

# **GENERAL PROVISIONS FOR NONPROFIT ORGANIZATIONS**

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In consideration of the payment of the premium and in reliance upon the **Application**, the Insurer specified in the Declarations (the “**Insurer**”) and the **Insureds** agree as follows:

## GENERAL PROVISIONS

### 1. APPLICABILITY OF GENERAL PROVISIONS

- A. Except as specifically provided herein, the General Provisions apply to all Coverage Parts.
- B. Except as specifically provided therein, the provisions of each Coverage Part apply to such Coverage Part only.
- C. If there is a conflict between the General Provisions and any Coverage Part, the provisions of the Coverage Part shall control.

### 2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

- A. “**Application**” means the application for this Policy, including any information and materials submitted therewith or incorporated therein. “**Application**” also means any application, including any information and materials submitted therewith or incorporated therein, for any insurance policy in an uninterrupted series of policies issued by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, of which this Policy is a direct or indirect renewal or replacement. The **Application** shall be deemed attached to and is incorporated into this Policy.
- B. “**Claim**” shall have the meaning specified in each **Liability Coverage Part**.
- C. “**Claim Manager**” means any natural person who is a chief executive officer, executive director, chief financial officer, president, general counsel, risk manager or any equivalent position, of an **Insured Organization**.
- D. “**Debtor in Possession**” means a “debtor in possession” as defined in Chapter 11 of the United States Bankruptcy Code or any similar law.
- E. “**Defense Costs**” means reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**, including **Extradition Costs**. **Defense Costs** shall include the premium for any appeal, attachment or similar bond, provided that the **Insurer** shall have no obligation to issue such bond. **Defense Costs** shall not include any compensation, benefit expenses, or overhead of any **Insureds**.
- F. “**Domestic Partner**” means any natural person qualifying as a domestic partner under any federal, state or local law or under the provisions of any formal program established by any **Insured Organization**.
- G. “**Employee**” shall have the meaning specified in each Coverage Part.
- H. “**ERISA**” means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, or any similar law.
- I. “**Executive**” shall have the meaning specified in each Coverage Part.

- J.** “**Extradition Costs**” means fees and expenses incurred by an **Insured Person** to lawfully oppose, challenge, resist or defend against any request for extradition of such **Insured Person** from his or her current country of employment and domicile to any other country for any criminal trial, including the appeal of any order or other grant of extradition of such **Insured Person**.
- K.** “**Independent Contractor**” means any natural person working for an **Insured Organization** in the capacity of an independent contractor pursuant to an express contract or agreement with such **Insured Organization** governing the nature of such person’s engagement.
- L.** “**Insolvency**” means the status of any **Insured Organization** due to:
1. the appointment of any conservator, liquidator, receiver, trustee, or similar official to control, supervise, or liquidate such **Insured Organization**; or
  2. such **Insured Organization** becoming a **Debtor in Possession**.
- M.** “**Insured Organization**” means:
1. the **Named Organization**; or
  2. any **Subsidiary**;
- including any such organization as a **Debtor in Possession**.
- N.** “**Insured Person**” shall have the meaning specified in each Coverage Part.
- O.** “**Insured**” shall have the meaning specified in each Coverage Part.
- P.** “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- Q.** “**Liability Coverage Part**” means any Coverage Part of this Policy other than the Crime Coverage Part and Kidnap, Ransom & Extortion Coverage Part.
- R.** “**Loss**” shall have the meaning specified in each Coverage Part.
- S.** “**Named Organization**” means the organization named in Item 1 of the Declarations.
- T.** “**Non-Indemnifiable Loss**” means any **Loss** incurred by an **Insured Person** that all **Insured Organizations** cannot indemnify because of:
1. legal prohibition; or
  2. **Insolvency**.
- U.** “**Policy Period**” means the period specified in Item 2 of the Declarations, subject to any cancellation prior to the scheduled expiration date.
- V.** “**Pollutants**” means any solid, liquid, gaseous, biological, radiological or thermal contaminant or irritant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos containing products, waste or any electric, magnetic, or electromagnetic field of any

frequency. "Waste" includes, without limitation, material to be recycled, reconditioned, or reclaimed. **Pollutants** also means any substance identified on a list of hazardous substances issued by any governmental agency, including, without limitation, the Environmental Protection Agency.

**W. "Senior Executive"** means any natural person who is a chief executive officer, executive director, chief financial officer, president, general counsel, trustee, or chairperson or any equivalent position of an **Insured Organization**.

**X. "Subsidiary"** means any:

1. not-for-profit entity while the **Named Organization** owns or controls, directly or indirectly, the right to elect or appoint more than 50% of the directors or trustees of the corporate governing board of such entity; or
2. for-profit or other entity listed as a **Subsidiary** in a written endorsement issued by the **Insurer**.

**Y. "Wrongful Act"** shall have the meaning specified in each **Liability Coverage Part**.

### 3. **COVERAGE TERRITORY**

This Policy shall apply on a worldwide basis.

