address shown on the Declarations Page, written notice stating a date not less than sixty (60) days thereafter when such cancellation shall be effective (ten (10) days notice will be given for non-payment of premium). The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender of the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery of such written notice either by an **insured** or by MMIC shall be equivalent to mailing.

If an **insured** cancels this Policy, earned premium shall be computed in accordance with the customary short-rate table and procedures. If MMIC cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is affected or as soon as practical after cancellation becomes effective, but tender by MMIC of unearned premium is not a condition of cancellation.

### **Declarations and Applications**

By acceptance of this Policy, the **named insured** agrees that the statements on the Declarations Page and applications are its agreements and representations, that this Policy is issued in reliance upon the truth of such representations, and that this Policy embodies all agreements existing between the **named insured** and MMIC or any of its agents relating to this insurance.

### **Inspection and Audit**

MMIC shall be permitted but not obligated to inspect an **insured's** premises at any time. Neither MMIC's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **insured** or others, to determine or warrant that such premises are safe or healthful, or are in compliance with any law, rule or regulation.

The **insured** agrees to allow risk management surveys and other risk management or loss prevention programs approved by the MMIC's Board of Directors to be conducted at the **insured's** premises. The **insured** agrees to cooperate with all reasonable recommendations resulting from such programs.

MMIC may examine and audit the **named insured's** books and records at any time during the **policy period** and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

### **Governing Law**

The validity, construction and enforceability of this Policy shall be governed in all respects by law of the State or States in which this Policy is issued. Any and all provisions of this Policy which are in conflict with statutes of these states are understood, declared and agreed to be automatically changed to conform to the laws.

### **Severability**

In the event any portion of this Policy shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Policy.

### **Liberalization**

If MMIC implements any revisions during the **policy period** which would broaden the coverage under this policy without additional premium, such broadened coverage will automatically apply to this Policy. The documents reflecting the broadened coverage will be included in the next renewal policy.

### **Participation**

This policy is a participating policy to the extent that the **insured** may participate, upon the conditions fixed and determined by MMIC's board of directors and subject to the applicable provisions of law and sole discretion of the board of directors, in any distribution to the policyholders.

### **Government Access to Records**

In order to comply with the requirements of Sections 952 of the Omnibus Reconciliation Act of 1980, it is agreed that, upon written request, MMIC will allow the Secretary of Health and Human Services and the Comptroller General access to the Policy and necessary books, documents and records to verify the cost of the Policy, to the extent required by law. Access will also be allowed to subcontracts between MMIC and any related organization of MMIC and to its books, documents and records. Such access will be provided up to four years after the services furnished under this Policy.

**VI. NUCLEAR ENERGY LIABILITY EXCLUSION**

(a) This Policy does not apply:

- (1) to injury or death (including all forms of radioactive contamination)
  - (a) with respect to which an **insured** under this Policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the **hazardous properties of nuclear material** and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) an **insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (2) to injury or death (including all forms of radioactive contamination) resulting from the **hazardous properties of nuclear material**, if
  - (a) the **nuclear material** (1) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (2) has been discharged or dispersed therefrom;
  - (b) the **nuclear material** is contained in **spent fuel or waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
  - (c) the injury or death arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

(b) As used in this exclusion:

“**hazardous properties**” include radioactive, toxic or explosive properties;

“**nuclear material**” means source material, special **nuclear material** or byproduct material;

“source material,” “special **nuclear material**,” and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

“**spent fuel**” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

“**waste**” means any **waste material** (1) containing byproduct material and (2) resulting from the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility** as set forth hereinafter under paragraph (a) or (b);

“**nuclear facility**” means:

- (1) any nuclear reactor,
- (2) any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing **spent fuel**, or (c) handling, processing or packaging **waste**.
- (3) any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

IN WITNESS WHEREOF, the said MMIC Insurance, Inc., has caused this Policy to be signed by its Chairman, and Secretary, but it shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of MMIC.



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Lee Arostegui  
Secretary  
MMIC Insurance, Inc.



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Mark Odland, M.D.  
Chairman  
MMIC Insurance, Inc.



## HEALTHCARE SYSTEM LIABILITY PROTECTION UMBRELLA/EXCESS

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Definitions are provided for words in **boldface** type.

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In consideration of the payment of the premium, in reliance upon the representations and warranties contained in the Declarations Page made a part hereof, and subject to all terms of this Policy, MMIC Insurance, Inc., hereafter referred to as MMIC, agrees with the **named insured** as follows:

## PART ONE

### HEALTHCARE SYSTEM EXCESS MEDICAL PROFESSIONAL LIABILITY

#### I. INSURING AGREEMENT

MMIC agrees to pay on behalf of the **insured**, in accordance with the applicable provisions of the **underlying insurance** those sums, in excess for the applicable limits of the **underlying insurance**, which the **insured** shall become legally obligated to pay as **damages**, because of any **claim** or **claims** to which the **underlying insurance** would apply except for the exhaustion of its applicable limit of liability, first made against the **insured** and reported to MMIC during the **policy period** and occurring within the **coverage territory**, arising out of performance of **medical professional services** rendered or which should have been rendered on or after the retroactive date by the **insured** or by any person for whose acts or omissions the **insured** is legally responsible.

