



BETA Risk Management Authority ("BETARMA")
A Public Entity

CERTIFICATE OF PARTICIPATION

EXCESS HEALTHCARE ENTITY COMPREHENSIVE LIABILITY COVERAGE CONTRACT

PRODUCER: James & Gable Insurance Brokers Attn: Jim Sprague

CERTIFICATE NUMBER:
XHCL-21-053

<p>ITEM 1: NAMED MEMBER:Hospital County of San Bernardino 222 Hospitality Lane, 3rd Floor San Bernardino, CA 92415</p>
<p>ITEM 2: SUBSIDIARIES: See amendment X310.</p>
<p>ITEM 3: CONTRACT PERIOD: (a) Effective Date: 07/01/21 (b) Expiration Date: 07/01/22 at 12:01 a.m. local time for all dates at the address in Item 1</p>
<p>ITEM 4: RETROACTIVE DATE: 11/01/00 at 12:01 a.m. local time for all dates at the address in Item 1</p>
<p>ITEM 5: COVERAGE AND LIMITS OF LIABILITY PROVIDED : \$25,000,000 per Claim (except as provided by Amendment) \$35,000,000 in the Aggregate (Coverages provided are indicated with an "X")</p> <p>Excess Professional Liability <input checked="" type="checkbox"/> Healthcare Entity Professional Liability - Claims Made</p> <p>Excess General Liability <input checked="" type="checkbox"/> Bodily Injury and Property Damage Liability - Claims Made <input checked="" type="checkbox"/> Personal Injury, Advertising Injury and Discrimination Liability - Claims Made <input checked="" type="checkbox"/> Employee Benefits Liability - Claims Made</p>
<p>ITEM 6: SELF-INSURED RETENTION: See Section 7.9.B \$1,000,000 Per Claim / \$8,000,000 Aggregate Indemnity & Expense Retained Self-Insured Retention after aggregate is satisfied: \$50,000 Indemnity & Expense (If the Named Member has a Self-Insured Retention aggregate, the Retained Self-Insured Retention will apply after the aggregate has been satisfied.)</p>
<p>ITEM 7: CONTRIBUTION: See Section 7.9.A</p>
<p>ITEM 8: CONTRACT AND AMENDMENT FORMS ATTACHED AT ISSUANCE: XHCL (07/21) X101 X120 X131 X294 X310 X320 X390</p>
<p>ITEM 9: NOTICE REQUIRED TO BE GIVEN TO BETARMA MUST BE ADDRESSED TO : BETA Risk Management Authority 1443 Danville Boulevard Alamo, CA 94507</p>

This Certificate of Participation, the **Application(s)** and accompanying documents, and the Coverage Contract with Amendments shall constitute the Contract between BETARMA and the **Members**.

Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
SECTIONS 3, 4 AND 5 PROFESSIONAL SERVICE ONLY LIMITATION

Certificate Number: XHCL-21-053	Amendment No: X101-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is understood and agreed as follows:

1. Sections 3 and 4 are modified to add the following:

However, this coverage shall only apply to damages caused by an **Occurrence** or offense that takes place on the premises owned, leased or operated by the **Named Member** or **Subsidiary** for the sole purpose of providing **Professional Services**.

2. Section 5 is modified to add the following:

However, this coverage shall only apply to **Economic Damages** arising out of negligent administrative acts, errors or omissions performed by the **Member** in performing any of the duties listed in subparts 1, 2 and 3 above to employees who work for a department of the **Named Member** or **Subsidiary** whose sole purpose is providing **Professional Services**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
PROCEDURES REGARDING SETTLEMENT OF SECTION 2

Certificate Number: XHCL-21-053	Amendment No: X120-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is understood and agreed as follows:

1. The following procedures regarding settlement of **Claims**, and not the procedures regarding settlement of **Claims** and resolution of disputes set forth in Section 7, apply to settlement of **Claims** against physicians under Section 2 (Healthcare Entity Professional Liability).

2. No settlement shall be made of any such **Claim** on a physician's behalf without his or her consent, except as provided in this Amendment. Further, in granting or withholding such consent the physician shall act reasonably and in good faith considering his or her and BETARMA's respective interests. If the decision to settle a **Claim** is recommended by BETARMA, and if BETARMA and the physician cannot agree on the appropriateness of the settlement, the matter shall be submitted to a settlement review panel comprising three independent physicians in good standing who hold a valid license to practice medicine in the State of California and who actively practice the same medical specialty as the defendant physician.

a. Upon receipt of BETARMA's recommendation to settle a **Claim**, if the physician desires to withhold consent to such settlement, the physician shall, within seven (7) calendar days after notification by BETARMA of the recommendation, appeal such recommendation to a settlement review panel. The appeal shall be in writing and shall be submitted to the Claims Representative assigned to the **Claim**. The appeal shall indicate whether the **Member** requests to be present during the settlement review panel hearing. If the **Member** fails to timely appeal, BETARMA will settle the **Claim** as proposed and submit National Practitioner Data Bank and licensing agency reports as required by law. The settlement review panel shall be composed of:

- (1) One physician selected by the defendant physician;
- (2) One physician selected by BETARMA; and
- (3) One physician selected by the mutual agreement of the two physicians selected by the defendant physician and BETARMA.

b. Upon completion of the review, the settlement review panel shall determine whether the proposed settlement is reasonable, and it shall immediately advise BETARMA and the defendant physician of its decision.

3. The decision of the settlement review panel shall be binding upon both BETARMA and all **Members**.

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
PROCEDURES REGARDING SETTLEMENT OF SECTION 2

Certificate Number: XHCL-21-053	Amendment No: X120-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
SUPPLEMENTAL MEMBER

Certificate Number: XHCL-21-053	Amendment No: X131-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is understood and agreed that coverage afforded by this Contract is extended to:

State of California, its officers, employess and agents

as a **Supplemental Member** pursuant to Section 7.2, but only for legal liability arising out of the acts, errors or omissions of the **Named Member** or a **Subsidiary** solely in the performance of the following contract with the **Named Member** or **Subsidiary**:

Agreements with the State of California - Patton State Hospital - ARMC Agreement 14-358 referencing Patton's Agreement 14-30006- for inpatient and outpatient services ARMC Agreement 14-382 referencing Patton's agreement 14-30242 - Resident Affiliation.

This Amendment does not extend coverage for the acts, errors or omissions of *State of California, its officers, employess and agents.*

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
SUPPLEMENTAL MEMBER – MEDICAL STAFF ENTITY

Certificate Number: XHCL-21-053	Amendment No: X294-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is understood and agreed that coverage afforded by this Contract is extended to:

The Medical Staff of *Arrowhead Regional Medical Center*, an entity or unincorporated association, as a **Supplemental Member** pursuant to Section 7.2, but only for legal liability arising out of the acts, errors or omissions of the **Named Member** or a **Subsidiary** in the rendering of medical services or arising out of the premises or operation of *Arrowhead Regional Medical Center* or its **Subsidiaries**.

This Amendment does not: (1) extend coverage for any acts, errors or omissions of The Medical Staff of *Arrowhead Regional Medical Center*; or (2) extend coverage to any medical staff member.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
COVERED SUBSIDIARIES LIST

Certificate Number: XHCL-21-053	Amendment No: X310-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is understood and agreed that coverage is afforded by this Contract to the following **Subsidiaries:**

Arrowhead Regional Medical Center, Department of Public Health, Department of Behavioral Health, Sheriff-Coroner Department, Probation Department, Center for Employee Health and Wellness, Department of Aging and Adult Services, Arrowhead Regional Medical Center Education Services, Inland Counties Emergency Medical Agency(ICEMA), all County of San Bernardino Board Governed Special Districts, Flood Control Districts and County Service Areas.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
BLANKET CALIFORNIA LOCATIONS COVERAGE FOR
SECTION 2 - EXCESS HEALTHCARE ENTITY PROFESSIONAL LIABILITY

Certificate Number: XHCL-21-053	Amendment No: X320-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is hereby understood and agreed that Section 1.8 is deleted in its entirety and replaced with the following:

8. Covered Locations means:

- A. any location identified in the Certificate of Participation or by amendment; or
- B. any location in the state of California.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA Risk Management Authority ("BETARMA")
A Public Entity

AMENDMENT
HEALTHCARE PROFESSIONAL - LIMIT OF LIABILITY SUB-LIMIT

Certificate Number: XHCL-21-053	Amendment No: X390-01
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Issued to: County of San Bernardino		
Effective Date: 07/01/21 at 12:01 a.m.	Expiration Date: 07/01/22 at 12:01 a.m.	Additional Contribution: Per Contract

It is hereby understood and agreed that Section 7.A. (8) is amended to add the following:

The Limits of Liability applicable to each healthcare professional who provide **Professional Services** to the **Named Member** or **Subsidiary** will be the applicable indemnification and/or liability insurance amount specified in the healthcare professional's written agreement with the **Named Member** or **Subsidiary**, subject to the Limit of Liability stated on the Certificate of Participation.

If there is not a written agreement between the **Named Member** or **Subsidiary** and the healthcare professional, the Limit of Liability for that healthcare professional will be \$1,000,000 per **Claim** and \$3,000,000 in the aggregate.

The Limits of Liability for each healthcare professional will apply on an individual basis to the healthcare professional and are within, not in addition to, the Limits of Liability stated on the Certificate of Participation.

As used in this Amendment, "healthcare professional," includes the healthcare professional's medical corporation, if any.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative of BETARMA

BETA RISK MANAGEMENT AUTHORITY

EXCESS HEALTHCARE ENTITY COMPREHENSIVE LIABILITY COVERAGE CONTRACT FOR MEMBERS WITH SELF-INSURED RETENTIONS

IMPORTANT

THIS IS A NON-ASSESSABLE COVERAGE CONTRACT THAT INCLUDES MULTIPLE COVERAGE SECTIONS ABOVE A SELF-INSURED RETENTION. SOME COVERAGES ARE PROVIDED ON A "CLAIMS MADE" BASIS, AND OTHERS ARE PROVIDED ON AN "OCCURRENCE" BASIS. THIS COVERAGE CONTRACT REQUIRES ARBITRATION OF DISPUTES WITH BETA_{ARMA}. PLEASE REVIEW THE ENTIRE CONTRACT CAREFULLY.