### 4. **SPOUSAL, DOMESTIC PARTNER, ESTATE AND LEGAL REPRESENTATIVE COVERAGE**

Subject to the provisions of this Policy, coverage shall apply to a **Claim** made against the lawful spouse or **Domestic Partner** of an **Insured Person**, or if an **Insured Person** dies, becomes incapacitated, or files for bankruptcy, such **Insured Person's** estate, heirs, assigns, or legal representatives, provided that:

**A.** such **Claim** arises solely out of:

1. such person's status as a spouse, **Domestic Partner**, trustee, beneficiary, heir, assignee or legal representative of such **Insured Person**; or
2. such person's ownership of property sought as recovery for a **Wrongful Act**;

**B.** the **Insured Person** is named in such **Claim** along with such persons or entities; and

**C.** no coverage shall apply to any **Claim** for a **Wrongful Act** of such persons or entities.

Coverage for such **Claim** shall be on the same terms and conditions (including, without limitation, the Deductible) as apply to any **Claim** made against an **Insured Person**.

### 5. **EXTENDED REPORTING PERIOD**

Regarding the **Liability Coverage Parts** only:

**A.** If the **Insurer** or **Named Organization** shall refuse to renew this Policy, or if the **Named Organization** shall cancel this Policy, the **Insureds** shall have the right, upon payment of the Additional Premium stated in Item 4 of the Declarations, to a continuation of the coverage afforded by all elected **Liability Coverage Parts** for the Additional Period stated in Item 4 of the Declarations (the "Extended Reporting Period"). If elected, the Extended

Reporting Period shall commence upon the effective date of such nonrenewal or cancellation. Such continuation of coverage shall apply only to a **Claim**:

1. first made against the **Insureds** during the Extended Reporting Period for a **Wrongful Act** occurring prior to the end of the **Policy Period**; and
  2. otherwise covered by any **Liability Coverage Part**.
- B.** The rights contained in this section shall terminate unless a written notice of election together with the additional premium due is received by the **Insurer** within 30 days after the effective date of nonrenewal or cancellation.
- C.** The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D.** There is no separate limit of liability for the Extended Reporting Period.

## 6. LIMIT OF LIABILITY

Regarding the **Liability Coverage Parts** only:

- A.** The Limit of Liability specified in Item 6 of the Declarations for each **Liability Coverage Part** shall be the maximum aggregate amount that the **Insurer** shall pay under such **Liability Coverage Part**.
- B.** Notwithstanding the above, if the Liability Coverage Parts Aggregate Limit of Liability Option is elected in Item 6 of the Declarations:
1. such single shared Limit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under all **Liability Coverage Parts** combined; and
  2. any amount specified as a Limit of Liability for an elected **Liability Coverage Part** shall be:
    - a. the maximum aggregate amount that the **Insurer** shall pay under such **Liability Coverage Part**; and
    - b. part of, and not in addition to, the amount specified as the Liability Coverage Parts Aggregate Limit of Liability.
- C.** **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the **Insurer** shall reduce each applicable Limit of Liability.
- D.** Notwithstanding the above:
1. if the Defense Costs Outside the Aggregate Limit of Liability Option is elected in Item 6 of the Declarations, then the amount specified in such option shall be available to pay **Defense Costs** for all elected **Liability Coverage Parts**; or
  2. if the Defense Costs Outside the Limit of Liability Option is elected in Item 6 of the Declarations for any **Liability Coverage Part**, then the amount specified in such option shall be available to pay **Defense Costs** regarding such **Liability Coverage Part**,

provided that if any Defense Costs Outside the Limit of Liability Option is elected: (i) the **Insurer** shall pay **Defense Costs** out of the amount specified in such option prior to paying any **Defense Costs** out of the otherwise applicable Limit of Liability; and (ii) any amount specified in such Option shall be in addition to, and not part of, the otherwise applicable Limit of Liability.

- E. If any applicable Limit of Liability or Defense Costs Outside the Limit of Liability amount is exhausted, the premium for this Policy shall be fully earned.

## 7. DEDUCTIBLE

Regarding the **Liability Coverage Parts** only:

- A. The **Insurer** shall pay covered **Loss** arising from each **Claim** covered under any **Liability Coverage Part** only to the extent such **Loss** is in excess of the applicable Deductible specified in Item 6 of the Declarations.
- B. Each Deductible under any **Liability Coverage Part** shall be uninsured.
- C. Any **Loss** paid by the **Insurer** under any **Liability Coverage Part**, whether pursuant to a duty to defend or otherwise, that is within any applicable Deductible shall be reimbursed by any **Insured Organization** to the **Insurer** upon the **Insurer's** request.
- D. If a **Claim** is subject to multiple Deductibles, the total Deductible for such **Claim**, shall be the highest applicable Deductible.
- E. No Deductible shall apply to **Non-Indemnifiable Loss**.
- F. If any **Insured Organization** is permitted by common or statutory law to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on such **Insured Person's** behalf, and fails to do so other than because of **Insolvency**, then any coverage under a **Liability Coverage Part** for such **Insured Person** shall apply without any Deductible. In such case, the **Insured Organization** shall promptly reimburse the **Insurer** for such **Loss** up to the amount of the Deductible that would have applied if the **Insured Organization** indemnified or advanced such **Loss**.