This coverage is subject to all terms, conditions, definitions, agreements, limitations and exclusions of the **underlying insurance**, except for any provisions to the contrary contained herein.

#### II. LIMITS OF LIABILITY

Regardless of the number of **insureds** under this Policy, number of persons injured, or the number of **claims** made, MMIC's liability is limited as follows:

The limits of liability stated on the Declarations Page as applicable to "each **claim**" is the maximum amount of MMIC's liability for losses based on injury to any one person arising out of the same or related professional services provided to that person regardless of the number of claimants seeking recovery

Subject to the above provisions respecting "each **claim**," the limits of liability stated on the Declarations Page as "aggregate" is the total limit of MMIC's liability for all **claims** first made during the effective policy year.

If the aggregate limits of liability of the **underlying insurance** has been reduced or exhausted solely as a result of **claims** made after the inception date of this Policy, this Policy shall:

- (a) in the event of reduction, become excess of the reduced **underlying insurance**; or
- (b) in the event of exhaustion, continue in force as **underlying insurance** provided that at the inception of this Policy, the **insured** had no knowledge or could not have reasonably foreseen that such **claims** would be made.

#### III. DEFENSE AND SUPPLEMENTARY PAYMENTS

In addition to the applicable limits of liability, MMIC will pay:

- (a) all expenses incurred by MMIC in the investigation and defense of **claims**, all costs taxed against an **insured** in any suit defended by MMIC and all interest on that part of any judgment which does not exceed the limit of MMIC's liability thereon which accrues after entry of the judgment and before MMIC has paid or tendered or deposited in court such part of the judgment;
- (b) any prejudgment interest awarded against an **insured** on that portion of the judgment paid by MMIC;

- (c) premiums on appeal bonds required in any suit defended and appealed by MMIC and premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this Policy, but MMIC shall have no obligation to apply for or furnish any such bonds

MMIC shall have no obligation to provide such coverage until the limits of liability of the **underlying insurance** have been exhausted.

#### IV. DEFINITIONS

The definitions applicable to the **underlying insurance** are incorporated herein by reference including the following:

“**Underlying insurance**” means the Policy(ies) listed on the Schedule of **Underlying Insurance** of this Policy.

#### V. GENERAL CONDITIONS

The general conditions applicable to the **underlying insurance** are incorporated herein by reference including the following:

##### Maintenance of Underlying Insurance

It is a condition of this Policy that while this Policy is in effect, the **insured** shall maintain in force as collectible insurance the **underlying insurance** as shown on the Schedule of **Underlying Insurance** of this Policy, without alteration of terms, conditions or limits, except for any reduction or exhaustion of the aggregate limit contained therein solely by reason of **claims** first made during the **policy period**. Failure of the **insured** to comply with the foregoing shall not invalidate this Policy but in the event of such failure, MMIC shall only be liable had the **insured** complied therewith.

For purposes of this provision, **underlying insurance** shall also include a reporting endorsement.

##### Reporting Endorsement

The reporting endorsement conditions applicable to the **underlying insurance** are incorporated herein by reference except the **insured** may exercise this right only if the **underlying insurance** is maintained.

## PART TWO

### HEALTHCARE SYSTEM UMBRELLA LIABILITY

#### I. INSURING AGREEMENT

MMIC agrees to pay on behalf of the **insured** the **ultimate net loss** because of:

- (a) **bodily injury** or **property damage** during the **policy period** caused by an **occurrence**;
- (b) **advertising injury** or **personal injury** caused by an **offense** during the **policy period**;

provided the **occurrence** takes place, or the **offense** is committed within the **coverage territory**.

##### Exclusions:

This Policy does not apply to:

- (a) **bodily injury** or **property damage** arising out of the ownership, entrustment, maintenance, operation, use, loading or unloading of any aircraft owned or operated by or rented, chartered or loaned to an **insured**, or any other aircraft operated by any person in the course of employment by an **insured**;

- (b) **bodily injury or property damage** arising out of:
- (1) the transportation of **mobile equipment** by an automobile owned or operated by or rented or loaned to any **insured**;
  - (2) the use of **mobile equipment** in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity;
- (c) **bodily injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft owned or operated by or rented to any **insured**, or any other watercraft operated by any person in the course of employment by an **insured**. However, this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by an **insured**, or any watercraft under 50 feet in length which is not owned by the **insured** nor used to carry persons or property for a charge;
- (d) Liability under any worker's compensation, employer's liability, disability benefits, unemployment compensation, or under any similar law. This includes **bodily injury** to an employee arising out of and in the course of his or her employment, as well as **bodily injury** to the spouse, child, parent, brother or sister of that employee as a consequence of the above injury. This exclusion will apply whether the **insured** may be held liable as an employer or in any other capacity such as a property owner or product manufacturer. This exclusion will also apply to any obligation of the **insured** to share **damages** with or repay someone else who must pay **damages** because of **bodily injury** to any employee of the **insured**.

