



Public Officials Professional and Employment Practices Liability Insurance Policy

SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. GENERALLY, DEFENSE EXPENSES ARE PAID IN ADDITION TO THE LIMITS OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer**, including the statements made in the **Application**, the **Insurer** and the **Insureds**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

I. INSURING AGREEMENTS

A. Public Officials Professional Liability

The **Insurer** will pay on behalf of any **Insured**, subject to the Limit of Liability set forth in ITEM 3(a) of the Declarations, **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period for a **Public Officials Wrongful Act** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

B. Employment Practices Liability and Third Party Liability

The **Insurer** will pay on behalf of any **Insured**, subject to the Limit of Liability set forth in ITEM 3(b) of the Declarations, **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

In addition to the applicable Limits of Liability set forth in ITEM 3 of the Declarations, the **Insurer** will have the right and duty to defend any **Claim** first made against any **Insured** for a **Wrongful Act** which is covered under INSURING AGREEMENTS A. or B. of this Policy, even if the allegations of such **Claim** are groundless, false or fraudulent.

C. Supplemental Payments

(1) The **Insurer** will reimburse the **Insured**, in addition to the Limits of Liability set forth in ITEM 3(a), 3(b) and 3(c) of the Declarations, and subject to the Limits of Liability set forth in ITEMS 3(d) and 3(e) of the Declarations, **Defense Expenses** incurred in connection with a **Claim** exclusively seeking, and at all times remaining a **Claim** exclusively seeking, **Non-Monetary Relief**, which is first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period, and arising out of **Wrongful Acts** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Subject to CONDITION B(3), it shall be the duty of the **Insured**, and not the **Insurer**, to defend any **Claim** under INSURING AGREEMENT C(1).

- (2) The **Insurer** will pay on behalf of any **Insured**, in addition to the aggregate Limit of Liability set forth in ITEM 3(c) of the Declarations, all reasonable expenses incurred by the **Insured** at the **Insurer's** request to assist the **Insurer** in the investigation or defense of any **Claim**, including actual loss of earnings of any **Insured**, because of time off from work; provided that the most the **Insurer** shall pay shall be up to \$250 per day, per **Insured**. Such "expenses", as used herein, shall not include salaries of employees of the **Named Insured**.

II. DEFINITIONS

- A. "**Application**" means the application submitted to the **Insurer**, any and all materials and information submitted to the **Insurer** in connection with such application, and all publicly available material that is created by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of the Policy, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this Policy, as if physically attached.
- B. "**Business Invitee**" means a natural person, solely in their capacity as one who is invited to enter into and remain on any premises owned or operated by the **Named Insured** for a purpose directly or indirectly connected with the business or commercial dealings therein. A "**Business Invitee**" shall not, under any circumstances, include a trespasser or any other person who enters any premises of the **Named Insured** without its knowledge or permission or any **Employee**.
- C. "**Claim**" means:
- (1) any written demand for monetary damages or **Non-Monetary Relief**;
 - (2) any written request to toll or waive any statute of limitations;
 - (3) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
 - (4) any criminal proceeding which is commenced by the return of an indictment or similar document;
 - (5) any administrative or regulatory proceeding or investigation, including a proceeding brought by or before the Equal Employment Opportunity Commission or similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or
 - (6) any arbitration proceeding, or any other alternative dispute resolution proceeding, to which the **Insured** must submit or does submit with the **Insurer's** consent.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

- D. “**Contaminant-Toxin**” means any of the following:
- (1) smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
 - (2) mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);
 - (3) lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
 - (4) nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.
- E. “**Defense Expenses**” means reasonable legal fees and expenses incurred by or on behalf of the **Insured** in the defense or appeal of a **Claim**; provided, however, that **Defense Expenses** will not include the **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of its **Employees**. **Defense Expenses** shall include the cost of any bond or appeal bond required in any civil suit, but only for bond amounts within the applicable Limit of Liability shown in ITEM 3 of the Declarations; provided that the **Insurer** shall not be obligated to apply for or furnish any such bond.
- F. “**Employee**” means the following natural persons, but only for **Wrongful Acts** committed while acting within the scope of employment for the **Named Insured**:
- (1) full-time, part-time, seasonal and temporary employees; and
 - (2) all persons who perform services on a volunteer basis for the **Named Insured**, and under the direction and control of the **Named Insured**.
- Employee** shall not include persons providing services to the **Named Insured** under a mutual aid agreement or any similar agreement.
- G. “**Employment Practices Wrongful Act**” means any of the following, when alleged by any past or present **Employee** of the **Named Insured** or any applicant for employment with the **Named Insured**, in connection with that person’s actual or proposed employment relationship with the **Named Insured**:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
 - (2) harassment (including sexual harassment whether “quid pro quo”, hostile work environment or otherwise);
 - (3) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws;