## 8. DEFENSE OF CLAIMS

Regarding the **Liability Coverage Parts** only:

- A. The **Insurer** shall have the right and duty to defend each **Claim** covered under a **Liability Coverage Part** for which the **Insurer** receives notice, even if such **Claim** is groundless, false or fraudulent. The **Insurer** may make any investigation it deems appropriate.
- B. The **Insurer's** duty to defend any **Claim** shall end upon exhaustion of any applicable Limit of Liability. Notwithstanding the above, if Defense Costs Outside the Limit of Liability is elected in Item 6 of the Declarations, then the **Insurer's** duty to defend any **Claim** shall cease upon exhaustion of the amount of additional **Defense Costs** and any applicable Limit of Liability.
- C. The **Insureds** shall neither admit nor assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.

- D. The **Insurer** may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If any **Insureds** refuse to consent to the settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, then the **Insurer** shall not pay **Loss** for such **Claim** in excess of the sum of:
1. The amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
  2. 80% of **Loss** incurred for such **Claim** in excess of the amount specified in 1. above.
- E. The **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request. Upon the **Insurer's** request, the **Insureds** shall attend proceedings, hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim**.

## 9. CLAIM AND POTENTIAL CLAIM NOTICES

Regarding the **Liability Coverage Parts** only:

- A. As a condition precedent to coverage, the **Claim Manager** shall give the **Insurer** written notice of any **Claim** as soon as practicable, after any **Claim Manager** first becomes aware of such **Claim**, but no later than 60 days after the end of the **Policy Period** or the Extended Reporting Period, if applicable. Such notice shall specify the **Liability Coverage Part** under which notice is being given.
- B. If, during the **Policy Period**, the **Claim Manager** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against an **Insured** for which coverage may be available under a **Liability Coverage Part**, and if written notice of such **Wrongful Act** is given to the **Insurer** during the **Policy Period** specifying the (i) reasons for anticipating such a **Claim**, (ii) nature and date of the **Wrongful Act**, (iii) identity of the **Insureds** involved, (iv) injuries or damages sustained, (v) names of potential claimants, (vi) manner in which the **Insureds** first became aware of the **Wrongful Act** and (vii) the **Liability Coverage Part** under which such notice is being given, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made at the time that the **Insurer** receives such notice.

## 10. INTERRELATED CLAIMS

Regarding the **Liability Coverage Parts** only, all **Claims** arising from, based upon, or attributable to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earliest date that:

- A. any of such **Claims** was first made, even if such date is before the **Policy Period**;
- B. proper notice of such **Wrongful Act** or **Interrelated Wrongful Act** was given to the **Insurer** pursuant to Section 9.B above; or
- C. notice of any fact, circumstance or situation including such **Wrongful Act** or **Interrelated Wrongful Act** was given under any prior insurance policy.

## 11. ALLOCATION

Regarding the **Liability Coverage Parts** only, if the **Insureds** incur **Loss** that is only partially covered by this Policy because a **Claim** includes both covered and uncovered matters, **Loss** shall be allocated as follows:

- A. 100% of **Defense Costs** incurred by the **Insureds** shall be allocated to covered **Loss**; and
- B. **Loss**, other than **Defense Costs**, incurred by the **Insureds** shall be allocated between covered and non-covered **Loss** based upon the relative legal exposure of the parties to covered and non-covered matters.

## 12. SUBROGATION

- A. The **Insurer** shall be subrogated to all of the **Insureds**' rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the **Insurer's** position or any rights of recovery.
- B. Regarding the **Liability Coverage Parts** only, the **Insurer** shall not subrogate against any **Insureds**.

## 13. OTHER INSURANCE

Except for personal liability insurance maintained by an **Insured Person** for such **Insured Person's** own benefit, coverage under this Policy shall apply only in excess of any other valid and collectible insurance regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other insurance or bond to this Policy's Policy Number.

## 14. CORPORATE TRANSACTIONS

### A. Takeover of Named Organization

If, during the **Policy Period**:

1. any person or entity or group of persons and/or entities acting in concert acquires the right to elect or appoint more than 50% of the directors or trustees of the corporate governing board of the **Named Organization**; or
2. the **Named Organization** merges into, or consolidates with, another organization such that the **Named Organization** is not the surviving organization,

then coverage shall: (i) continue under the **Liability Coverage Parts** for **Wrongful Acts** occurring before such transaction; and (ii) terminate under the Crime and the Kidnap Ransom & Extortion Coverage Parts subject to the provisions therein. No coverage shall be available for any: (i) **Wrongful Act** occurring (under any **Liability Coverage Part**); (ii) **Loss** discovered or sustained (as applicable, under the Crime Coverage Part); or (iii) covered event first commenced (under the Kidnap, Ransom & Extortion Coverage Part), after such transaction. Upon such transaction, the entire premium for this Policy shall be deemed fully earned. The **Insureds** shall give the **Insurer** written notice of such transaction as soon as practicable, but no later than 90 days after the effective date of such transaction.