This exclusion does not apply to **bodily injury** arising from employer's liability covered by **underlying insurance** as listed on the Schedule of **Underlying Insurance** of this Policy;

- (e) liability arising out of the performance of **medical professional services**
- (f) liability assumed by an **insured** under any oral or written **contract** or agreement except as **contract** is defined in Section IV. Definition section of this policy. This exclusion will not apply if covered by **underlying insurance** as listed on the Schedule of **Underlying Insurance** of this Policy;
- (g) any willful, fraudulent, dishonest, criminal or malicious act or omission, by or with the knowledge or consent of, or at the direction of any **insured**;
- (h) liability arising against an **insured** as the perpetrator of sexual conduct including, but not limited to, sexual abuse, deviant sexual behavior, sexual assault, molestation or sexual harassment;
- (i) **property damage** to:
- (1) property owned or occupied by or rented to an **insured**;
  - (2) property used by an **insured**; or
  - (3) property in the care, custody or control of an **insured** or property over which an **insured** is for any purpose exercising physical control;
  - (4) premises an **insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (j) liability based upon the Employee Retirement Income Security Act of 1974 (also known as the Pension Reform Act of 1974), as amended in part by Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and amendments to either, or similar provisions of any federal, state or local statutory law or common law;
- (k) **property damage** to **impaired property** or property that has not been physically injured, arising out of:
- (1) a defect, deficiency, inadequacy or dangerous condition in the **named insured's products** or **named insured's work**; or

- (2) a delay or failure by the **named insured** or anyone acting on the behalf of the **named insured** to perform a **contract** or agreement in accordance with its terms;

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to the **named insured's products** or **named insured's work** after it has been put to its intended use;

- (l) **damages** claimed for any loss, cost or expense incurred by the **insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **named insured's products**;

- (2) **named insured's work**;

- (3) **impaired property**;

if such **product, work** or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition;

- (m) liability arising from the withdrawal, inspection, repair, replacement or loss of use of an **insured's products** or **work** completed by or for the **insured** or of any property of which such **products** or **work** form a part, if such **products, work** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

- (n) **personal injury** or **advertising injury** arising from any false written or spoken material that the **insured** knew to be false;

- (o) **personal injury** and **advertising injury** arising directly out of any action or omission that violates or is alleged to violate:

- 1. The Telephone Consumer Protection Act (TCPA) including any amendment of or addition to such law; or
- 2. The CAN-SPAM Act of 2003, including any amendment or addition to such law; or
- 3. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material information.

- (p) **bodily injury** or **personal injury** to:

- (1) a prospective, current or former employee arising out of any:

- (a) refusal to employ that person;

- (b) termination of that person's employment; or

- (c) employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at a prospective, current or former employee.

This exclusion applies whether the injury causing event(s) described in paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment.

- (2) the spouse, child, parent, brother or sister of that prospective, current or former employee, as a consequence of **bodily injury** or **personal injury** to that person at whom any of the employment-related practices described in paragraphs (a), (b) or (c) above is directed;

this exclusion applies:

- (a) whether the **insured** may be liable as an employer or in any other capacity; and

- (b) to any obligation to **share damages** with or repay someone else who must pay **damages because** of the injury;

This exclusion applies whether the injury causing event described in paragraphs (a), (b) and (c) above occurs before employment, during employment or after employment.