IMPORTANT NOTICES

This Contract affords four basic excess coverages in Sections 2 through 5 below. The coverages include professional liability coverage (in Section 2) that applies to only those Claims first made against the Member during the Contract Period and reported in writing to BETA Risk Management Authority ("BETARMA") as required by the reporting provisions of this Contract. This coverage provides no protection or defense for acts, errors, omissions that occurred prior to the Retroactive Date set forth on the Certificate of Participation (the "Certificate") or after the Expiration Date. Unlike the professional liability coverage in Section 2, the general liability coverages in Section 3, 4, and 5 apply on an "Occurrence" basis to Occurrences, offenses or negligent acts, errors or omissions that take place during the Contract Period. **PLEASE READ EACH COVERAGE SECTION CAREFULLY AND DISCUSS THE CONTRACT WITH YOUR ATTORNEY, INSURANCE ADVISOR OR BROKER.**

BETARMA is a California Joint Powers Authority formed to pool self-insured claims and losses among public entities and nonprofit organizations providing healthcare services as authorized by California Government Code Sections 990.4(a), 990.8(c) and 6527 and subject to the provisions of Section 991.2. BETARMA is not subject to regulation as an insurer. This Contract is not an insurance policy. The **Named Member** must be a member in good standing in BETARMA to participate in the Group Self-Insurance Program. The **Named Member** pays, when due, Contributions to BETARMA. In return, BETARMA provides excess healthcare entity professional liability and general liability protection under this agreement above a Self-Insured Retention. However, the Contract includes limitations, restrictions and exclusions. In other words, this agreement does not protect against all risks associated with your activities.

This Contract is an agreement arrived at by mutual negotiation among and consent of the members of BETARMA and approved by the BETA Council. The Contract is intended to be interpreted in accordance with the usual rules of contract law. Because, among other reasons, this Contract was negotiated at arm's length by parties of approximately equal bargaining power, any ambiguities that may be found are to be interpreted in an even-handed fashion in the manner most consistent with the relevant terms, conditions, and exclusions of the Contract. You should read this agreement carefully to determine the extent of the protection provided. This Contract sets forth the four basic excess coverages in Sections 2 through 5. Section 6 sets forth the exclusions. Section 7 sets forth common provisions that apply to these excess coverages. Amendments further expand or limit the coverages afforded. You must read the entire Contract, including the amendments and the Certificate, carefully in order to understand your and BETARMA's obligations. Words or terms that are in **bold** print have a special meaning that is set forth in the Definitions section, Section 1. These definitions limit the protection this Contract provides.

Any disputes with BETARMA under this Contract that cannot be resolved must be arbitrated as set forth in Section 7. By accepting this Contract, you and BETARMA are agreeing to give up the right to court remedies, including a jury trial. Except as provided by law, the Arbitrators' ruling will be final and binding on the parties, and rights of appeal are strictly limited.

EXCESS HEALTHCARE ENTITY COMPREHENSIVE LIABILITY COVERAGE CONTRACT
FOR MEMBERS WITH SELF-INSURED RETENTIONS

This Excess Healthcare Entity Comprehensive Liability Coverage Contract for **Members** with Self-Insured Retentions comprises the following:

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AMENDMENTS

APPLICATION

BETARMA and all **Members**, subject to all of the terms, conditions and limitations of this Contract, agree as follows:

SECTION 1 – DEFINITIONS

1. **Advertising Injury** means injury arising out of one or more of the following offenses in the advertising of the **Named Member's** or **Subsidiary's** work or products:
 - A. oral or written publication of material that slanders or libels a person or organization;
 - B. oral or written publication of materials that disparages a person's or organization's goods, products or services;
 - C. oral or written publication of material that violates an individual's right of privacy;
 - D. unauthorized taking of advertising ideas or style of business; or
 - E. infringement of copyright, trade dress or slogan.
2. **Automobile** means a motor vehicle, trailer or semi trailer designed for travel on public roads, including any attached equipment or machinery, but **Automobile** does not include **Mobile Equipment**.
3. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** includes mental anguish, mental injury or shock sustained by that person as a result of such bodily injury, sickness or disease.

For purposes of Section 2 only, **Bodily Injury** includes a bystander's mental anguish, mental injury, shock, fright or death resulting from physical injury, sickness or disease of another.

4. **Certified Act of Terrorism** means a Certified Act of Terrorism, as defined under the federal Terrorism Risk Insurance Act of 2002 as it may be amended from time to time.
5. **Claim** means:
 - A. a written demand for damages, including:
 - (1) service of suit or institution of arbitration proceedings against a **Member**; or
 - (2) a demand made under an applicable claim statute, signed by or on behalf of one alleged to have been damaged by a **Member**.
 - B. written notice to BETARMA of specific circumstances involving injury to a particular person or organization that may reasonably be expected to give rise to a **Claim** against a **Member**, provided the **Member** becomes aware during the **Contract Period** of an act, error or omission that may reasonably be expected to give rise to a **Claim** against a **Member** to which Section 2 – Excess Healthcare Entity Professional Liability – applies, and the **Member** reports to BETARMA in writing the names of any injured parties, witnesses, the nature of any injury or damage, and the manner in which the **Member** first became aware of the act, error or omission. Any **Claim** subsequently arising from such reported act, error or omission, shall be deemed to be a **Claim** made during the **Contract Period** in which the act, error or omission was first duly reported to BETARMA.

For purposes of Section 2.2, **Claim** also means a writ of administrative mandamus under Section 1094.5 of the California Code of Civil Procedure.

Internal incident reports sent to BETARMA and trending reports, quarterly claims reports and other data collection reports shall not be considered a **Claim**.

Two or more **Claims** arising out of a single **Occurrence** or an act, error, omission or offense or a series of related **Occurrences**, acts, errors, omissions or offenses shall be treated as a single **Claim**. **Occurrences**, acts, errors, omissions and offenses are related if they share a causal connection or have as a common nexus any event or transaction or series of events or transactions. When two or more **Claims** are treated as a single **Claim**, the single **Claim** shall be considered first made when the earliest of the **Claims** is first made.

However, no **Claim** shall be deemed first made during the **Contract Period** if:

- C. the **Claim** or incident was reported before the Effective Date of this Contract to BETARMA or to any liability insurer; or
 - D. any **Member** had knowledge prior to the Effective Date of facts or circumstances that would cause a reasonable person to believe that a **Claim** might be made.
6. **Claimant** means the person or entity who asserts a **Claim**.
7. **Contract Period** means the time period from the Effective Date to the Expiration Date, as specified on the Certificate, or to any earlier termination date, and not including any extended reporting period.
8. **Covered Location** means:
- A. any location identified in the Certificate or by amendment; or
 - B. any location in the state of California, newly owned, occupied, rented, used or controlled by the **Named Member** or a **Subsidiary**; however:
 - (1) coverage is afforded only until the thirtieth (30th) calendar day after possession begins or the end of the **Contract Period**, whichever is earlier; and
 - (2) coverage will be extended beyond the thirtieth (30th) calendar day only upon the **Named Member's** or **Subsidiary's** submission of such underwriting information as may be required by BETARMA, BETARMA's issuance of an amendment extending coverage at the location, and timely payment of the Contribution specified by BETARMA.
9. **Defense Expenses** includes the following expenses resulting from the investigation, adjustment, defense and appeal of a covered **Claim**, if incurred by the **Named Member** or by BETARMA:
- A. fees, costs and expenses charged by an attorney or other person or organization retained by the **Named Member** or by BETARMA; and
 - B. all other fees, costs and expenses, including, but not limited to, expenses incurred by independent contractors or vendors.
- Defense Expenses** does not include salaries or expenses of a **Member** or BETARMA's employees or officials, the expenses or costs of any third party claims administrator, or a **Member's** unpaid patient or other bills. **Defense Expenses** also does not include fees, costs or expenses paid for any purpose that cannot be properly charged to a specific **Claim**.
10. **Economic Damages** means financial loss and does not include damages arising from **Bodily Injury** or **Property Damage**.
11. **Employee Benefit Program** means group or individual life insurance, accident and health insurance, profit sharing or savings plan, pension or retirement plan, salary reduction or deferral plan, employee stock subscription plan, workers' compensation, unemployment insurance, social security and disability benefits plan or insurance, plan to pay medical, dental, vision or drug claims, or any other similar plan provided, in whole or part, or administered by the **Named Member** for its employee(s) and their dependents.

12. **Employment Practices Liability** means:

- A. any actual or alleged act or omission by any **Member** related to the employment of the **Claimant**, including, but not limited to, recruiting, interviewing, hiring, declining to hire, assigning, reassigning, granting or placing on leave, performance reviews, promotion, training, transfer, disciplinary action, demotion, supervision, layoff and termination of the **Claimant** as an employee or as an independent contractor;
- B. any actual or alleged acts of wrongful discharge, unlawful discrimination or harassment in employment, and any other act or omission prohibited by any statute regulating employment practices;
- C. any actual or alleged **Retaliation**; or
- D. any actual or alleged **Advertising Injury** or **Personal Injury** alleged or suffered by any employee or former employee of the **Named Member** or a **Subsidiary**.

However, "**Employment Practices Liability**" does not include any actual or alleged act or omission by any **Member** related to any **Employee Benefit Program**.

13. **Fungi** means any type or forms of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by **Fungi**.

14. **Hazardous Properties** includes radioactive, toxic or explosive properties.

15. **Member** means a person or entity identified in Section 7.1 or to whom coverage is extended under Section 7.2.

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

- A. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- B. vehicles maintained for use solely on or next to premises the **Named Member** or **Subsidiary** owns or rents;
- C. vehicles that travel on crawler treads;
- D. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) power cranes, shovels, loaders, diggers or drills; or
 - (2) road construction or resurfacing equipment such as graders, scrapers or rollers;
- E. vehicles not described in clauses A, B, C, or D above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) cherry pickers and similar devices used to raise or lower workers;
- F. vehicles not described in clauses A, B, C, or D above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **Mobile Equipment**, but will be considered **Automobiles**:

- (1) equipment designed primarily for:
 - (a) snow removal;
 - (b) road maintenance, but not construction or resurfacing;
 - (c) street cleaning;
 - (2) cherry pickers and similar devices mounted on **Automobile** chassis and used to raise or lower workers;
 - (3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
17. **Named Member** means the organization specified as such in the Certificate.
18. **Nuclear Facility** means:
- A. any **Nuclear Reactor**;
 - B. any equipment or device designed or used for separating the isotopes of uranium or plutonium, processing or utilizing **Spent Fuel**, or handling, processing or packaging **Nuclear Waste**;
 - C. any equipment or device used for the processing, fabricating or alloying of **Nuclear Material** if at any time the total amount of such material in the **Member's** custody 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; or
 - D. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **Nuclear Waste**, including the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
19. **Nuclear Material** means Source Material, Special Nuclear Material or By-Product Material, as defined under the federal Atomic Energy Act of 1954 or in any amendment thereto.
20. **Nuclear Reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
21. **Nuclear Waste** means any material containing By-Product Material and resulting from the operation by any person or organization of any **Nuclear Facility**.
22. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which is neither expected nor intended by the **Member**.
23. **Personal Information** includes any information defined as "individually identifiable health information," "medical information", "personal information" or "personally identifying information" in the Health Insurance Portability and Accountability Act of 1996 or the California Civil Code, as amended from time to time, or in any regulations adopted thereunder.
24. **Personal Injury** means injury arising out of one or more of the following offenses resulting from the **Named Member's** or **Subsidiary's** business activities:
- A. false arrest, detention or imprisonment;
 - B. malicious prosecution;
 - C. the wrongful eviction from, wrongful entry into, or invasion of the right of public or private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