### B. Acquisition or Creation of a Not-For-Profit Subsidiary

If, before or during the **Policy Period**: (i) the **Named Organization** acquires the direct or indirect right to elect or appoint more than 50% of the directors or trustees of the corporate governing board of a not-for-profit entity; (ii) the **Named Organization** creates a not-for-profit entity in which it acquires, directly or indirectly, the right to elect or appoint more than 50% of the directors or trustees of the corporate governing board of such entity; or (iii) any not-for-



profit **Insured Organization** merges with another not-for-profit organization such that such **Insured Organization** is the surviving entity, then such newly created, acquired or merged not-for-profit organization and its **Insureds** shall be covered under this Policy for any:

1. **Wrongful Act** occurring (under any **Liability Coverage Part**);;
2. **Loss** discovered or sustained (as applicable, under the Crime Coverage Part.); or
3. covered event first commenced (under the Kidnap, Ransom & Extortion Coverage Part)

after such acquisition, creation or merger. No coverage shall be available for any new **Insureds** for any: (i) **Wrongful Act** occurring (under a **Liability Coverage Part**); (ii) **Loss** discovered or sustained (as applicable, under the Crime Coverage Part); or (iii) covered event first commenced (under the Kidnap, Ransom & Extortion Coverage Part), before such transaction. No coverage shall be available for any new **Insureds** for any **Wrongful Act** that is a **Interrelated Wrongful Act** to any **Wrongful Act** occurring before such transaction.

If the fair value of the assets of any newly acquired or merged not-for-profit organization exceeds 25% of the total consolidated assets of the **Named Organization** as reflected in its most recent annual financial statements prior to such merger or acquisition, then as a condition precedent to coverage for such new **Insureds**, the **Named Organization** shall give the **Insurer** written notice of the transaction as soon as practicable, pay any additional premium, and agree to any additional terms and conditions required by the **Insurer**. The **Insureds** shall furnish all information regarding such transaction as the **Insurer** shall request.

No coverage shall be available for any for-profit entity or any natural person or plan affiliated with such entity unless such entity is listed as a **Subsidiary** in a written endorsement issued by the **Insurer**, regardless of whether such entity is owned, controlled, or merged into, an **Insured Organization**.

#### C. **Loss of Subsidiary Status**

If, before or during the **Policy Period**, any organization ceases to be a **Subsidiary**, then coverage otherwise available under this Policy for such **Subsidiary** and its **Insureds**, shall apply only for any:

1. **Wrongful Act** occurring (under any **Liability Coverage Part**);;
2. **Loss** discovered or sustained (as applicable, under the Crime Coverage Part.); or
3. covered event first commenced (under the Kidnap, Ransom & Extortion Coverage Part),

before such transaction. No coverage shall be available for any former **Subsidiary** and its **Insureds** for any: (i) **Wrongful Act** occurring (under a **Liability Coverage Part**); (ii) **Loss** discovered or sustained (as applicable, under the Crime Coverage Part); or covered event first commenced (under the Kidnap, Ransom & Extortion Coverage Part), after such transaction.

### 15. **APPLICATION & SEVERABILITY**

- A. The **Insureds** represent that the information contained in the **Application** is true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application**

contains misrepresentations or omissions made with intent to deceive or that materially affect the acceptance of the risk or the hazard assumed by the **Insurer**, this Policy shall not afford coverage for any **Insureds** who knew on the inception date of this Policy the facts that were not accurately disclosed in the **Application**, regardless whether such **Insureds** knew the **Application** contained such misrepresentation or omission. The foregoing shall be the **Insurer's** sole remedy with respect to misrepresentations or omissions in the **Application**.

- B. For the purpose of determining coverage, knowledge possessed by:
  - 1. any **Insured Person** shall not be imputed to any other **Insured Person**; and
  - 2. any **Senior Executive** or anyone signing the **Application** shall be imputed to all **Insureds** other than **Insured Persons**.
- C. This Policy shall not be rescinded.

#### 16. SUITS AGAINST THE INSURER

- A. No suit or other proceeding shall be commenced by the **Insureds** against the **Insurer** unless there shall have been full compliance with all the terms and conditions of this Policy, including Section 16.B below.
- B. Prior to commencing any suit or other proceeding against the **Insurer**, the **Insureds** shall first submit any coverage or other dispute arising under or in connection with this Policy to nonbinding mediation. The mediator for such mediation shall be disinterested and knowledgeable on the relevant issues in dispute. The mediator shall be selected jointly by the parties. Such mediation shall be conducted in a venue and in accordance with procedural rules as are agreed to jointly by the parties. The costs of such mediation shall be shared equally by the parties provided that each party shall bear its own legal costs. If such mediation does not resolve the dispute between the **Insureds** and the **Insurer**, the **Insureds** shall have the right to commence a suit or other proceeding against the **Insurer** regarding the issues in dispute 60 days after the conclusion of such mediation. No suit or other proceeding shall be initiated prior to 60 days after the conclusion of such mediation.
- C. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any **Claim**.

#### 17. ENTIRE AGREEMENT

This Policy, including the Declarations, General Provisions, elected Coverage Parts, written endorsements, and the **Application** shall constitute the entire agreement between the **Insurer** and the **Insureds** regarding the insurance provided hereunder.

#### 18. CHANGES

This Policy shall not be changed in any manner except by a written endorsement issued by the **Insurer**.