- (4) breach of any manual of employment policies or procedures issued to the **Insureds** by the **Named Insured**;
- (5) retaliatory action in response to that **Employee's**:
 - (a) disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
 - (b) actual or attempted exercise of any right that **Employee** has under law;
 - (c) filing of any **Claim** under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law;
- (6) misrepresentation, libel, slander, humiliation, defamation, invasion of privacy, infliction of emotional distress or mental anguish; or
- (7) wrongful failure to employ or promote, wrongful deprivation of career opportunity, including tenure, wrongful demotion or evaluation or wrongful discipline.

H. "**Insured**" means:

- (1) the **Named Insured**;
- (2) all past, present or future duly elected, appointed or employed officials, directors, or members of commissions, boards or other units operated by the **Named Insured** and under its jurisdiction, within the apportionment of the **Named Insured's** operating budget in the **Application**;

provided that "**Insured**" shall not include the following boards, commissions or units, or any officials, directors, members or employees thereof: schools, airports, transit authorities, hospitals, nursing homes, housing authorities, port authorities or any type of utility companies, unless otherwise provided in an Endorsement attached hereto;

- (3) **Employees**; and
- (4) all persons providing services to the **Named Insured** under a mutual aid or any similar agreement; however, such persons are not **Insureds** with respect to **Claims for Employment Practices Wrongful Acts or Third Party Wrongful Acts**.

In the event of the death, incapacity or bankruptcy of an **Insured** individual, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured** individual for a **Wrongful Act** will be deemed a **Claim** against such **Insured** individual.

I. "**Insurer**" means the Company identified in the Declarations.

J. "**Loss**" means damages, pre-judgment interest, post-judgment interest, front pay and back pay, judgments, settlements, punitive or exemplary damages where insurable under

applicable law, or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** will not include:

- (1) **Defense Expenses;**
- (2) **Non-Monetary Relief;**
- (3) any amount representing the value of diminished or lost retirement, health care or other benefits;
- (4) fines, taxes, penalties; or
- (5) the multiplied portion of multiplied damages; provided that **Loss** will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act ("Specified Multiplied Damages") that an **Insured** is obligated to pay as a result of a **Claim**, but only if such Specified Multiplied Damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages, exemplary damages or Specified Multiplied Damages under this Policy, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (1) is the location of the court which awarded or imposed such punitive or exemplary damages;
- (2) is where the **Named Insured** is incorporated or otherwise organized or has a place of business; or
- (3) is where the **Insurer** is incorporated or has its principal place of business.

K. "**Named Insured**" means the public entity set forth in ITEM 1 of the Declarations.

L. "**Non-Monetary Relief**" means relief or redress in any form other than compensatory or monetary damages, including: the costs of complying with any injunctive, declaratory or equitable relief, remedy or order; the costs of compliance with the Americans with Disabilities Act or any similar provisions of federal, state or local statutory or common law; and any award of claimant's or plaintiff's attorneys fees or costs, whether or not provided for by statute, but only with respect to **Claims** seeking such non-monetary relief.

M. "**Personal Injury**" means the following, when alleged against an **Insured** by an entity or a person who is not a past or present **Insured**, or applicant for employment with the **Insured**: libel, slander, or other defamation, invasion of privacy, false arrest, erroneous service of process, wrongful detention or imprisonment, malicious prosecution, wrongful entry or eviction, infringement of copyright or trademark, or other unauthorized use of title, or plagiarism or misappropriation of ideas.