- D. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - E. an invasion that violates a person's right of privacy.
25. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **Waste**. **Pollutants** include indoor **Pollutants**.
26. **Privacy Breach Wrongful Act** means: (a) any actual or alleged failure to safeguard or to prevent unauthorized access to or use or disclosure of any **Personal Information**, including any access, use or disclosure that exceeds authorization, (b) failure to give notification of an actual or potential unauthorized access to, or use or disclosure of, any **Personal Information**.
27. **Product** means goods or products manufactured, sold, handled or distributed by the **Member**.
28. **Professional Services** means:
- A. medical, surgical, dental or nursing or other healthcare services or treatment to a patient, including custodial care and the furnishing of food or beverages in connection with the treatment;
 - B. the furnishing or dispensing of drugs, or medical, dental or surgical supplies or appliances to a patient if the injury occurs after the **Member** has relinquished possession thereof;
 - C. healthcare research involving a patient, study participant or trial participant, if, before the research was commenced, the **Named Member** or **Subsidiary's** Institutional Review Board approved the research study or trial;
 - D. the handling or performing of post-mortem examinations on human bodies; or
 - E. services by any person as a member of the **Named Member's** or **Subsidiary's** formal accreditation or similar professional board or committee, or as a person charged with the duty of executing directives of any such board or committee.
29. **Property Damage** means:
- A. physical injury to tangible property, including resulting loss of use of that property; or
 - B. loss of use of tangible property that is not physically injured.
30. **Retroactive Date** is the date so specified on the Certificate. The **Retroactive Date** applies only to coverages provided on a "claims made" basis. No coverage is provided by this Contract with regard to any act, error or omission occurring prior to the **Retroactive Date**.
31. **Spent Fuel** means any fuel component, solid or liquid, which has been used or exposed to radiation in a **Nuclear Reactor**.
32. **Subsidiary** means any of the following:
- A. any corporate, general partnership or limited-liability-company affiliate of the **Named Member** listed as a **Subsidiary** in the Certificate or an amendment;
 - B. any foundation the sole activity of which is to provide financial support to the **Named Member**; or
 - C. any nonprofit corporation affiliated with the **Named Member** and created pursuant to Section 32121(p) of the Health and Safety Code to which the **Named Member** has transferred assets.
33. **Supplemental Member** means a person or entity to whom coverage is extended under Section 7.2.

34. **Terrorism** means a **Certified Act of Terrorism** or acts of any person or organization against any persons, organization or property of any nature:
- A. that involve the following or preparation for the following:
 - (1) use or threat of force or violence; or
 - (2) commission or threat of a dangerous act; or
 - (3) commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and
 - B. when either or both of the following applies:
 - (1) the effect is to intimidate or coerce a government or the civilian population or any segment of the public, or to disrupt any segment of the economy; or
 - (2) it appears that the intent is to influence, intimidate or coerce a government, or any segment of the public, or to further political, ideological, religious, social, economic or similar objectives or to express (or express opposition to) a philosophy or ideology.
35. **Volunteer** means any person or group, such as an auxiliary, whose services or labor are uncompensated from any source, are accepted or directed by the **Named Member** or any **Subsidiary**, and who is not a healthcare professional rendering **Professional Services** which require licensing or other certification.
36. **Waste** includes materials to be disposed of, recycled, reconditioned or reclaimed, including, but not limited to, used, expired or disposed of medical and pharmaceutical supplies.

SECTION 2 – EXCESS HEALTHCARE ENTITY PROFESSIONAL LIABILITY
(This coverage is provided on a claims made basis.)

After the **Named Member** has paid the amount of the Self-Insured Retention by indemnity payments or **Defense Expenses** within the scope of the coverages afforded by this Contract and subject to the exclusions in Section 6 and the conditions in Section 7, BETARMA will pay the following:

1. Those sums which the **Member** is legally required to pay as damages for a **Claim** for **Bodily Injury, Property Damage** or **Economic Damages** arising out of the **Member's** negligence in the rendering of, or failure to render, **Professional Services**:

- A. on or after the **Retroactive Date**; and
- B. at a **Covered Location**; and provided that

the **Claim** is first made against the **Member** during the **Contract Period** and is reported in writing to BETARMA as required by Section 7.10 - MEMBERS' REPORTING OBLIGATIONS.

2. Those sums which the **Member** is legally required to pay as damages for a **Claim** arising from a negligent act, error or omission resulting in actual or alleged denial, suspension, revocation, termination or limitation of medical staff privileges, provided that the effective date of the first denial, suspension, revocation, termination or limitation of staff privileges that is a basis of the **Claimant's Claim** occurs on or after the **Retroactive Date**. This coverage applies only if the **Claim** is first made against the **Member** during the **Contract Period** and is reported in writing to BETARMA as required by Section 7.10 - MEMBERS' REPORTING OBLIGATIONS. To the extent that such a **Claim** alleges an intentional act or omission, this Contract applies only to **Defense Expenses**.

3. Those sums which the **Member** is legally required to pay as damages for a **Claim** arising from reckless neglect within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act, California Welfare and Institutions Code, Section 15600, et seq., in the rendering of, or failure to render **Professional Services** on or after the **Retroactive Date**, at a **Covered Location**. This coverage applies only if the **Claim** is first made against the **Member** during the **Contract Period** and is reported in writing to BETARMA as required by Section 7.10 - MEMBERS' REPORTING OBLIGATIONS.

4. Those sums which the **Member** is legally required to pay as damages for a **Claim** arising out of the following offenses:

- A. discrimination based upon, without limitation, an individual's race, ethnicity, ancestry, national origin, citizenship, religion, age, sex, gender identification, sexual orientation or preference, pregnancy, preexisting medical condition, perceived or actual, physical or mental disability or handicap, insurance status, economic status or ability to pay for medical services, and
- B. sexual abuse, assault, battery, harassment or molestation

if the **Claimant's** injury arises out of the **Member's** negligence in the rendering of, or failure to render, **Professional Services** on or after the **Retroactive Date**; and at a **Covered Location**; and provided that the **Claim** is first made against the **Member** during the **Contract Period** and is reported in writing to BETARMA as required by Section 7.10 - MEMBERS' REPORTING OBLIGATIONS.

BETARMA will defend, but will not indemnify, a **Claim** that is otherwise covered under this Section, but alleges an intentional act or omission.

5. Only upon the **Named Member's** or **Subsidiary's** specific written request, subject to BETARMA's sole, absolute and unreviewable discretion, reasonable **Defense Expenses** for a criminal action or proceeding brought by a law enforcement agency against the **Named Member's** or **Subsidiary's** employee alleging **Bodily Injury** or **Property Damage** caused by an **Occurrence** on or after the **Retroactive Date**. This provision applies only if:

- A. the criminal action or proceeding is first brought by a law enforcement agency against the **Named Member's** or **Subsidiary's** employee or employees during the **Contract Period** and is reported to BETARMA as soon as possible during the **Contract Period** but in no event later than thirty (30) calendar days after the termination of the **Contract Period**;
- B. the acts or omissions charged:
 - (1) occur only in the discharge of the employee's regular duties to the **Named Member** or **Subsidiary**; and
 - (2) arise solely and directly from the care and treatment of patients on the **Named Member's** or **Subsidiary's** behalf;
- C. the **Named Member** or **Subsidiary** determines that the **Named Member's** or **Subsidiary's** defense of the criminal action or proceeding would be in the best interests of the **Named Member** or **Subsidiary** and that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the **Named Member** or **Subsidiary**; and
- D. such payment of **Defense Expenses** is permitted by law.

SECTION 3 – EXCESS BODILY INJURY AND PROPERTY DAMAGE LIABILITY
(This coverage is provided on an occurrence basis.)

After the **Named Member** has paid the amount of the Self-Insured Retention by indemnity payments or **Defense Expenses** within the scope of the coverages afforded by this Contract and subject to the exclusions in Section 6 and the conditions in Section 7, BETARMA will pay the following:

Those sums which the **Member** is legally required to pay as damages for a **Claim** that is caused by an **Occurrence**, if the **Bodily Injury** or **Property Damage** occurs during the **Contract Period**. Such **Bodily Injury** or **Property Damage** includes damages arising out of the **Member's Products** away from the **Member's** premises after physical possession of the **Products** has been relinquished to others.

**SECTION 4 – EXCESS PERSONAL INJURY, ADVERTISING INJURY AND
DISCRIMINATION LIABILITY**

(This coverage is provided on an occurrence basis.)

After the **Named Member** has paid the amount of the Self-Insured Retention by indemnity payments or **Defense Expenses** within the scope of the coverages afforded by this Contract and subject to the exclusions in Section 6 and the conditions in Section 7, BETARMA will pay the following:

1. Those sums which the **Member** is legally required to pay as damages for a **Claim** for **Personal Injury** or **Advertising Injury** caused by an offense committed during the **Contract Period**.
2. Those sums which the **Member** is legally required to pay as damages for a **Claim** for the following offenses committed during the **Contract Period**:
 - A. discrimination based upon, without limitation, an individual's race, ethnicity, ancestry, national origin, citizenship, religion, age, sex, gender identification, sexual orientation or preference, pregnancy, preexisting medical condition, perceived or actual, physical or mental disability or handicap, insurance status, economic status or ability to pay for medical services, and
 - B. sexual abuse, assault, battery, harassment or molestation.

SECTION 5 – EXCESS EMPLOYEE BENEFIT LIABILITY

(This coverage is provided on an occurrence basis.)

After the **Named Member** has paid the amount of the Self-Insured Retention by indemnity payments or **Defense Expenses** within the scope of the coverages afforded by this Contract and subject to the exclusions in Section 6 and the conditions in Section 7, BETARMA will pay the following:

Those sums which the **Member** is legally required to pay as **Economic Damages** for a **Claim** arising out of the following negligent administrative acts, errors or omissions performed by the **Member**, other than as a fiduciary, during the **Contract Period**:

1. counseling employees with respect to or interpreting **Employee Benefit Programs**;
2. handling of records and processing of claims in connection with the **Employee Benefit Programs**; or
3. effecting or failing to effect enrollment, termination or cancellation under the **Employee Benefit Programs**.

SECTION 6 – EXCLUSIONS

WHAT BETARMA WILL NOT COVER:

EXCEPT AS OTHERWISE PROVIDED BELOW, THESE EXCLUSIONS APPLY REGARDLESS OF WHETHER ANY OTHER CAUSE, ACT, ERROR, OMISSION, EVENT, MATERIAL OR PRODUCT CONTRIBUTES CONCURRENTLY OR IN ANY SEQUENCE TO A CLAIMANT'S INJURY OR DAMAGE.