#### 19. ASSIGNMENT

Assignment of any interest under this Policy shall not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.

#### 20. NAMED ORGANIZATION'S AUTHORITY

The **Named Organization** shall act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, election of the Extended Reporting Period, transmission and receipt of notices, acceptance of endorsements, payment of premiums, and receipt of return premiums.

## 21. CANCELLATION

- A. The **Insurer** may cancel this Policy for non-payment of premium by sending not less than 20 days notice to the **Named Organization**. This Policy may not otherwise be cancelled by the **Insurer**.
- B. Except as otherwise provided, the **Named Organization** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice shall be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- C. If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the **Insurer's** customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall make payment of any unearned premium as soon as practicable.

## 22. BANKRUPTCY

Bankruptcy or insolvency of any **Insureds** shall not relieve the **Insurer** of any obligation under this Policy.

## 23. NOTICES

- A. Notices to the **Insureds** shall be sent to the **Named Organization** at the address specified in Item 1 of the Declarations.
- B. Notices to the **Insurer** shall be sent or e-mailed to the applicable address specified in Item 5 of the Declarations and become effective upon receipt at such address.
- C. All notices shall be in writing.

## 24. TITLES

The titles of the sections of, and endorsements to, this Policy are for reference only. Such titles shall not be part of the terms and conditions of coverage.

## 25. REFERENCES TO LAWS

- A. Any statute, act, or code mentioned in this Policy shall be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.
- B. Any statute, act, or code mentioned in this Policy that is followed by the phrase "or any similar law" shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.

## 26. COVERAGE PART COORDINATION

- A. If any **Loss** is covered under two or more **Liability Coverage Parts**:
  - 1. the **Insureds** shall be entitled to recover **Loss** only once; and

2. the maximum aggregate amount that the **Insurer** shall pay for all **Loss** arising from a single **Claim** shall be the largest remaining applicable Limit of Liability and, if elected, the remaining Defense Costs Outside the Limit of Liability amount.
- B. Regardless of the **Liability Coverage Part** under which a notice of **Claim** or potential **Claim** is given by the **Insureds**, the **Insurer** shall be entitled to make its own determination as to which **Liability Coverage Part**, if any, **Loss** is covered and under which **Liability Coverage Part Loss** should be paid.

# **NONPROFIT ORGANIZATION LIABILITY COVERAGE PART**

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## NONPROFIT ORGANIZATION LIABILITY COVERAGE PART

### 1. INSURING AGREEMENTS

#### A. Insured Person Liability

The **Insurer** shall pay **Non-Indemnifiable Loss** on behalf of any **Insured Person** resulting from a **Claim** first made against such **Insured Person** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act**.

#### B. Organization Reimbursement

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** that such **Insured Organization** is permitted or required by law, to indemnify the **Insured Person** resulting from a **Claim** first made against such **Insured Person** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act**.

#### C. Organization Liability

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** resulting from a **Claim** first made against such **Insured Organization** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act**.

#### D. Derivative Demands

The **Insurer** shall pay **Investigation Costs** on behalf of an **Insured Organization** resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to the Sublimit of Liability specified in Item 6 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Deductible shall apply to this Insuring Agreement.

#### E. Crisis Management Costs for a Network Security Breach or Privacy Violation

The **Insurer** shall pay **Crisis Management Costs** on behalf of an **Insured Organization** resulting from a **Network Security Breach** or **Privacy Violation** occurring during the **Policy Period** and reported as soon as practicable but no later than 60 days after the **Policy Period**.

This Insuring Agreement shall be subject to the Sublimit of Liability specified in item 6 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Deductible shall apply to this Insuring Agreement.

Regarding this Insuring Agreement: (i) General Provisions Sections 4. Coverage Extensions, 5. Extended Reporting Period, 7. Deductible, 8. Defense of Claims, 9. Claim and Potential Claim Notices, 10. Interrelated Claims, and 11. Allocation shall not apply; (ii) Section 4. Exclusions shall not apply; and (iii) the **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request.

## 2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

**A. “Claim”** means any:

1. written demand or notice for civil monetary damages or other civil non-monetary relief commenced by the **Insured’s** receipt of such demand or notice;
2. civil proceeding, including, without limitation, an arbitration or alternative dispute resolution proceeding (ADR), commenced by the service upon an **Insured** of a complaint, demand for arbitration, request for mediation or similar document, including a foreign equivalent thereof;
3. criminal proceeding commenced by the return of an indictment, information or similar pleading, including a foreign equivalent thereof;
4. administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document, including a foreign equivalent thereof;
5. civil, criminal, administrative, or regulatory investigation of an **Insured Person** commenced by the service upon, or other receipt by, such **Insured Person** of a written notice from an investigating authority specifically identifying such **Insured Person** as a target against whom a formal proceeding described in 2, 3, or 4 above may be commenced;
6. written request to an **Insured** to toll or waive the statute of limitations regarding a potential **Claim** as described above commenced by the **Insured’s** receipt of such request;
7. solely for purposes of Insuring Agreement D, any **Derivative Demand**; or
8. solely for purposes of Insuring Agreement E, any **Network Security Breach** or **Privacy Violation**.