- (q) liability based upon violations of any "anti-trust" laws as defined in Section 1 of the Clayton Act, 15 U.S. Code Section 12, the Federal Trade Commission Act, or the laws of any jurisdiction relating to monopolization, restraint of trade, or unfair methods of competition;
- (r) **property damage** to an **insured's** products or completed **work** that is caused by an **insured's** products or completed **work** itself or any of its parts;
- (s) any willful, fraudulent, dishonest, criminal or malicious act or omission, by or with the knowledge or consent of, or at the direction of the **insured**;
- (t) any uninsured motorists, underinsured motorists, or automobile no-fault or first party **bodily injury** or **property damage** law;
- (u) (1) **bodily injury** or **property damage** and **advertising injury** or **personal injury** arising out of, resulting from, caused by, or contributed to by asbestos, exposure to asbestos or the use of asbestos;
- (2) Any **damages** or any loss, cost or expense arising out of any (i) **claim** or suit by or on behalf of any government authority or any other alleged responsible party because of, or (ii) request, demand, order or statutory or regulatory requirement that any **insured** or any other person or entity should be, or should be responsible for:
  - a. Assessing the presence, absence or amount or effects of asbestos;
  - b. Identifying, sampling, or testing for, detecting, monitoring, cleaning up, removing, containing treating, detoxifying, neutralizing, abating, disposing of or mitigating asbestos; or
  - c. Responding to asbestos in any other way other than described in 2.a. and b. above;
- (3) any supervision, instruction, recommendations, warning or advice given or which should have been given in connection with any of the subsections above; or
- (4) any obligation to share damage with or repay someone else in connection with any of the subsections above.
- (v) (1) **bodily injury, property damage** or **personal injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
  - (a) at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **insured**. However, this subparagraph does not apply to:
    - (i) **Bodily injury** if sustained within a building and caused by smoke, fumes, vapor or soot produced or originating from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by building occupants or their guests.
    - (i) **Bodily injury** or **property damage** arising out of heat, smoke or fumes from a **hostile fire**.
  - (b) at or from any premises, site or location which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing or treatment of **waste**;
  - (c) which are or were at any time transported, handled, stored, treated, disposed of, or processed as **waste** by or for:

- (i) **any insured;**
  - (ii) **any person or organization for whom any insured may be legally responsible; or**
- (d) at or from any premises, site or location on which any **insured** or any contractors or subcontractors working directly or indirectly on any **insured's** behalf are performing operations if the **pollutants** are brought on or to the premises, site or location in connection with such operations by such **insured**, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) **bodily injury or property damage** arising if the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of **mobile equipment** or its part's, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the **bodily injury or property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such **insured**, contractor or subcontractor;
  - (ii) **bodily injury or property damage** sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) **bodily injury or property damage** arising out of heat, smoke or fumes from a **hostile fire**.
- (e) At or from any premises, site or location on which any **insured** or any contractor or subcontractor working directly or indirectly on any **insured's** behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of the **pollutants**.
- (w) **Bodily injury or property damage** due to war, whether or not declared, civil war, insurrection, rebellion, riot or revolution, or to any act or condition resulting from these acts or events.
- (x) (1) injury or death (including all forms of radioactive contamination):
  - (a) of an **insured** under this Policy with respect to which an **insured** under this policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the **hazardous properties of nuclear material** and with respect to which any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or an **insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- (2) injury or death (including all forms of radioactive contamination) resulting from the **hazardous properties of nuclear material**, if:
  - (a) the **nuclear material** is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or has been discharged or dispersed therefrom;

- (b) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
  - (c) the injury or death arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the **planning, construction, maintenance, operation** or use of any **nuclear facility**.
- (y) (1) **Bodily injury, property damage, personal injury, advertising injury** or medical expenses caused by, arising from, relating to, or in any way connected with inhalation of, ingestion of, contact with, or exposure to or manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, or growth of mold, mildew, mycotoxins, fungi, or other "**organic pathogen**".
  - (2) Any loss, cost, or expenses caused by, arising from, relating to, or in any way connected with the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of mold, mildew, mycotoxins, fungi, or "other pathogen" by any **insured** or by any other person or entity.

This exclusion applies regardless of any cause or event that contributes concurrently or in any sequence to the loss or damage.

- (z) **Bodily injury, property damage, personal injury** and **advertising injury** due to the loss of, the loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

## II. LIMITS OF LIABILITY

Regardless of the number of **insureds** under this Policy, persons or organizations who sustain **bodily injury, personal injury, advertising injury** or **property damage** or claims made or suits brought on account of **bodily injury, personal injury, advertising injury** or **property damage**, MMIC's liability is limited as follows:

The limits of liability stated on the Declarations Page as applicable to "each **occurrence**," is the limit of MMIC's liability for the **ultimate net loss** because of **bodily injury, personal injury, advertising injury** or **property damage** arising out of one **occurrence or offense**. All **bodily injury, personal injury, advertising injury** or **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence or offense**.

Subject to the above provisions respecting "each **occurrence**," MMIC's total liability for the **ultimate net loss** because of all **bodily injury, personal injury, advertising injury** or **property damage** shall not exceed the limit of liability stated on the Declarations Page as "aggregate."

In the event of reduction or exhaustion of the aggregate limit(s) of liability of the **underlying insurance**, this Policy shall:

- (1) in the event of reduction, pay excess of the reduced **underlying insurance**; or
- (2) in the event of exhaustion, continue in force in place of **underlying insurance**, provided that at the inception of this Policy, the **insured** had no knowledge or could not have reasonably foreseen that the **underlying insurance** aggregate limit(s) would be exhausted.