EXCLUSIONS THAT APPLY TO ALL COVERAGE SECTIONS

1. This Contract does not apply to any **Claim** for damages arising out of the breach of any contract or agreement or liability assumed by the **Member** under any contract or agreement, except that:
 - A. this exclusion does not apply under Sections 2 and 3 as respects the **Member's** warranty of goods and **Products**, whether expressed or implied;
 - B. this exclusion does not apply under Sections 2, 3 and 4 for liability arising out of a written agreement entered into before the **Occurrence** or offense under which the **Member** assumed the tort liability of others for injury to a third person or entity caused by the **Member's** negligence or other fault; and
 - C. this exclusion does not apply under Sections 2, 3 and 4 for liability the **Member** would have had in the absence of the contract or agreement.

Coverage is not provided for any liability resulting from guaranteeing the results of treatment.

2. This Contract does not apply to any **Claim** for or arising out of **Bodily Injury** (a) to any employee arising out of and in the course of that person's employment by any **Member**, or (b) to any **Volunteer** arising out of and in the course of that person's provision of services for any **Member**. However, clause (b) shall not apply if such **Claim** is not covered under any workers' compensation insurance policy or self-insurance program.
3. This Contract does not apply to any **Claim** for which the **Member** or any of the **Member's** insurance carriers may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law or any administrative interpretation of such laws.
4. This Contract does not apply to any liability of any person or entity:
 - A. acting as an independent contractor for any **Member** or on any **Member's** behalf, except as provided in Section 7 or by amendment; or
 - B. hired or employed by or on behalf of a patient.
5. This Contract does not apply to any injury that is expected or intended by the **Member**. This exclusion does not apply to **Bodily Injury** resulting from the use of reasonable force to protect persons or property.
6. Except for the defense of criminal charges as provided in Section 2.5, this Contract does not apply to any **Claim** arising from or brought about or contributed to by the **Member's** dishonest, fraudulent, criminal or malicious acts or omissions, or to acts or omissions that an insurer could not indemnify under California Insurance Code Section 533.
7. This Contract does not apply to any **Claim** based, in whole or in part or directly or indirectly, on, attributable to, arising out of, resulting from, or in any way related to any actual or alleged violation of the Employment Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq., or similar provisions of any federal, state or other statutory or common law or rule or regulation, including but not

limited to the Pension Trusts provisions of the California Government Code, Section 53215, et seq., all as they may be amended from time to time.

8. This Contract does not apply to any **Claim** based on **Employment Practices Liability**.
9. This Contract does not apply to any **Claim** based, in whole or in part or directly or indirectly, on, attributable to, arising out of, resulting from, or in any way related to any actual or alleged violation of any federal, state or other statutory or common law (including but not limited to the Cartwright Act, California Business & Professions Code § 16600, et seq., the Unfair Practices Act, Business & Professions Code § 17000, et seq. and the Unfair Competition Act of the State of California, Business & Professions Code §§ 17200, et seq. and 17500, et seq. and Title 15 of the United States Code, all as they may be amended from time to time) that prohibits the unlawful restraint of trade, business or profession, except any liability arising from actions brought against the **Member** by any person or persons alleging the improper or unlawful denial or restriction of medical staff privileges or alleging the **Member's** failure to act upon any application for such privileges.
10. This Contract does not apply to any **Claim** based, in whole or in part or directly or indirectly on, attributable to, arising out of, resulting from, or in any way related to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any rules or regulations of the Securities and Exchange Commission adopted thereunder, similar provisions of any federal, state or other statute regulating securities, all as they may be amended from time to time, any rules or regulations adopted pursuant thereto, or any other law, including common law, relating to securities.
11. This Contract shall not apply to any **Claim** against an individual **Member** alleging directly or indirectly or in whole or in part that he or she committed sexual harassment or sexual abuse, assault, battery or molestation, unless the **Named Member** first determines that it is in the best interests of the **Named Member** for BETARMA to defend the individual **Member** and requests that BETARMA do so.
12. BETARMA will not pay any punitive or exemplary damages, fines, penalties, taxes, trebled damages or any other measure of damages exceeding actual compensatory damages.
13. This Contract does not apply to any **Claim** arising, directly or indirectly, in whole or in part from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of **Fungi** or bacteria at or from any premise, site or location, including its contents, which is or was at any time owned or occupied by, or rented or loaned to, any **Member**, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

This exclusion does not apply to Section 2 or to any **Fungi** or bacteria that are, are on, or are contained in, a good or product intended for consumption.

14. This Contract does not apply to any **Claim** arising in whole or in part from 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 **Member**;
 - B. at or from any premises, site or location which is or was at any time used by or for any **Member** 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 any **Member** or any person or organization for whom the **Member** may be legally responsible; or
 - D. at or from any premises, site or location on which any **Member** or any contractors or subcontractors working directly or indirectly on any **Member's** behalf are performing operations:

- (1) if the **Pollutants** are brought on or to the premises, site or location in connection with such operations by such **Member**, contractor or subcontractor; or
- (2) 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 **Pollutants**.

Clause D (1) does not apply to **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 fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such **Member**, contractor or subcontractor.

Clauses A and D(1) do not apply to **Bodily Injury** or **Property Damage** arising out of heat, smoke or fumes from a hostile fire. A hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

15. This Contract does not apply to any loss, cost or expense arising out of any:
 - A. request, demand or order that any **Member** or others abate, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, remediate, dispose or in any way respond to, or assess the effects of **Pollutants, Fungi** or bacteria; or
 - B. **Claim** or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **Pollutants**.
16. This Contract does not apply to equitable remedies or the costs of complying with equitable remedies, governmental requests, directives, orders or recommendations. (Examples of equitable remedies include injunctions, restitution, disgorgement, declaratory relief, constructive trust, and rescission, reformation or specific performance of a contract.)
17. This Contract does not apply to any **Claim** that directly or indirectly or in whole or in part arises out of, results from, is based on, or alleges ownership, management, operation or control of any Health Maintenance Organization (HMO) or Preferred Provider Organization (PPO) or other similar organization. However, the exclusion does not apply to the **Member's** participation solely as a provider of healthcare services to a Health Maintenance Organization (HMO) or Preferred Provider Organization (PPO) or similar organization not owned, managed or controlled by a **Member**.
18. This Contract does not apply to any **Claim** that directly or indirectly, arises out of, results from, is based on or alleges any liability or injury that is in any way connected with the practice of reuse or reprocessing of medical devices (sometimes referred to as single-use devices or SUDs) that are labeled, designated or intended for one time use.
19. This Contract does not apply to any **Claim** for injury or damage arising out of, attributable to, resulting from, or in any way related to directly or indirectly, Telehealth, if the patient is outside of the state of California, or if the **Claim** or suit is brought outside of the state of California. Telehealth (previously, called telemedicine) means the use of electronic information and telecommunication technologies to support and promote long-distance clinical health care, patient and professional health-related education, and public health and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

However, this exclusion will not apply:

- A. if the patient has a pre-existing clinician- patient relationship established with the individual **Member** in California and the **Professional Services** rendered to the patient outside of California occurred when the patient was only temporarily outside of the state of California, or
 - B. if the individual **Member** is providing only medical information to another healthcare provider, regarding a patient located outside the state of California.
20. This Contract does not apply to any **Claim** arising, directly or indirectly, in whole or in part, out of, attributable to, resulting from, or in any way related to:
- A. war, including undeclared or civil war; or
 - B. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - C. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or
 - D. the discharge of a nuclear weapon, even if it is accidental; or
 - E. **Terrorism**, including any action taken in hindering or defending against an actual or expected incident of **Terrorism**.

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

However, this exclusion does not apply to a **Claim** based solely on a **Member's** alleged negligence in rendering or failing to render **Professional Services** to a victim of **Terrorism** or other acts specified in Clauses A through D above.

21. This Contract does not apply to any **Claim** based upon or attributable to or resulting from pricing, charges, rates or billing for service or goods, including but not limited to, actual or alleged unfair, unreasonable, unlawful or excessive prices, charges, rates or billings.
22. This Contract does not apply to any **Claim** for actual or alleged injury or damage arising out of, attributable to, resulting from, or in any way related to, directly or indirectly, any of the following:
- A. any actual or alleged **Professional Services** for which the **Member** does not hold the license or certificate required by law at the time and place where the **Member** renders or fails to render such **Professional Services**. However, this exclusion shall not apply if at that time the **Member** reasonably believed in good faith that the **Member** possessed the required license or certificate and the **Member** provides documentation satisfactory to BETARMA that substantiates such belief.
 - B. any facility or equipment operated by any **Member**, or operated pursuant to any contract with any **Member**, for which all licenses and permits required by law have not been secured as of the date of the **Occurrence** (under Section 3), negligent act, error or omission (under Section 2 and 5), or offense (under Section 4).

A license or permit will be deemed to have been secured and held as of the date of the application for it, if the application was made prior to the date of such **Occurrence**, act, error or omission, or offense, and such application was granted within sixty (60) calendar days following the date of the **Occurrence**, act, error or omission or offense.

23. Except to the extent such coverage is extended by amendment, this Contract does not apply to any **Claim** that, directly or indirectly or in whole or in part, arises out of any **Product** developed or created through healthcare research conducted by any **Member**.

24. This Contract does not apply to any damages directly or indirectly arising out of, resulting from or in any way related to any **Privacy Breach Wrongful Act**.

EXCLUSIONS THAT APPLY TO SPECIFIC COVERAGE SECTIONS

25. Sections 2 and 3 of this Contract do not apply to any **Claim** arising out of any **Member's** ownership, maintenance, use or entrustment to others of any **Automobile**, watercraft, helicopter or aircraft or the loading or unloading thereof, except for the loading and unloading of patients by a **Member**. This exclusion does not apply to:

- A. **Property Damage to Mobile Equipment;**
- B. **Property Damage** to an **Automobile** while it is parked or when being parked on, or on the ways immediately next to, premises that the **Named Member** or **Subsidiary** owns or rents. Coverage for such **Property Damage** is not subject to Exclusion 26; or
- C. **Bodily Injury** or **Property Damage** resulting from negligent maintenance of a helipad that the **Named Member** or a **Subsidiary** owns or leases.

26. Section 2 and 3 of this Contract do not apply to any **Claim** for **Property Damage** to any of the following:

- A. property any **Member** owns, rents, occupies, or holds for sale or safekeeping;
- B. property any **Member** controls, or plans to install, erect or use in construction;
- C. premises any **Member** sells, gives away or abandons, if the **Property Damage** arises out of any part of those premises;
- D. personal property in any **Member's** care, custody or control;
- E. that particular part of real property on which any **Member**, or any contractor or subcontractor working directly or indirectly for any **Member**, is working, if the **Property Damage** results from that work; or
- F. that particular part of any property that must be restored, repaired or replaced because of faulty workmanship by any **Member** or on any **Member's** behalf.