**B. “Computer System”** means any computer hardware, software or firmware, including components thereof and data stored thereon, that is owned or leased by, and under the direct operational control of, an **Insured Organization**. **Computer System** shall exclude any disconnected devices including, without limitation, laptops, mobile devices or memory storage data devices.

**C. “Crisis Management Costs”** means reasonable and necessary fees and expenses incurred by an **Insured**, with the **Insurer’s** prior written consent, for:

1. public relations firm services to mitigate reputational damage resulting from any **Network Security Breach** or **Privacy Violation**; and
2. legal services (by an attorney selected from the **Insurer’s** panel of lawyers) regarding any **Network Security Breach** or **Privacy Violation** to:
  - a. provide counsel on the obligations of any applicable **Privacy Law**; and
  - b. draft notices required by any applicable **Privacy Law**.

**Crisis Management Costs** shall exclude any: (i) compensation, internal expenses or overhead of any **Insured**; or (ii) payments made as compensation for any injury or damages resulting from any **Network Security Breach** or **Privacy Violation**.

- D. **“Derivative Demand”** means a written demand by any member of an **Insured Organization**, in such member’s capacity as such, upon the board of directors or managers of such **Insured Organization** to bring a civil proceeding on behalf of an **Insured Organization** against an **Insured Person** for a **Wrongful Act** of such **Insured Person** if such demand is made without the assistance, participation or solicitation of any **Executive**. A **Derivative Demand** shall be deemed commenced by the receipt by the board of directors or managers of such demand.
- E. **“Derivative Suit”** means any civil proceeding against an **Insured Person** for a **Wrongful Act** of such **Insured Person** made on behalf of, or in the name or the right of, an **Insured Organization** by any member of such **Insured Organization**, in such member’s capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Executive**.
- F. **“Employee”** means any natural person whose labor or service was, is or shall be engaged and directed by any **Insured Organization**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any **Independent Contractor**.
- G. **“Excess Benefit Transaction Excise Tax”** means any tax imposed by Section 4958 of the Internal Revenue Code of 1986 on an organization manager for participation in an excess benefit transaction.
- H. **“Executive”** means any natural person while a duly elected or appointed:
1. director, executive director, officer, trustee, regent, governor or member of the board of managers, board of governors, advisory board or duly constituted committee of an **Insured Organization**;
  2. in-house general counsel of an **Insured Organization** as well as any other natural person employed by an **Insured Organization** as an in-house attorney;
  3. manager of an **Insured Organization** organized outside the United States of America if such position is equivalent to those specified in 1 or 2 above.
- I. **“Insured Person”** means any:
1. **Executive**; or
  2. **Employee**.
- J. **“Insured”** means any:
1. **Insured Organization**; or
  2. **Insured Person**.
- K. **“Investigation Costs”** means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand**, provided that **Investigation Costs** shall not include compensation, benefit expenses, or overhead of any **Insureds**.



- L. **“Loss”** means damages, settlements, judgments (including awards of legal fees and costs), pre/post-judgment interest and **Defense Costs**. Solely regarding Insuring Agreement D, **“Loss”** means **Investigation Costs**. Solely regarding Insuring Agreement E, **“Loss”** means **Crisis Management Costs**.

**Loss** shall specifically include, and exclude, the following amounts:

1. **Loss** shall specifically include any:
  - a. punitive, exemplary and multiple damages;
  - b. civil penalties assessed against **Insured Persons** pursuant to Section 2(g)2(B) of the Foreign Corrupt Practices Act of 1977; or
  - c. **Excess Benefit Transaction Excise Tax** provided that: (i) the **Insurer's** maximum aggregate liability for all such taxes shall be subject to the sublimit specified in Item 6 of the Declarations which amount shall be the maximum aggregate amount that the **Insurer** shall pay for all such taxes and shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**; and (ii) indemnification for such taxes is not expressly prohibited in the bylaws, certificate of incorporation or other documents of an **Insured Organization**.

Notwithstanding item 2.e below, the insurability of the above types of **Loss** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such **Loss**.

2. **Loss**, other than **Defense Costs**, shall exclude any:
  - a. fines or penalties imposed by law, other than pursuant to Section 2(g)2(B) of the Foreign Corrupt Practices Act of 1977;
  - b. taxes other than any **Excess Benefit Transaction Excise Tax**;
  - c. amount for which the **Insureds** are not liable or for which the claimants are without legal recourse to the **Insureds**;
  - d. non-monetary relief; or
  - e. matters that are uninsurable under the law.

- M. **“Malicious Code”** means any virus, Trojan, worm or other similar malicious software program, code or script designed to infect, harm, harm data on, or steal data from, a **Computer System**.

- N. **“Network Security Breach”** means any:

1. unauthorized access to, or unauthorized use of, a **Computer System**; or
2. transmission of **Malicious Code** into or from a **Computer System**.

- O. **“Outside Capacity”** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Organization** with the knowledge and consent, or at the request, of an **Insured Organization**.