## III. DEFENSE AND SUPPLEMENTARY PAYMENTS

### Defense

This Policy does not apply to defense, investigation, settlement, trial attendance, legal expenses or legal fees covered by **underlying insurance**. However, MMIC shall have the right to associate with the **insured** or the **underlying insurance** carrier in the defense of any **claim** or proceeding for which coverage may be afforded by this Policy and to make such investigation relative to such **claim** or proceeding as it deems expedient.

With respect only to insurance afforded by this Policy, if no **underlying insurance** is available due to exhaustion of its Policy limits by payment of losses, or if no coverage is provided by **underlying insurance**, MMIC shall have the right and duty to defend any suit against the **insured** alleging such **damages**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation or such settlement of any **claim** or suit as it deems expedient, but MMIC shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of MMIC's liability has been exhausted by payment of judgments or settlements.

#### **Supplementary Payments**

In addition to the applicable limits of liability, MMIC will pay:

- (a) all expenses incurred by MMIC, all costs taxed against an **insured** in any suit defended by MMIC and all interest on that part of any judgment to be paid by MMIC, and which does not exceed the limits of MMIC's liability therein which accrues after entry of the judgment and before MMIC has paid or tendered or deposited in court such part of the judgment;
- (b) any prejudgment interest awarded against an **insured** on that portion of the judgment paid by MMIC;
- (c) premiums on appeal bonds required in any suit defended and appealed by MMIC and premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limits of liability of this Policy, but MMIC shall have no obligation to apply for or furnish any such bonds; and

MMIC shall have no further defense or other supplementary payments obligations under this Policy after the applicable limits of liability as stated on the Declarations Page has been exhausted by the payment of judgments or settlements.

#### **IV. DEFINITIONS**

When used in this Policy or Endorsements forming a part hereof:

**"Advertising injury"** means an injury arising out of one or more of the following **offenses** which result from advertising, broadcasting or telecasting:

- (a) oral or written publication of material that slanders or libels a person or organization or disparages a people or organization's goods or services;
- (b) oral or written publication of material that violates a person's right of privacy;
- (c) misappropriation of advertising ideas or style of doing business; or
- (d) infringement of copyright, title or slogan.

**"Bodily injury"** means death, physical injury, sickness or disease sustained by a person.

**"Claim(s)"** means:

- (a) a demand for money **damages** to which this insurance applies, arising from an injury allegedly caused by the **insured**;
- (b) an act or omission which a reasonable person would believe will result in a demand for money damages to which this insurance applies.

**"Contract"** means any of the following agreements:

- (a) lease of premises;

- (b) sidetrack agreement;
- (c) elevator maintenance agreement;
- (d) easement agreement, including any license agreement in connection with vehicle or pedestrian private railroad grade crossings; or
- (e) promise to reimburse a municipality that is required by ordinance except in connection with **work** for the municipality; and
- (f) any other **contract** or agreement under which any **insured** assumes the tort liability of another party to pay for injury or **property damage** to a third person or organization if such **contract** is related to your business and is made before the **bodily injury** or **property damage** occurs. Tort liability means a liability that would be imposed by law in the absence of any **contract** or agreement.

“**Coverage territory**” means anywhere in the world with respect to **damages** because of **bodily injury, property damage, advertising injury or personal injury**, provided the original suit for such **damages** is brought within the United States of America.

“**Electronic Data**” means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

“**Damages**” means all amounts of money that are payable to compensate for loss because of injury to which this insurance applies.

“**Formal Review Board or Committee**” means any **formal review board or committee** of the **named insured** while performing the following activities:

- (a) evaluating the professional qualifications or clinical performance of any provider of **medical professional services**; or
- (b) promoting and maintaining the quality of **medical professional services** being provided.

“**Hazardous properties**” means radioactive, toxic or explosive properties.

“**Hostile fire**” means a fire which becomes uncontrollable or breaks out from where it was intended to be.

“**Impaired property**” means tangible property, other than the **named insured’s products** or **named insured’s work**, that cannot be used or is less useful because:

- (a) it incorporates the **named insured’s products** or **named insured’s work**, that is known or thought to be defective, deficient, inadequate or dangerous; or
- (b) the **insured** failed to fulfill the terms of a **contract** or agreement;

if such property can be restored to use by:

- (a) the repair, replacement, adjustment or removal of the **named insured’s products** or **named insured’s work**; or
- (b) the **insured** fulfilling the terms of the **contract** or agreement.

“**Insured**” means the following:

- (a) the **named insured**;

- (b) any organization the **named insured** newly acquires or forms, other than a partnership or joint venture, and over which the **named insured** maintains ownership or majority interest, provided there is no similar insurance available to that organization. However:
- (1) coverage under this provision is afforded only until the 90<sup>th</sup> day after the new organization is acquired or formed or the end of this **policy period**, whichever is earlier;
  - (2) coverage does not apply to **bodily injury, property damage, personal injury or advertising injury** prior to the acquisition or formation of such organization;
- (c) if the **named insured** is designated on the Declarations Page as:
- (1) a partnership or joint venture, that organization is covered. Individual partners or members including spouses of such are also **insureds**, but only while acting within the scope of their duties;
  - (2) an organization, other than a partnership or joint venture, that organization is covered. Executive officers, stockholders, trustees and directors are also **insureds**, but only while acting within the scope of their duties.