Clauses B, D, E and F will not apply to liability for damage to the above property assumed under an elevator service agreement. Also, this exclusion does not apply to damage to property of others caused by an elevator on the **Named Member's** or **Subsidiary's** premises. However, damage to the elevator itself is not covered.

Clauses B, D, E and F will also not apply to liability for damage to patients' property.

27. Section 3 of this Contract does not cover **Bodily Injury** or **Property Damage** arising out of rendering or failure to render **Professional Services**.
28. Sections 2, 3, and 4 of this Contract do not apply to any **Bodily Injury** or **Property Damage** resulting from the loss of use, recall or withdrawal, adjustment, inspection, repair or replacement, removal or disposal of any **Member's Product** from the market or from use by anyone for any reason.
29. Section 3 of this Contract does not apply to any **Bodily Injury** or **Property Damage** with respect to which the **Member** is also an insured under a nuclear energy policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability.

30. Section 3 of this Contract does not apply to any **Bodily Injury** or **Property Damage** (including, but not limited to, all forms of radioactive contamination of property) caused in whole or in part by the **Hazardous Properties of Nuclear Material** under any of the following circumstances:
- A. if any **Member** is required to maintain financial protection for nuclear events, or any **Member** is entitled, or would have been entitled had this Contract not been issued, to indemnify for nuclear events from the United States of America;
 - B. the **Nuclear Material** is located at, or is discharged or dispersed from, any **Nuclear Facility** owned or operated by or on behalf of any **Member**;
 - C. the **Nuclear Material** is contained in **Spent Fuel** or **Nuclear Waste** that has at any time been possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any **Member**; or
 - D. the **Bodily Injury** or **Property Damage** arises out of services, materials, parts or equipment any **Member** furnishes in connection with the planning, construction, maintenance, operation or use of any **Nuclear Facility**. If the **Nuclear Facility** is in the United States of America, its territories or possessions or Canada, this clause D applies only to **Property Damage** to or at the **Nuclear Facility**.

This exclusion does not apply to liability arising out of the practicing of nuclear medicine and activities related to nuclear medicine by the **Member**.

31. Section 4 of this Contract does not apply to any oral or written publication of false material by the **Member** or at the **Member's** direction with knowledge of its falsity.
32. Section 4 of this Contract does not apply to any **Claim** for **Personal Injury** or **Advertising Injury** if the first oral or written publication was made prior to the first date BETARMA provided the **Member** uninterrupted coverage.
33. Section 4 of this Contract does not apply to any **Claim** for **Personal Injury** or **Advertising Injury** alleging:
- A. the failure of goods, products or services to conform with advertised quality or performance; or
 - B. the false or misleading description of the price of goods, products or services.
34. Section 4 of this Contract does not apply to any **Claim** asserted by, on behalf of, with the assistance of or at the behest of any of the following persons or organizations: the **Named Member**, a **Subsidiary**, or any present or former director, trustee, officer, administrator, manager, department head, employee, **Volunteer** or member of a committee of the **Named Member** or a **Subsidiary**.
35. Section 4 of this Contract does not apply to any **Claim** for **Personal Injury** or **Advertising Injury** if the **Named Member** or any **Subsidiary** is in the business of advertising, broadcasting, publishing or telecasting.
36. Sections 3 and, 4.2 of this Contract do not apply to: (a) a denial, suspension, revocation, termination or limitation of medical staff privileges, or (b) any **Claim** by a patient, resident of a **Member's** facility or a person seeking care or treatment. However, clause (b) does not apply to sexual abuse, assault, battery, harassment or molestation if the alleged perpetrator is a visitor, vendor, custodian, security guard or a person not covered by BETARMA and the incident is not directly related to the rendering or failure to render **Professional Services**.
37. Section 5 of this Contract does not apply to any **Claim**:
- A. based in whole or in part on the termination of any **Employee Benefit Program**;

- B. alleging that a **Member** gained any personal profit or advantage to which that **Member** is not entitled;
 - C. arising out of any **Member's** liability to return remuneration paid to that **Member** in violation of any law; or
 - D. alleging fiduciary liability associated with any **Employee Benefit Program**.
38. Section 5 of this Contract does not apply to any **Claim** based upon or attributable to:
- A. investing, reinvesting, purchasing, acquiring, exchanging, selling, managing, handling or holding funds, including but not limited to liability under Section 53600.3 of the California Government Code;
 - B. failure of investments or securities to perform as represented;
 - C. advice given to participate or not participate in any **Employee Benefit Program**;
 - D. failure to provide benefits because they are unfunded or not properly funded;
 - E. any failure to effect and/or maintain insurance;
 - F. any insurance company's failure to comply with the terms of its contract; or
 - G. the insolvency of any insurance company.

SECTION 7 – PROVISIONS APPLICABLE TO ALL COVERAGES

1. WHO IS PROTECTED UNDER THIS CONTRACT

A. The term **Member** refers to the **Named Member** and each **Subsidiary** identified in the Certificate or by amendment, and each of the following persons, but only with respect to his or her legal liability when acting within the course and scope of his or her duties to the **Named Member** or **Subsidiary** and only to the extent the **Named Member** or **Subsidiary** is permitted or required by law to indemnify him or her:

- (1) any member of the board of directors or board of trustees, and any officer, administrator or department head of the **Named Member** or **Subsidiary**;
- (2) any employee (other than a physician, surgeon, dentist, physician assistant, nurse anesthetist, nurse practitioner or nurse midwife) or **Volunteer** of the **Named Member** or **Subsidiary**;
- (3) any medical director, but only when performing teaching or administrative duties and not in connection with any **Direct Patient Care**; and
- (4) any member of the **Named Member's** or **Subsidiary's** medical staff when involved in the following, other than in connection with any **Direct Patient Care**:
 - (a) any **Supervisory, Evaluation or Instructional Services** with respect to employees, trainees or medical staff members or applicants of the **Named Member** or **Subsidiary**, including proctoring of any medical staff member or applicant.
 - (b) any **Supervisory, Evaluation or Instructional Services** with respect to residents, paramedics, trainees, members of the medical staff or applicants for medical staff membership or privileges.
 - (c) Healthcare research, if before the research was commenced, the **Named Member** or **Subsidiary's** Institutional Review Board approved the research study or trial.

Coverage will be extended to a physician, surgeon, dentist, physician assistant, nurse anesthetist, nurse practitioner or nurse midwife for acts or omissions relating to or in connection with **Direct Patient Care**, including but not limited to healthcare research in connection with **Direct Patient Care**, only upon compliance with the requirements specified in Section 7.1.A.(8).

Direct Patient Care includes, but is not limited to, any direct treatment, consultation, diagnostic tests or procedures, therapeutic procedures, pathological analysis or reports, or any other associated medical or health services.

Supervisory, Evaluation or Instructional Services means that supervision, evaluation or instruction required by the **Named Member** or **Subsidiary** or as an obligation of medical staff membership and for which the staff physician volunteers or is paid for such services by the **Named Member** or **Subsidiary**. The fact that the patient may also be obligated to pay for **Professional Services** rendered to the patient in the course of **Supervisory, Evaluation or Instructional Services** shall not reduce the coverage for a medical staff member's service solely as a proctor.

- (5) the **Named Member's** or **Subsidiary's** employee for any act, error or omission committed by a person whom he or she is supervising or proctoring.
- (6) any person:

- (a) when acting as a member of or unpaid advisor to the **Named Member's** or a **Subsidiary's** board or any committee;
 - (b) when acting as a member of any committee of the **Named Member's** or a **Subsidiary's** medical or professional staff;
 - (c) when communicating information (other than legal advice) to the **Named Member** or a **Subsidiary** or its medical or professional staff for the purpose of aiding in the evaluation of the qualifications, fitness or character of an applicant for membership or privileges on such medical or professional staff or for purposes of initiating corrective action; or
 - (d) charged by the **Named Member** or a **Subsidiary** with the duty of acting as a hearing officer or agent of a judicial review committee executing directives of any such board or committee. These individuals are not deemed to be independent contractors for the purpose of this Contract. This provision does not apply to any settlement review panel or arbitration under any insurance or coverage contract.
- (7) any person (other than a physician, surgeon, dentist, physician assistant, nurse anesthetists, nurse practitioner or nurse midwife) enrolled as a student in a formal training program offered by the **Named Member** or a **Subsidiary** or offered by a third party educational institution at a **Covered Location** pursuant to a written agreement with the **Named Member** or **Subsidiary**. However, coverage shall not apply if the third party educational institution has agreed in writing to obtain liability coverage for the students.
- (8) any physician, surgeon, dentist, physician assistant, nurse anesthetist, nurse practitioner or nurse midwife ("healthcare professional") who is employed by the **Named Member** or **Subsidiary** or provides **Professional Services** to the **Named Member** or **Subsidiary** on an independent contractor basis, subject, however, to the following:
- (a) the healthcare professional must possess the proper credentials and the **Named Member** or **Subsidiary** must have appropriately granted privileges to the healthcare professional, if required at the applicable **Covered Location**; and
 - (b) coverage will only be provided to the healthcare provider after the **Named Member's** or **Subsidiary's** submission of such underwriting information as may be required by BETARMA, BETARMA'S issuance of a certificate evidencing coverage for the healthcare professional, and timely payment of the Contribution specified by BETARMA, if applicable.

If these requirements are not met or the healthcare professional is not deemed to be an acceptable underwriting risk by BETARMA, the healthcare professional will have no coverage. However, if the Self-Insured Retention under this Contract is equal to or greater than twenty-five percent (25%) of the healthcare provider's per-**Claim** Limit of Liability, underwriting approval will not be required.

- (9) the estates, heirs, executors, administrators and legal representatives of any individual **Member** in the event of the **Member's** death, but only to the extent the **Member** would otherwise be provided coverage under this Contract.
 - (10) any individual who previously qualified as a **Member** under clauses (1) through (8) above prior to the termination of his or her relationship with the **Named Member** or **Subsidiary**, but only for **Claims** alleging acts or omissions occurring prior to the termination of the relationship those subsections.
- B. If the **Named Member** or a **Subsidiary** is a limited liability company, the following are **Members**, but only to the extent that **Named Member** or **Subsidiary** is permitted or required by law to indemnify them:
- (1) its members, but only with respect to the conduct of its business; and

- (2) its managers, but only when acting within the course and scope of their duties to the **Named Member** or **Subsidiary**.