N. "**Policy Period**" means the period from the Inception Date of this Policy set forth, in ITEM 2(a) of the Declarations, to the Expiration Date of this Policy set forth in ITEM 2(b) of the Declarations, or to any earlier cancellation date of this Policy.

- O. **"Public Officials Wrongful Act"** means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, including any **Personal Injury**, by any **Insured**;
 - (2) any actual or alleged violation of civil rights protected under 42 USC 1981 et seq., or any similar federal, state or local law, by any **Insured**;
 - (3) any matter claimed against an **Insured** solely by reason of his or her status as an **Insured** during the **Policy Period**;
- and committed in the performance of his or her duties for the **Named Insured**.
- P. **"Related Claims"** means all **Claims** for **Wrongful Acts** based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, causally or in any other way.
- Q. **"Retroactive Date"** means the applicable date set forth in ITEM 7 of the Declarations.
- R. **"Sexual Abuse and Molestation"** means any actual or alleged conduct, physical act, gesture or spoken or written word of a sexual nature directed by an **Insured**, or by any person for whom an **Insured** is legally responsible, toward any person under the care, custody or control of any **Insured**, including without limitation any actual, alleged or threatened sexual intimacy (even if allegedly consensual), molestation, assault or battery, exploitation or any other sexual act.
- S. **"Terrorism"** means activities against persons, organizations or property of any nature:
- (1) that involve the following or preparation for the following:
 - (a) use or threat of force or violence; or
 - (b) commission or threat of a dangerous act; or
 - (c) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
 - (2) when one or both of the following applies:
 - (a) the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - (b) it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
- T. **"Third Party Wrongful Act"** means any of the following, when alleged against an **Insured** by a **Business Invitee** of the **Named Insured**:
- (1) harassment (including sexual harassment);

- (2) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws; or
- (3) humiliation, invasion of privacy, or infliction of emotional distress or mental anguish.

U. "**Wrongful Act**" means any **Public Officials Wrongful Act, Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

III. EXCLUSIONS

- A. The **Insurer** shall not pay **Loss**, but shall only pay **Defense Expenses**, from any **Claim** brought about or contributed to in fact by:
- (1) any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by any **Insured**;
 - (2) any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; or
 - (3) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** is not legally entitled.

The applicability of EXCLUSIONS A(1), A(2) and A(3) to any specific **Insured** may be determined by an admission of such **Insured**, a finding, or a final adjudication in the proceeding constituting the **Claim** or in a proceeding separate from or collateral to the **Claim**. If any specific **Insured** in fact engaged in the conduct specified in EXCLUSIONS A(1), A(2) or A(3), such **Insured** shall reimburse the **Insurer** for any **Defense Expenses** advanced to or on behalf of such **Insured**.

- B. The **Insurer** shall not pay any **Loss** or **Defense Expenses** from any **Claim**:
- (1) under INSURING AGREEMENTS I.A. or I.B., if otherwise covered under INSURING AGREEMENT I.C(1);
 - (2) by, on behalf of or in the name or right of:
 - (a) the **Named Insured**; or
 - (b) any duly elected, appointed or employed director or official of the **Named Insured**, or any member of a commission, board or other unit operated by the **Named Insured** and under its jurisdiction, and within the apportionment of the **Named Insured's** operating budget in the **Application**, unless in the form of a cross-claim or third-party complaint arising from a **Claim** made against such director, official or member, that is otherwise covered under this Policy;
 - (3) for actual or alleged violation of the Fair Labor Standards Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation,

unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing, including, but not limited to, any actual or alleged improper payroll practices, wage and hour policies, and payment of overtime or vacation pay; provided, however, that this EXCLUSION B(3) shall not apply to the extent that any **Claim** alleges an **Employment Practices Wrongful Act**;

- (4) for any actual or alleged express or assumed liability of any **Insured** under an indemnification agreement; provided, that this EXCLUSION B(4) shall not apply to any tort liability that would have attached to the **Insured** in the absence of such agreement and is otherwise insured under this Policy;