Each of the following is also an **insured**:

- (1) hospital administrators, members of the Board of Governors, members of the Board of Directors, employees or volunteer workers, but only while acting within the scope of their duties.

However, coverage afforded for employees does not apply to:

- (a) interns, externs, residents and dental, osteopathic, chiropractic, podiatrist or medical doctors unless specifically scheduled as **Underlying Insurance**;
  - (b) **bodily injury or personal injury** to an **insured** or to a co-employee while in the course of employment or to the spouse, child, parent, brother or sister of such co-employee as a consequence of such **bodily injury or personal injury**, or for any obligation to share **damages** with or repay someone else who must pay **damages** because of the injury; or
  - (c) **property damage** to property owned or occupied by or rented or loaned to the employee, any other employee or any partner or member of the **named insured**.
- (2) members of any formal accreditation, **formal review board or committee**, or similar board or committee or persons charged with the duty of executing directives of any board or committee of the **named insured** while acting within the scope of their duties;
  - (3) any person enrolled as a student in a training program within the **named insured** facility, but only for legal liability arising out of the performance of, or failure to perform duties relating to such training program;
  - (4) any person (other than an employee of the **named insured**) or organization while acting as real estate manager for the **named insured**;
  - (5) Medical directors, but only for administrative duties performed on behalf of the **named insured**.

However, no person or organization is an **insured** with respect to the conduct of any current or past partnership or joint venture that is not listed as a **named insured** in the Declarations.

**“Medical professional services”** means only the following:

- (a) medical, surgical, dental, X-Ray, nursing, mental health or other similar professional health care services or treatments relating to the practice of medicine provided in the operation of your health care facility;
- (b) furnishing of food and beverages in connection with providing **medical professional services**
- (c) dispensing of drugs, medical or dental supplies and appliances;
- (d) performing post-mortem procedures, including autopsies of harvesting or organs;
- (e) evaluating, or responding to an evaluation of, the professional qualifications or performance of any provider of health care professional services, when done by or for any of the **insured’s formal review boards** or committees;
- (f) communicating or failing to communicate any information to any of the **insured’s formal review boards** or committees;
- (g) carrying out or failing to carry out any decision or directive of any of the **insured’s formal review boards** or committees.

**“Mobile equipment”** means any of the following types of land vehicles, including any attached machinery or equipment:

- (a) forklifts, snow removal equipment, lighting and well servicing equipment, street cleaning and road maintenance, air compressors, pumps, generators, welding, spraying, building cleaning equipment; and
- (b) vehicles maintained for use solely on the premises owned or rented by the **insured** and other vehicles designed for use principally off public roads.

**“Named insured”** means the person(s) or organizations designated as the **named insured** on the Declarations Page of this Policy.

**“Named insured’s products”** means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under its name, including any container thereof (other than a vehicle) and the providing of or failure to provide warnings or instructions. A **named insured’s products** shall not include a vending machine or any property other than such container, rented to or located for use of others.

**“Nuclear facility”** means any:

- (a) nuclear reactor;
- (b) equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packing **waste**;
- (c) equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;

and includes the site of which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

**“Nuclear material”** means source material, special **nuclear material** or by-product material.

**“Occurrence”** means an accident, including injurious exposure to conditions, which results in **bodily injury** or **property damage** that is neither expected nor intended from the standpoint of the **insured**.

**“Offense”** means a single act or omission or series of related acts or omissions, which results, during the **policy period**, in **personal injury** or **advertising injury**.

**“Organic pathogen”** means any organic irritant or contaminant including but not limited to mold, fungus, bacteria, or virus and their by-products such as mycotoxins, mildew or biogenic aerosol. Non-exclusive examples of **organic pathogen** include: *Aspergillus*, *Penicillium*, *Stachybotrys chartarum*, *Trichoderma*, *Fusarium*, and *Memnoniella*.

**“Personal injury”** means an injury, other than **bodily injury**, arising out of one or more of the following **offenses**:

- (a) libel or slander;
- (b) false arrest, detention or imprisonment;
- (c) malicious prosecution;
- (d) wrongful entry or eviction;
- (e) invasion of the right of private occupancy of a room, dwelling or premises that a person occupies;
- (f) invasion of a right of privacy;
- (g) interfering with the rights provided to a person by a Patients’ Bill of Rights or any similar law.