2. OTHER PERSONS AND ENTITIES ELIGIBLE FOR PROTECTION UNDER THIS CONTRACT

The following persons and entities are covered as **Supplemental Members** under this Contract, subject to all of its terms and conditions, except any provision which is stated not to apply to **Supplemental Members**:

- A. the lessor of equipment the **Named Member** or a **Subsidiary** leases, but only for **Bodily Injury** and **Property Damage** resulting solely from the acts, errors or omissions of the **Named Member** or **Subsidiary** in its use of the leased equipment. This extension of coverage applies only to Sections 2 and 3. This Contract does not apply to any **Bodily Injury** or **Property Damage** arising out of the acts, errors or omissions of the lessor or its agents or employees.
- B. the lessor of premises the **Named Member** or a **Subsidiary** leases, but only for **Bodily Injury** and **Property Damage** resulting solely from the acts, errors or omissions of the **Named Member** or **Subsidiary** in its use of the leased premises. This extension of coverage applies only to Sections 2 and 3. This Contract does not apply to any **Bodily Injury** or **Property Damage** arising out of the acts, errors or omissions of the lessor or its agents or employees.
- C. any **Supplemental Member** to whom coverage is extended by amendment.

3. COVERAGE IN THE EVENT OF ACQUISITIONS, MERGERS AND DISSOLUTIONS

- A. If the **Named Member** or **Subsidiary** acquires or forms any organization, other than a partnership or joint venture, over which the **Named Member** or **Subsidiary** maintains at least fifty percent (50%) ownership or control, the organization will qualify as a **Subsidiary** under this Contract for acts or omissions committed or begun on or after the date that the **Named Member** or **Subsidiary** acquired or formed the organization. However, coverage under this provision shall be in excess of any other valid and collectible insurance or other coverage available to the organization. Coverage under this provision is afforded only until the thirtieth (30th) calendar day after the **Named Member** or **Subsidiary** acquires or forms the organization or the end of the **Contract Period**, whichever is earlier.
- B. If, before or during the **Contract Period**, the **Named Member** or any **Subsidiary** is acquired by or merged with any other entity, or dissolved, coverage for the acquired, merged or dissolved entity will terminate and will continue only for **Claims** against the directors, officers, trustees and other individual **Members** of such **Named Member** or **Subsidiary**, and only for acts or omissions committed prior to the acquisition, merger or dissolution.

“Coverage,” as used in this section, includes the obligation to defend **Claims** and to pay **Defense Expenses** and indemnification.

4. SEPARATION OF MEMBERS' INTERESTS

Except with respect to the Limit of Liability and any rights or duties specifically assigned to the first **Named Member**, this coverage applies:

- A. as if each **Member** were the only **Member**; and
- B. separately to each **Member** against whom a **Claim** is made.

5. WHERE THIS CONTRACT PROVIDES PROTECTION

Except as provided in Section 2.1, 2.3, 2.4 and Section 6.19, this Contract will apply anywhere in the world, provided a **Claim** or suit is brought within the United States of America, its territories or possessions, Puerto Rico or Canada. As for **Claims** that are brought outside of the United States of

America, its territories or possessions, Puerto Rico or Canada, BETARMA shall have the right but not the obligation to pay **Defense Expenses** or defend such **Claims** after the Self-Insured Retention has been paid

6. SELF-INSURED RETENTION

A. **Named Member** is Responsible for Paying Amounts Within the Self-Insured Retention

The **Named Member** shall be responsible for paying a Self-Insured Retention in the amount specified on the Certificate for each **Claim** under this Contract. This means that the **Named Member** has the obligation to pay damages, costs, interest and **Defense Expenses** incurred in connection with each covered **Claim** up to the amount of the Self-Insured Retention. Unless otherwise agreed in writing by BETARMA, the Self-Insured Retention shall be retained solely for the **Named Member's** account and other coverage or insurance may not be used to satisfy the Self-Insured Retention.

Subject to other provisions of this Contract, if the **Named Member's** Self-Insured Retention stated on the Certificate includes an aggregate limit, the **Named Member** will be responsible only for the per-**Claim** Retained Self-Insured Retention specified on the Certificate after the aggregate limit has been satisfied by the **Named Member's** payments of covered indemnity and **Defense Expenses**.

The rules for determining when the **Named Member** is responsible for more than one Self-Insured Retention in the case of multiple **Claims**, claimants, acts, errors, omissions, **Occurrences** or offenses are the same as those that apply to the determination of whether more than one Limit of Liability applies to those circumstances. (Please refer to the definition of **Claim** in Section 1.)

BETARMA will require the **Named Member** to provide evidence of the damages, settlements and **Defense Expenses** that the **Named Member** has paid.

B. BETARMA's Coverage Applies After Self-Insured Retention is Paid

- (1) BETARMA's coverage under this Contract applies only to covered indemnity, costs, interest and **Defense Expenses** in excess of the per-**Claim** Self-Insured Retention. Only indemnity, costs, interest and **Defense Expenses** paid by the **Named Member** that are covered by this Contract (or would be covered except for the Self-Insured Retention) will erode the Self-Insured Retention. BETARMA will not assume any responsibility for the **Named Member's** Self-Insured Retention, nor will it pay any third party on behalf of the **Named Member** in satisfaction of the Self-Insured Retention for any reason whatsoever, including, but not limited to the **Named Member's** bankruptcy, insolvency, financial impairment or any regulatory or judicial intervention arising from the financial condition of the **Named Member**.
- (2) Notwithstanding clause (1) immediately above, if BETARMA does pay any amount in settlement or satisfaction of any **Claim** within the Self- Insured Retention, the **Named Member** shall reimburse BETARMA for such amount within 30 days of BETARMA's request.

7. INVESTIGATION AND DEFENSE OF CLAIMS AND APPEALS OF JUDGMENTS

- A. The **Named Member**, and not BETARMA, has the duty to investigate and defend any **Claim** made against any **Member**, except as provided in this Contract. Until either the per-**Claim** Self-Insured Retention for any one **Claim** or the total annual aggregate Self-Insured Retention for all **Claims** is exhausted, the **Named Member** will pay all **Defense Expenses**, including, but not limited to, fees and costs of defense counsel, experts and consultants involved in a **Claim**. If the **Named Member** has paid the amount of the aggregate Self-Insured Retention, then, notwithstanding any other provision of this Contract, BETARMA, not the **Named Member**, shall have the right and duty to investigate and defend any **Claims** made against any **Member**.
- B. The **Named Member** shall maintain by contract a third party claims administrator to provide claims services, including the investigation, adjustment, management and reporting of incidents and **Claims** to which this Contract may apply.

- C. The **Named Member** shall exercise its best judgment in adjusting **Claims** and shall endeavor to resolve them in a fair, equitable, timely and cost-effective manner. However, no **Member** shall admit liability, make any settlement or agree to any settlement offer that is reasonably likely to involve BETARMA's coverage without the prior written consent of BETARMA. No **Member** shall knowingly take any action that increases BETARMA's exposure for damages or other loss under this Contract.
- D. BETARMA, at its sole discretion and expense, may elect to participate in the investigation, defense or settlement of any **Claim** against any **Member** for matters covered by this Contract even if the Self-Insured Retention has not been exhausted.
- E. BETARMA, at its sole discretion, also may elect to defend a **Member** against **Claims** that allege damages potentially covered by this Contract. If BETARMA so elects:
- (1) the **Member** agrees to take the necessary measures to allow legal counsel appointed by BETARMA to assume the **Member's** defense;
 - (2) all **Defense Expenses** incurred in connection with the **Claim** are subject to the Self-Insured Retention; and
 - (3) BETARMA will not settle a **Claim** within the Self-Insured Retention without the **Named Member's** prior written consent.
- F. All **Members** and their defense counsel and other representatives shall cooperate fully with BETARMA in all matters relating to any **Claim** and shall give such information and assistance as BETARMA may require. The **Members** must attend and give evidence at trials and other proceedings; and they must assist in securing evidence and the attendance of witnesses.
- G. If a **Claim** involves both covered and noncovered allegations, theories of recovery or relief, BETARMA shall be responsible only for that portion of the total amount that is covered by this Contract. Each **Member** and BETARMA shall use their best efforts to agree upon a fair and proper allocation of covered and noncovered sums. Each **Member**, if requested by BETARMA, shall use its best efforts to secure:
- (1) a special verdict and findings that segregate covered and noncovered allegations, theories of recovery or relief; and
 - (2) a bifurcation of the trial or hearing as to covered and noncovered allegations, theories of recovery or relief.
- Should a **Member** and BETARMA be unable to resolve any disagreement regarding allocation of covered and noncovered sums, either may invoke the arbitration provisions of this Contract.
- H. If the **Member** elects not to appeal a judgment that, together with **Defense Expenses** and any other payments incurred, may exhaust the Self-Insured Retention, BETARMA may elect to do so at its own expense, including incremental costs, disbursements and interest. However, in no event shall the liability of BETARMA exceed the Limits of Liability specified on the Certificate, including interest on the judgment incurred after its entry and **Defense Expenses** that BETARMA incurred on the appeal. If the judgment is reversed on appeal, the **Named Member** shall reimburse BETARMA for the **Defense Expenses** that BETARMA incurred in the appeal. However, such reimbursement shall be limited to the amount of the Self-Insured Retention.
- I. In no event shall BETARMA be obligated to pay any **Defense Expenses** or to defend or to continue to defend any **Claim**, or to take or to continue to prosecute any appeal, once an applicable Limit of Liability specified on the Certificate, by amendment, or elsewhere has been exhausted.

8. THE TOTAL BETARMA WILL PAY

- A. The most BETARMA will pay for any one **Claim** in excess of the **Member's** Self-Insured Retention is the per-**Claim** Limit of Liability specified on the Certificate, by amendment or elsewhere. The Self-Insured Retention specified on the Certificate will reduce the amount that BETARMA will pay for damages for a **Claim** and **Defense Expense**. BETARMA will have no further obligation under this Contract once the per-**Claim** or aggregate Limit of Liability has been exhausted by payments of judgments, settlements or **Defense Expenses**.
- B. Subject to the Self-Insured Retention and the Limits of Liability, BETARMA will pay the following, in addition to covered damages and **Defense Expenses**:
 - (1) the cost of bonds legally required to release attachments and all premiums on appeal bonds required to appeal a covered judgment. BETARMA does not, however, have to apply for or furnish these bonds;
 - (2) all expenses incurred by BETARMA;
 - (3) all costs taxed against a **Member** on a covered cause of action; and
 - (4) all prejudgment and post-judgment interest on only the part of any judgment that BETARMA pays, and before BETARMA has paid, offered to pay, or deposited with the court the part of the judgment that is within BETARMA's applicable Limit of Liability.
- C. The inclusion in a **Claim** of more than one **Member** or the making of **Claims** or the bringing of suits by more than one **Claimant** shall not increase the Limits of Liability. If two or more coverages under this Contract apply to a **Claim** (including coverages added by amendment), the most that BETARMA will pay is the highest applicable Limit of Liability.
- D. When two or more **Claims** are treated as a single **Claim** under the definition of "**Claim**," one per-**Claim** Limit of Liability shall apply to all such **Claims** and the **Named Member** shall satisfy the Self-Insured Retention specified on the Certificate one time only.
- E. Limits of Liability under multiple BETARMA Contracts may not be combined, added or stacked. The Aggregate Limit of Liability is the most that BETARMA will pay, regardless of the number or duration of any and all **Claims, Occurrences**, injuries, acts, errors, omissions, offenses or successive periods of coverage involved.
- F. The following provision applies only to coverages that are provided on an occurrence basis: If **Bodily Injury, Property Damage, Economic Damages, Personal Injury, Advertising Injury** and discrimination, acts, errors, omissions or offenses (collectively, "Injuries and Events") occur over a period of time within the **Contract Period** of two or more BETARMA Contracts, all such Injuries and Events shall be deemed to occur during the first such Contract, and the most that BETARMA will pay is the applicable Limit of Liability specified in that Contract.
- G. It is the intention of BETARMA and the **Members** that this Contract and a BETARMA Directors, Officers and Trustees Liability Coverage Contract including Healthcare Entity Coverage or a BETARMA Automobile Liability and Physical Damage Coverage Contract between BETARMA and **Members** shall not provide any duplication or overlap of coverage for the same **Claim**. Nonetheless, if both this Contract and another such BETARMA Coverage Contract, including amendments, do apply to a **Claim**, the terms, conditions and exclusions, including the Limits of Liability, of each such Coverage Contract shall apply, provided, however, that in no event shall BETARMA pay more than the highest applicable Limit of Liability.