- P. “Outside Organization”** means any:
1. not-for-profit corporation, community chest, fund or foundation that is not an **Insured Organization** and that is exempt from federal income tax as an organization described in Section 501(c)(3), 501(c)(4) or 501(c)(10) of the Internal Revenue Code of 1986;
  2. organization established for a religious or charitable purpose under any not-for-profit statute; or
  3. organization listed as an **Outside Organization** in a written endorsement issued by the **Insurer**.
- Q. “Personal Injury Wrongful Act”** means any actual or alleged:
1. false arrest, wrongful detention or imprisonment or malicious prosecution;
  2. libel, slander, defamation of character, or publication of material in violation of a person’s right of privacy; or
  3. wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.
- R. “Privacy Law”** means those parts of the following laws regulating the use and protection of non-public personal information:
1. Health Insurance Portability and Accountability Act of 1996 (HIPAA);
  2. Gramm-Leach Bliley Act of 1999 (GLBA);
  3. consumer protection and unfair and deceptive trade practice laws enforced by state Attorneys General or the Federal Trade Commission, including, without limitation, Section 5(a) of the Federal Trade Commission Act of 1914;
  4. security breach notification laws that require notice to individuals of the actual or potential theft of their non-public personal information, including, without limitation, the California Security Breach Notification Act of 2003; or
  5. domestic or foreign privacy laws requiring reasonable security for non-public personal information or the adoption of a privacy policy limiting the sale, disclosure or sharing of non-public personal information.
- S. “Privacy Violation”** means any:
1. theft or unauthorized copying of **Private Information** while in the care, custody or control of an **Insured**; or
  2. violation of a **Privacy Law** by an **Insured**.
- T. “Private Information”** means any:
1. individual’s name in combination with any of the following:
    - a. social security number;

- b. drivers license number or any other state identification number;
    - c. medical or healthcare data, including protected health information;
  - 2. non-public personal information as defined in any **Privacy Law**; or
  - 3. confidential or proprietary business information of a third-party that is protected under a written non-disclosure agreement between such third-party and an **Insured Organization**.
- U. “Publisher Wrongful Act”** means any actual or alleged:
- 1. infringement of copyright or trademark or unauthorized use of title; or
  - 2. plagiarism or misappropriation of ideas.
- V. “Securities Laws”** means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, any state “blue sky” securities law, or any other federal, state or local securities law or foreign equivalent laws or amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer or solicitation of an offer to sell or purchase, or the sale of or purchase of, securities.
- W. “Whistleblowing”** means:
- 1. providing information, causing information to be provided, or otherwise assisting in an investigation regarding any conduct that such **Executive** reasonably believes constitutes a violation of any federal, state or local law when the information or assistance is provided to, or the investigation is conducted by, any:
    - a. federal, state, or local law enforcement or regulatory agency; or
    - b. any member of the United States Congress, any committee of Congress or any state or local elected official; or
  - 2. testifying in a proceeding relating to an alleged violation of any federal, state or local law.
- X. “Wrongful Act”** means any actual or alleged:
- 1. act, error, omission, misstatement, misleading statement, neglect or, breach of duty, including a **Personal Injury Wrongful Act** or **Publisher Wrongful Act** by any **Insured Person** in their capacity as such or in an **Outside Capacity** or, with respect to Insuring Agreement C, by any **Insured Organization**; or
  - 2. matter claimed against an **Insured Person** by reason of such person serving in such capacity, including service in an **Outside Capacity**.

### 3. OUTSIDE DIRECTORSHIP LIABILITY COVERAGE

Subject to the provisions applicable to this **Liability Coverage Part**, coverage otherwise afforded under Insuring Agreements A and B shall apply to **Loss** resulting from any **Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Organization**. Payment by the **Insurer**, or any insurance company controlling, controlled by or under common

control with the **Insurer**, under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Limit of Liability available under this Policy for such **Claim**.

#### 4. EXCLUSIONS

A. The **Insurer** shall not pay **Loss**:

1. in connection with any **Claim** arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other directors and officers liability, management liability or similar insurance policy;
2. in connection with any **Claim** arising from, based upon, or attributable to any:
  - a. demand, suit or proceeding made or initiated against any **Insured** on or prior to the applicable Pending and Prior Litigation Date in Item 6 of the Declarations; or
  - b. **Wrongful Act** specified in such prior demand, suit or proceeding or any **Interrelated Wrongful Acts** thereto;
3. for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
4. in connection with any **Claim** arising from, based upon, or attributable to any:
  - a. any discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release, escape, seepage, migration or disposal; or
  - b. any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,

provided that this exclusion shall not apply to any (i) **Non-Indemnifiable Loss**, (ii) **Derivative Demand**, or (iii) **Derivative Suit**;

5. for any violation of **ERISA** or any similar law;
6. in connection with any **Claim** by or on behalf of any **Insured**, provided that this exclusion shall not apply to any **Claim**:
  - a. that is a **Derivative Demand** or **Derivative Suit**;
  - b. by an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;
  - c. by any **Employee** who is not a past or present **Executive** if such **Claim** is made without the solicitation, assistance or active participation of any **Executive**, provided that there shall be no coverage for any **Claim** for a wrongful employment termination, employment discrimination, or other employment practices **Wrongful Act**;