**“Policy period”** means the period of coverage commencing on the date shown on the Declarations Page attached to this Policy as the effective date and ending upon the effective date of termination, expiration or cancellation of coverage under this Policy, and specifically excludes any **reporting period** purchased hereunder. All dates shown begin at 12:01 a.m.

**“Pollutant (s)”** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, biological and other etiologic agents or materials, genetically engineered materials, teratogenic, carcinogenic and mutagenic materials and **waste**.

**“Property damage”** means:

- (a) physical injury to **tangible property**, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- (b) loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.
- (c) For the purposes of this insurance, **electronic data** is not tangible property.

**“Retained limit”** means the amount stated on the Declarations Page which, in the absence of **underlying insurance**, the **insured** shall pay for **damages** as to each **occurrence** for which coverage is provided under this Policy.

**“Spent fuel”** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

**“Ultimate net loss”** means the total amount which the **insured** or any organizations as its insurer, or both, shall become legally obligated to pay as **damages**, whether actually expended or payable either by adjudication or settlement, to which this Policy applies in excess of the greater of:

- (a) the limits of the **insured’s underlying insurance** stated in the Schedule of **Underlying Insurance** plus the limits of any other insurance payable with respect to or collectible by the **insured**; or

- (b) the **retained limit** stated on the Declarations Page, if an **occurrence** is not covered by such **underlying insurance** or insurance as described in paragraph (a) above.

**“Underlying insurance”** means the Policy(ies) listed on the Schedule of **Underlying Insurance** of this Policy.

**“Waste”** means any **waste material** containing by-product material and resulting from the operation by any person or organization of any **nuclear facility** included within the definition **nuclear facility** under paragraph (a) or (b). **Waste** includes materials to be recycled, reconditioned or reclaimed.

**“Work”** means operations performed by an **insured** or on its behalf and materials, parts or equipment furnished in connection with such operations including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **work** and providing of or failure to provide warnings or instructions.

## V. GENERAL CONDITIONS

### Premium

All premiums for this Policy shall be computed in accordance with MMIC’s rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### Insured’s Duties in the Event of an Occurrence, Claim or Suit

- (a) Upon an **insured** obtaining knowledge or becoming aware of any alleged injury which may subsequently give rise to a **claim**, notice shall be given by or for such **insured** to MMIC or any of its authorized representatives as soon as practicable. If further information is required by MMIC to investigate or defend such **claim**, the **insured** shall provide all such information promptly.
- (b) If a **claim** is made or suit is brought against an **insured**, the **insured** shall immediately forward to MMIC every demand, notice, summons or other process received by the **insured** or the **insured’s** representative.
- (c) The **insured** shall cooperate with MMIC and, upon MMIC’s request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or **damages** with respect to which insurance is afforded under this Policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at the **insured’s** own cost, voluntarily make any payment, assume any obligation or incur expense other than for first aid to others at the time of accident.

### Action Against MMIC

No action shall lie against MMIC unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the amount of an **insured’s** obligation to pay shall have been finally determined either by final judgment after expiration of period for appeal against such **insured** after actual trial or by written agreement of the **insured**, the claimant and MMIC. 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 MMIC as a party to any action against an **insured** to determine the **insured’s** liability, nor shall MMIC be impleaded by the **insured** or **insured’s** legal representative. Bankruptcy or insolvency of an **insured** or of an **insured’s** estate shall not relieve MMIC of its obligations hereunder.

### **Other Insurance**

The insurance afforded by this Policy shall apply in excess of all **underlying insurance** whether or not valid and collectible. This Policy shall also apply in excess of other valid and collectible insurance which applies to any loss for which insurance is provided by this Policy, unless such insurance was purchased specifically to apply as excess of this Policy.

### **Maintenance of Underlying Insurance**

The **underlying insurance** aggregate limit(s) as shown on the Schedule of **Underlying Insurance** shall be in effect and unimpaired on the effective date of this Policy.

It is a condition precedent of this Policy that while this Policy is in effect, the **insured** shall maintain in force as collectible insurance the **underlying insurance** as shown on the Schedule of **Underlying Insurance**, without reduction in limits (except for any reduction or exhaustion of any applicable aggregate limit contained therein as described under Section II- Limits of Liability) or alteration of terms and conditions. In the event the **insured** fails to maintain such scheduled **underlying insurance** as required or fails to comply with any condition or warranty of the coverage subsequent to loss under such coverage and such failure in itself results in failure of the **insured** to recover under such **underlying insurance** or in the event of the inability of the **underlying insurance** provider to pay by reason of bankruptcy or insolvency, this Policy shall apply as though such **underlying insurance** was in force and collectible. The limits of liability of this Policy will apply only in excess of the required underlying limits as listed on the Schedule of **Underlying Insurance** attached to this Policy.