9. PAYMENTS REQUIRED FROM MEMBERS AND RIGHT TO AUDIT

A. Contribution.

The **Named Member** shall pay a Contribution based on the estimated exposures that are calculated from the reported census the **Named Member** provided to BETARMA on or before the

beginning of the **Contract Period**. BETARMA shall inform the **Named Member** of its Contribution for the **Contract Period**. The **Named Member** shall pay the Contribution in full on or before the due date shown on the invoice.

The **Named Member** must promptly report any exposure increases due to New Exposures during the course of the **Contract Period**. New Exposures shall mean an addition of a new location or new service. If BETARMA determines that a New Exposure materially changes Ratable Exposures, BETARMA will invoice the **Named Member** for the additional Contribution for coverage of the New Exposure. Ratable Exposures include but are not limited to exposure data reported by the **Named Member** on the application.

If Ratable Exposures materially change due to closure of a location or discontinuation of a service, the **Named Member** may receive a Contribution adjustment, subject to the BETARMA Underwriting Department's approval.

If the **Named Member** terminates this Contract at any time prior to the Expiration Date, earned Contribution shall be computed in accordance with the customary short rate table and procedure.

B. Offsetting Sums.

BETARMA may reduce any amount owed to the **Named Member** by BETARMA, or any credit against the **Named Member's** monthly Contribution, by the amount of any sum owed to BETARMA which has remained unpaid for more than thirty (30) calendar days.

C. BETARMA's Right to Inspect and Audit.

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

(2) BETARMA may examine and audit a **Member's** books and records relevant to the subject matter of this Contract at any time during the **Contract Period**, and extensions thereof, and within one (1) year after the final termination of this Contract.

10. MEMBERS' REPORTING OBLIGATIONS

A. The **Member** shall immediately notify BETARMA in writing of any actual or alleged incident, act, error, omission, **Occurrence** or offense which may reasonably be expected to result in **Claim** under this Contract. For the purpose of determining when notice shall be made to BETARMA, the **Member** shall assume that liability exists for the full amount of any **Claim**.

B. The **Member** shall immediately notify BETARMA in writing of any **Claim** which:

(1) seeks or demands as damages an amount equaling or exceeding fifty percent (50%) of the per-**Claim** Self-Insured Retention;

(2) results in the establishment of a reserve, or would reasonably require the establishment of a reserve, for damages and **Defense Expenses** which equals or exceeds fifty percent (50%) of the per **Claim** Self-Insured Retention; and/or

(3) involves or alleges any of the following injuries:

(a) a fatality;

- (b) an amputation or permanent loss of use of any limb (including hands and feet, fingers and toes);
 - (c) brain injury;
 - (d) spinal injuries involving paraplegia or quadriplegia;
 - (e) severe burns;
 - (f) disability greater than 6 months;
 - (g) class action allegations where the possibility of coverage under this Contract may reasonably exist;
 - (h) a contagious or infectious disease outbreak at any healthcare facility;
 - (i) any complications in childbirth which result in the possibility of an impaired infant;
 - (j) facial disfigurement;
 - (k) injury to base of spinal cord or bladder or bowel incontinence;
 - (l) extensive internal injuries;
 - (m) major economic or business loss;
 - (n) psychological impairment (severe emotional distress impairing the **Claimant's** ability to function);
 - (o) rape, sexual assault or sexual battery;
 - (p) extensive scarring; or
 - (q) multiple fractures.
- C. The written notice shall include, to the extent reasonably obtainable, the name of the injured person or organization and the time, place and circumstances related to the **Claim** or incident event. If the **Claim** or incident involves **Professional Services**, the notice shall contain reasonably obtainable information with regard to the nature of the services rendered or that should have been rendered.
- D. In addition to the above, the **Named Member** (directly or through its third party administrator) shall provide BETA_{ARMA} with quarterly claims reports detailing all claims that would be reasonably covered by this Contract in the absence of the Self-Insured Retention. Claims reports shall include at least the following:
- (1) the **Claimant's** name;
 - (2) the date of the incident, **Occurrence** or offense;
 - (3) the date the **Claim** was first made against a **Member**;
 - (4) the indemnity and expenses paid;
 - (5) the indemnity and expense reserves outstanding;

- (6) a summary of the **Claimant's** allegations;
 - (7) all mediation, settlement conference, arbitration and trial dates; and
 - (8) any settlement demands or offers.
- E. Internal incident reports sent to BETARMA and trending reports, quarterly claims reports or other data collection reports to BETARMA do not constitute a notice to BETARMA for purpose of reporting of **Claims** or triggering BETARMA's coverage.

11. SETTLEMENT OF CLAIMS AND PAYMENT OF JUDGMENTS

Settlement of **Claims**

- A. This section applies only to **Claims** that BETARMA is defending: No settlement shall be made of any **Claim** against a **Member** without the **Member's** consent, except as provided in this Section. Further, in granting or withholding such consent, the **Member** shall act reasonably and in good faith considering its and BETARMA's respective interests. If BETARMA and the **Member** cannot agree on the appropriateness of the settlement, the matter shall be submitted to settlement review as follows:
- (1) if BETARMA recommends settlement of a **Claim**, and if the **Member** desires to withhold consent to such settlement, the **Member** shall within seven (7) calendar days after notification of the recommendation appeal such recommendation to a settlement review panel. The appeal shall be in writing and shall be submitted to the BETARMA Claims Representative assigned to the **Claim**. The appeal shall indicate whether the **Member** requests to be present during the settlement review panel hearing. The settlement review panel shall be composed of:
 - (a) a minimum of three (3) members of the BETA Council, each of whom is appointed by the chairperson;
 - (b) one of the **Named Member's** administrators; and
 - (c) one of the **Named Member's** directors or trustees.
 - (2) upon completion of the review, the settlement review panel shall determine whether the proposed settlement is reasonable and it shall immediately advise BETARMA and the **Member** of its decision.
 - (3) If the **Member** fails to timely appeal, BETARMA will settle the **Claim** as proposed and submit National Practitioner Data Bank and licensing agency reports as required by law. If the BETA Council Chairperson or the **Named Member** fails to appoint members to the settlement review panel within five (5) calendar days of receipt of notice of the appeal, the appeal may be decided by the members of the settlement review panel who have been appointed during that period.
- B. The decision of the settlement review panel shall be binding upon both BETARMA and the **Member**.

This Section does not apply to **Supplemental Members**, unless otherwise provided by amendment.

12. DISPUTES WITH BETARMA

- A. Legal Action Against BETARMA.
- (1) No person or entity may join BETARMA as a party or otherwise bring BETARMA into any **Claim**, suit, arbitration or other proceeding against the **Member**.

- (2) No person or entity has a right under this Contract to sue or arbitrate with BETARMA on this Contract unless all of its terms have been fully complied with and either a final judgment against the **Member** after an actual trial or a written agreement signed by BETARMA, the **Member** and the **Claimant** has been obtained.
- (3) This Contract does not extend any rights to a **Claimant**.

B. Arbitration of Disputes.

All disputes in any way concerning, arising out of or relating to this Contract shall be submitted to binding arbitration, unless resolved through BETARMA's internal dispute resolution procedure established by the BETA Council.

Before requesting arbitration a Member must complete BETARMA's internal dispute resolution procedure established by the BETA Council. Requests for binding arbitration must be made within thirty (30) calendar days after the internal dispute resolution hearing decision is provided in writing to the Named Member by BETARMA. If a request is not made within thirty (30) calendar days, the decision shall be final and binding.

The arbitration and discovery will be governed by the California Arbitration Act, Section 1280, et seq. of the Code of Civil Procedure, except to the extent that it is inconsistent with this Section. BETARMA and each Member waive the right to court remedies, including a jury trial.

In all such arbitrations the terms, conditions and exclusions of this Contract shall be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions and exclusions of the Contract.

In any arbitration, the Arbitrator(s) will be chosen as follows:

1. Option One - One Arbitrator

By mutual agreement in writing, a single Arbitrator will be chosen before entering into arbitration. However, if within thirty (30) calendar days, mutual agreement cannot be obtained on a single Arbitrator, or the Member(s) or BETARMA disagree with the use of one Arbitrator, then Option Two below will be followed;

2. Option Two - Three Arbitrators

One Arbitrator will be chosen by all Members who are parties to the arbitration, collectively, and one Arbitrator will be chosen by BETARMA. The third Arbitrator will be chosen by the mutual agreement of the two party-chosen Arbitrators before they enter into arbitration. If any party or parties should fail to choose an Arbitrator within thirty (30) calendar days following a written request by the other party to do so, the requesting party or parties may choose two Arbitrators.

If Option One is followed:

Each party will present its case to the single Arbitrator. The Arbitrator shall be the judge of the relevance of the evidence offered and is not required to follow the strict rules of evidence. The decision of the Arbitrator chosen by the parties shall be final and binding on the parties. The Arbitrator shall be limited to the remedies that could be awarded by the Superior Court of the State of California. Judgment upon the final decision of the Arbitrator may be entered in any court of competent jurisdiction.

BETARMA and the Member, or all Members that are parties to the arbitration, collectively, will bear the expense of the Arbitrator and of the arbitration, with BETARMA bearing one

half of the expense and the Member, or the Members, collectively, bearing one half. However, if multiple Named Members under separate Coverage Contracts with BETARMA are parties to one arbitration with BETARMA, then BETARMA and each Named Member shall bear an equal share of the expense of the Arbitrator and of the arbitration.