- d. by a former **Executive** who has not served as an **Executive** for at least two (2) years prior to such **Claim** being made, provided that such **Claim** is made without the solicitation, assistance or active participation of any current **Executive** or any former **Executive** who has served as an **Executive** during the two (2) years prior to such **Claim** being made;
- e. brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, creditors committee or similar official or committee for an **Insured Organization** or any assignee of such trustee, examiner, receiver, committee or similar official or committee if such **Claim** is made without the assistance, participation or solicitation of any **Executive**; or
- f. made in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of an **Insured Organization** organized in such jurisdiction;

provided that solicitation, assistance or active participation shall not include **Whistleblowing**;

- 7. in connection with any **Claim** arising from, based upon, or attributable to any **Insured Person** serving as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Organization** even if such service is at the direction or request of the **Insured Organization**, provided that this exclusion shall not apply to a **Claim** for a **Wrongful Act** by an **Insured Person** in an **Outside Capacity**;
- 8. in connection with any **Claim** by or on behalf of any **Outside Organization**, or any director, officer, trustee, regent, governor or equivalent executive of any **Outside Organization**, provided that this exclusion shall not apply to any **Claim**:
  - a. that is a derivative suit made on behalf of an **Outside Organization** by any persons who are not:
    - 1. **Insured Persons**; or
    - 2. directors, officers, trustees, regents, governors or equivalent executives of the **Outside Organization**,

and who make such **Claim** without the solicitation, assistance or participation of any such persons; or
  - b. by any:
    - 1. **Insured Persons**; or
    - 2. directors, officers, trustees, regents, governors or equivalent executives of an **Outside Organization**,

for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**.
- 9. in connection with any **Claim** arising from, based upon, or attributable to any violation of any **Securities Laws**;

10. in connection with any **Claim** arising from, based upon, or attributable to any wrongful employment termination, employment discrimination, or other employment practices **Wrongful Act**;
11. in connection with any **Claim** arising from, based upon, or attributable to any unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits, provided that this exclusion shall not apply to any: (i) **Derivative Demand**; or (ii) **Derivative Suit**;
12. in connection with any **Claim** arising from, based upon, or attributable to any infringement of patent or misappropriation of intellectual property, ideas or trade secrets; provided that this exclusion shall not apply to a **Publisher Wrongful Act**;
13. in connection with any **Claim** arising from, based upon, or attributable to any **Network Security Breach** or **Privacy Violation**;
14. of an **Insured** arising from, based upon, or attributable to the gaining of any profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if established by any final, non-appealable adjudication against any such **Insured** in any proceeding other than a proceeding initiated by the **Insurer**, provided that this exclusion shall not apply to **Defense Costs**; or
15. of an **Insured** arising from, based upon, or attributable to any deliberately fraudulent or deliberately criminal act or omission or any willful violation of law by such **Insured**, if established by any final, non-appealable adjudication against any such **Insured** in any proceeding other than a proceeding initiated by the **Insurer**, provided that this exclusion shall not apply to any **Defense Costs**.

Regarding exclusions A.14. and A.15. above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**; and (ii) only a **Wrongful Act** by a past, present or future **Senior Executive** of any **Insured Organization** shall be imputed to an **Insured Organization**.

- B. The **Insurer** shall not pay **Loss** in connection with any **Claim** against an **Insured Organization** arising from, based upon, or attributable to any liability of an **Insured Organization** under any contract or agreement, provided that this exclusion shall not apply to: (i) the extent that liability would have been incurred in the absence of such contract or agreement, or (ii) **Defense Costs**.

## 5. PRIORITY OF LOSS PAYMENTS

If **Loss** is incurred that is acknowledged by the **Insurer** to be covered under this **Liability Coverage Part** except that such **Loss** exceeds the remaining Limit of Liability for this **Liability Coverage Part**, the **Insurer** shall pay **Loss**:

- A. first, under Insuring Agreement A;
- B. second, under Insuring Agreement B; and
- C. third, under Insuring Agreement C.

**6. ADDITIONAL LIMIT OF LIABILITY**

- A.** An Additional Limit of Liability of \$500,000 shall be available to pay **Non-Indemnifiable Loss** covered under Insuring Agreement A.
- B.** The Additional Limit of Liability shall be in addition to, and not part of, the Limit of Liability otherwise applicable to this **Liability Coverage Part** as specified in Item 6 of the Declarations.
- C.** The Additional Limit of Liability shall be excess of any valid and collectible insurance that is specifically excess of this Policy. Such excess insurance must be exhausted by the payment of loss covered thereunder before the **Insurer** shall be liable to pay the Additional Limit of Liability.
- D.** The Additional Limit of Liability shall not apply to any **Loss** in connection with the first **Claim** made during the **Policy Period**. This first **Claim** made under this Policy shall be determined by the chronological time such **Claim** was first made regardless of when coverage is acknowledged by the **Insurer** for such **Claim**.
- E.** **Non-Indemnifiable Loss** covered under Insuring Agreement A shall be allocated between, and paid by the **Insurer** under, the applicable Limit of Liability specified in Item 6 of the Declarations and any Additional Limit of Liability in whatever portions will maximize the total amount of covered **Loss** being paid under this Policy.