The **named insured** shall notify MMIC in writing of any material change in the **underlying insurance**, or of the termination or nonavailability thereof immediately upon becoming aware of such termination or nonavailability.

### **Subrogation**

In the event of any payment under this Policy, MMIC shall be subrogated to all the **insured's** rights of recovery therefore against any person or organization and MMIC may require an assignment of such rights from the **insured** to the extent of any payments made under this Policy plus reasonable costs of collection. The **insured** shall do nothing either before or after loss to prejudice such rights. The **insured** acknowledges that MMIC's rights under this provision shall be considered as the first priority **claim** against any such person or organization, to be paid before any other **claims** which may exist.

MMIC may, at its option, take such action as may be necessary and appropriate to preserve its rights under this provision, including the right to bring suit in the name of the **insured**. MMIC may, at its option, collect such amounts from the proceeds of any settlement or judgment that may be recovered by the **insured** or **insured's** legal representative. Any such proceeds of settlement or judgment shall be held in trust by the **insured** for the benefit of MMIC, and MMIC shall be entitled to recover reasonable attorneys' fees from the **insured**, incurred in collecting proceeds held by the **insured**.

### **Changes**

Notice to any representative of MMIC or knowledge possessed by any representative of MMIC or by any other person shall not affect a waiver or a change in any part of this Policy or prevent MMIC from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by Endorsement issued to form a part of this Policy. Failure of MMIC to require performance by an **insured** of any obligations under this Policy shall not affect its right to require performance of such obligation. Any waiver by MMIC or any breach of any provision of this Policy shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Policy.

### **Appeals**

In the event the **insured** or any **underlying insurance** carrier elects not to appeal a judgment which exceeds the **retained limit**, MMIC may elect to do so. MMIC shall be liable, in addition to the limit of liability, for all costs, taxes, expenses incurred and interest on judgments incidental to such an appeal and for all such costs, expenses and interest on appeals in connection with MMIC's right and duty to defend the **insured** under this Policy.

### **Assignment**

Assignment of interest under this Policy shall not bind MMIC until its consent is endorsed hereon; if, however, an **insured** shall die, such insurance as is afforded by this Policy shall apply (1) to the **insured's** legal representative, as an **insured**, but only while acting within the scope of duties as such, and (2) with respect to the property of an **insured**, to the person having proper temporary custody thereof, as **insured**, but only until the appointment and qualification of the legal representative.

### **Cancellation**

This Policy may be cancelled by an **insured** by surrender thereof to MMIC or any of its authorized representatives or by mailing to MMIC written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by MMIC by mailing to the **named insured** at the address shown on the Declarations Page of this Policy, written notice stating a date not less than sixty-days thereafter when such cancellation shall be effective (ten days notice will be given for non-payment of premium). The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender of the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery of such written notice either by an **insured** or by MMIC shall be equivalent to mailing.

If an **insured** cancels this Policy, earned premium shall be computed in accordance with the customary short rate table and procedures. If MMIC cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practical after cancellation becomes effective, but tender by MMIC of unearned premium is not a condition of cancellation.

### **Declarations and Applications**

By acceptance of this Policy, the **named insured** agrees that the statements on the Declarations Page and applications, are its agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **named insured** and MMIC or any of its agents relating to this insurance.

### **Inspection and Audit**

MMIC shall be permitted but not obligated to inspect an **insured's** premises at any time. Neither MMIC's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **insured** or others, to determine or warrant that such premises are safe or healthful, or are in compliance with any law, rule or regulation.

The **insured** agrees to allow risk management surveys and other risk management or loss prevention programs approved by the MMIC's Board of Directors to be conducted at the **insured's** premises. The **insured** agrees to cooperate with all reasonable recommendations resulting from such programs.

MMIC may examine and audit the **named insureds** books and records at any time during the **policy period** and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this insurance.

### **Governing Law**

The validity, construction and enforceability of this Policy shall be governed in all respects by law of the State or States in which this Policy is issued. Any and all provisions of this Policy which are in conflict with statutes of these states are understood, declared and agreed to be automatically changed to conform to the laws.

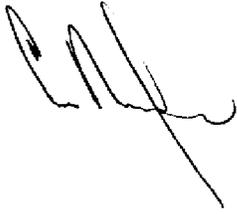
**Severability**

In the event any portion of this Policy shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Policy.

**Liberalization**

If MMIC implements any revisions during the **policy period** which would broaden the coverage provided herein without additional premium, such broadened coverage will automatically apply to this Policy. The documents reflecting the broadened coverage will be included in the next renewal policy.

IN WITNESS WHEREOF, the said MMIC Insurance, Inc., has caused this Policy to be signed by its Chairman, and Secretary, but it shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of MMIC.



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Lee Arostegui, M.D.  
Secretary  
MMIC Insurance, Inc.



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Mark Odland, M.D.  
Chairman  
MMIC Insurance, Inc.