If Option Two is followed:

Each party will present its case to the Arbitrators. The third Arbitrator shall be the judge of the relevance of the evidence offered and is not required to follow the strict rules of evidence. The decision of the Arbitrators chosen by the parties shall be final and binding on the parties; but, if these Arbitrators fail to agree, the decision of the majority of the three Arbitrators shall be final and binding upon the parties. The Arbitrators shall be limited to the remedies that could be awarded by the Superior Court of the State of California. Judgment upon the final decision of the Arbitrators may be entered in any court of competent jurisdiction.

Each party shall bear the expense of the Arbitrator the party has chosen. BETARMA and all Members that are parties to the arbitration, collectively, will bear the expense of the third Arbitrator and of the arbitration, with BETARMA bearing one half of the expense and the Member, or the Members, collectively, bearing one half. If two Arbitrators are chosen by one party, as provided above, the expense of the two Arbitrators, the third Arbitrator and the arbitration shall be divided in the same manner, with BETARMA bearing one half of the expense and the Member or the Members, collectively, bearing one half.

However, if multiple Named Members under separate Coverage Contracts with BETARMA are parties to one arbitration with BETARMA, then BETARMA and each Named Member shall bear an equal share of the expense of the third Arbitrator and of the arbitration.

Any arbitration proceedings shall take place in San Francisco, California, or such other location as may be mutually agreed by the parties to this Contract. The arbitration hearing shall be set by agreement of the parties and the Arbitrator. If the parties fail to agree on a hearing date, the Arbitrator or Arbitrators shall set the hearing date.

The Arbitrators shall have no authority to review any matter as to which this Contract grants BETARMA sole discretion, including but not limited to the cost and terms of any extended reporting period. No Member may arbitrate, or contest in any court, any such exercise of discretion.

13. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO BETARMA

- A. If BETARMA makes any payment under this Contract, BETARMA is entitled to the extent of its payment to take over the **Members'** rights of recovery against all others. The **Members** must do nothing to make it harder for BETARMA to enforce those rights, and must sign and deliver any papers, and do anything else that may be necessary, to enable BETARMA effectively to bring suit in the name of the **Members**. The obligations of the **Members** under this provision will survive the termination of the **Contract Period**.
- B. Any amount recovered pursuant to this Section shall be apportioned as follows:
 - (1) any recovery shall first be used in the repayment of expenses incurred toward recovery;
 - (2) next, to any damages and **Defense Expenses** paid by BETARMA;
 - (3) next, to any damages and **Defense Expenses** paid by the **Member** in excess of any Self-Insured Retention amount;

- (4) next, to any damages and **Defense Expenses** paid by an excess carrier on the **Member's** behalf;
- (5) next, to any damages and **Defense Expenses** paid by any other insurer on the **Member's** behalf; and,
- (6) finally, to the repayment of the **Member's** Self-Insured Retention amount.

14. APPLICABILITY OF INSURANCE OR OTHER COVERAGE A MEMBER MAY ALSO HAVE

This Contract shall be excess of any valid and collectible insurance or other coverage or self-insurance obtained or maintained by the **Member** or for the **Member's** benefit, whether such coverage or insurance or self-insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other coverage or insurance or self-insurance is written only as specific excess coverage, insurance or self-insurance over and above the Limit of Liability provided under this Contract by reference to the Certificate number of this Contract.

15. DELEGATION BY BETARMA AND ASSIGNMENT BY MEMBERS

A. Delegation.

Any or all Contract duties, obligations and responsibilities of BETARMA may be delegated or assigned to independent contractors and consultants retained or employed by BETARMA.

B. Assignment.

Any assignment of any right or interest under this Contract shall not bind BETARMA without its written consent.

16. GOVERNING LAW

This Contract in all respects shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law rules.

17. THE TERMS OF THIS CONTRACT SHALL CONFORM TO STATUTE

Any terms of this Contract that conflict with any applicable statute of the State of California are hereby amended to conform to such statute.

18. EFFECTIVE DATE OF THIS CONTRACT

This Contract shall be effective as of the Effective Date specified on the Certificate of Participation, but only if the Certificate has been signed by a duly authorized representative of BETARMA.

19. TERMINATION OF THIS CONTRACT

A. Termination by **Named Member**.

The **Named Member** may terminate this Contract by mailing to BETARMA -- at the address specified on the Certificate -- written notice stating when, not less than thirty (30) calendar days thereafter, the termination will be effective.

B. Termination by BETARMA.

(1) BETARMA may terminate this Contract for:

- (a) failure to pay any Contribution when due;

- (b) failure to reimburse BETARMA for payments made
 - (i) in excess of the Limit of Liability,
 - (ii) for which BETARMA has no liability under this Contract, or
 - (iii) which the **Member** is obligated to repay to BETARMA;
- (c) failure to abide by any provision of the Joint Powers Authority Agreement, as it may be amended, or this Contract;
- (d) upon a majority vote of the BETA Council, for failure to implement loss control or risk management recommendations.

When termination is for any reason specified above, the **Named Member** shall be given ten (10) calendar days' written notice, return receipt requested, of termination. Proof of mailing shall be deemed proof of receipt.

- (2) BETARMA may terminate this Contract for any reason other than those provided above by mailing written notice stating when, not less than ninety (90) calendar days thereafter, the termination shall be effective.

C. Automatic Termination.

This Contract shall automatically terminate on the effective date of the **Named Member's** withdrawal or termination as a member of BETARMA.

D. Effect of Termination; Adjustment of Contribution.

- (1) Termination by either party shall extinguish the coverage provided to all **Members** as of the effective date of the termination.
- (2) The **Named Member** shall remain liable for any unpaid Contribution, penalties, interest and other sums that have accrued before and/or after the termination. Payment of all such sums due BETARMA shall be made within thirty (30) calendar days of the time at which termination is effective or within thirty (30) calendar days of BETARMA's request, if the amount becomes due after the termination of the Contract.
- (3) Notwithstanding any other provision of this Contract, if the **Named Member** fails to pay all sums due BETARMA upon written notice, BETARMA shall have no further obligation to defend or indemnify the **Named Member** and **Subsidiaries** with regard to open **Claims**.

20. LIMITED RIGHT TO EXTENDED REPORTING PERIOD

- A. Except as provided in this Section or by amendment, upon termination of coverage there is no extended reporting period available to **Members** for **Claims** first made after this Contract ends.
- B. If this Contract is terminated by BETARMA or the **Named Member**, the **Named Member** shall have the right to purchase an extended reporting period upon payment of an additional Contribution. This right will terminate, however, unless written notice of the **Named Member's** election is received by BETARMA within ten (10) calendar days of the effective date of the termination of this Contract. The extended reporting period will provide coverage for **Claims** which are otherwise covered under this Contract and are first made against a **Member** during the extended reporting period and are reported in writing to BETARMA as required by Section 7.10 - MEMBERS' REPORTING OBLIGATIONS, but only with respect to negligent acts, errors, or omissions (under Section 2) occurring on or after the **Retroactive Date** and before the effective date of such termination. The cost and terms of the extended reporting period shall be determined in the sole, absolute and unreviewable discretion of BETARMA at the time the

extended reporting period is requested. This provision applies only to coverages that are provided on a "claims made" basis.

- C. The **Named Member** does not have the right to purchase an extended reporting period if, on the date of termination, the **Named Member** has failed to pay any Contribution due under this Contract, or has failed to reimburse BETARMA for any amount BETARMA has paid on account of any settlement or as damages or **Defense Expenses** in excess of any applicable Limit of Liability, or has otherwise failed to pay any other amount due BETARMA.
- D. The extended reporting period will not reinstate or increase the Limit of Liability specified on the Certificate.
- E. The Self-Insured Retention specified on the Certificate will apply to all **Claims** covered under the extended reporting period. Subject to other provisions of this Contract, if the Self-Insured Retention has an aggregate limit stated on the Certificate, the aggregate limit applicable to the extended reporting period will be determined in the sole, absolute and unreviewable discretion of BETARMA at the time the extended reporting period is requested. Any aggregate limit applicable to an extended reporting period is separate and apart from the obligation and responsibility for any aggregate limit applicable to **Claims** first made and reported during the **Contract Period**. The **Named Member** will be only responsible for the per-**Claim** Retained Self-Insured Retention after the aggregate limit has been satisfied by indemnity and **Defense Expenses**.

21. MEMBERS' AUTHORIZATION AND NOTICES TO MEMBERS

All **Members** agree that the **Named Member** will act on their behalf for receiving all notices from BETARMA, and for the negotiation and acceptance of any modification to any provision of this Contract.

22. LIMITS ON HOW THIS CONTRACT CAN BE CHANGED

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of BETARMA will not effect a waiver or change in any part of this Contract, nor estop BETARMA from asserting any right under the terms, conditions and limitations of this Contract. The terms, conditions and limitations of this Contract may only be waived or changed by written amendment.

23. MEMBERS' REPRESENTATIONS ON WHICH BETARMA HAS RELIED

All **Members** represent that the statements contained in the application, any updated or supplementary application and all materials submitted to BETARMA in connection with an application, are true, accurate and complete. All **Members** agree that:

- A. those statements are the basis of this Contract and are to be considered incorporated into and a part of this Contract;
- B. those statements are material to BETARMA's acceptance of its obligations under this Contract; and
- C. this Contract is issued in reliance upon the truth, accuracy and completeness of those statements.

24. NON-RENEWAL OF THIS CONTRACT

- A. The **Named Member** may elect not to renew this Contract for any reason.
- B. BETARMA may elect not to renew this Contract for any reason.

If BETARMA decides not to renew this Contract, BETARMA will mail or deliver written notice of the non-renewal to the **Named Member** not less than sixty (60) calendar days before the Expiration

Date specified on the Certificate. If the notice is mailed, proof of mailing will be sufficient proof of notice. BETARMA need not mail or deliver such notice if the **Named Member** has informed BETARMA that the **Named Member** is obtaining replacement coverage.

If BETARMA elects to renew this Contract without offering coverage to an Individual **Member**, BETARMA will mail or deliver written notice to the **Named Member** not less than sixty (60) calendar days before the Expiration Date specified on the Certificate. BETARMA need not give such notice of other intended changes to the renewal contract.

C. Effect of Non-Renewal; Adjustment of Contribution.

- (1) Non-renewal by either party shall extinguish the coverage provided to all **Members** as of the Expiration Date of this Contract.
- (2) The **Named Member** shall remain liable for any unpaid Contribution, penalties, interest and other sums that have accrued before and after the Expiration Date. Payment of all such sums due BETARMA shall be made within thirty (30) calendar days of the time at which expiration is effective or within thirty (30) calendar days of BETARMA's request, if the amount becomes due after the expiration of the Contract. Notwithstanding any other provision of this Contract, if the **Named Member** fails to pay all sums due BETARMA upon written notice, BETARMA shall have no further obligation to defend or indemnify the **Named Member** and **Subsidiaries** with regard to open **Claims**.