C. The **Insurer** shall not pay any **Loss** or **Defense Expenses** from any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (1) any actual or alleged damage to, destruction of or loss of use of, any tangible property;
- (2) any actual or alleged bodily injury, corporal punishment, sickness, disease or death;
- (3) emotional distress or mental anguish, provided, however, this EXCLUSION C(3) shall not apply to any emotional distress or mental anguish alleged in any **Claim** for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;
- (4) any **Sexual Abuse or Molestation**, including without limitation any actual or alleged liability for committing **Sexual Abuse or Molestation** or permitting or failing to prevent, stop, detect or reveal **Sexual Abuse or Molestation**, whether such liability is alleged as a violation of civil rights protected under 42 USC 1981 et seq. or any similar federal, state or local law, or as a tort or other breach of duty;
- (5) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Contaminant-Toxin**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Contaminant-Toxin**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (6) any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto or any similar provisions of state statutory law or common law;
- (7) any actual or alleged liability of the **Named Insured** under any express contract or agreement, unless such liability would have attached to the **Named Insured** in the absence of such express contract or agreement. For the purposes of this EXCLUSION C(7), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making, but does

not include any manual of employment policies or procedures issued to the **Insureds** by the **Named Insured**;

- (8) any actual or alleged failure to obtain, implement, effect, comply with, provide notice under or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship or bond;
- (9) any fact, circumstance, situation, transaction, event or **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:
 - (a) underlying or alleged in any mediation, arbitration, grievance proceeding, litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date set forth in ITEM 2(a) of the Declarations:
 - (i) to which any **Insured** is or was a party; or
 - (ii) with respect to which any **Insured**, as of the Inception Date set forth in ITEM 2(a) of the Declarations, knew or should reasonably have known that an **Insured** would be made a party thereto;
 - (b) which was the subject of any notice given prior to the Inception Date set forth in ITEM 2(a) of the Declarations under any other policy of insurance or plan or program of self-insurance; or
 - (c) which was the subject of any **Claim** made prior to the Inception Date set forth in ITEM 2(a) of the Declarations;

if, however, this Policy is a renewal of one or more policies previously issued by the **Insurer** to the **Named Insured**, and the coverage provided by the **Insurer** to the **Named Insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION C(9) to the Inception Date will be deemed to refer instead to the Inception Date of the first policy under which the **Insurer** began to provide the **Named Insured** with the continuous and uninterrupted coverage of which this Policy is a renewal;

- (10) any lockout, strike, picket line, hiring of replacement workers, riot or civil commotion, or other similar actions in connection with labor disputes or labor negotiations;
- (11) any activities of any law enforcement agency or law enforcement personnel, including the operation of any jail cell, holding cell, detention or lock up facility;
- (12) eminent domain, adverse possession, dedication by adverse use, inverse condemnation or condemnation proceedings;
- (13) debt financing, including but not limited to bonds, notes, debentures and guarantees of debt;

- (14) the formulation of tax rates, the collection of taxes and/or the disbursement of tax refunds;
- (15) any procurement, service, construction, architectural or engineering contract;
- (16) construction, architectural, engineering, legal or other professional services rendered by an **Insured** for an individual or entity other than the **Named Insured**;
- (17) war, whether or not declared, or any act or condition incidental to war, including civil war, insurrection, rebellion or revolution; or **Terrorism**.

IV. CONDITIONS

A. Limits of Liability, Retentions:

Regardless of the number of **Claims** brought under this Policy, the number of persons or entities included within the definition of **Insured**, or the number of claimants, the **Insurer's** liability is limited as follows:

(1) Public Officials Professional Liability

Subject to the Policy Aggregate Limit of Liability, the amount set forth in ITEM 3(a) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Loss** in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under INSURING AGREEMENT I.A for which this Policy provides coverage.

(2) Employment Practices Liability and Third Party Liability

Subject to the Policy Aggregate Limit of Liability, the amount set forth in ITEM 3(b) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Loss** in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under INSURING AGREEMENT I.B for which this Policy provides coverage.

(3) Policy Aggregate

The amount set forth in ITEM 3(c) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss** resulting from all **Claims** under INSURING AGREEMENT I.A and INSURING AGREEMENT I.B for which this Policy provides coverage.

(4) Supplemental Payments

Subject to the INSURING AGREEMENT 1.C(1). Aggregate Limit of Liability, the amount set forth in ITEM 3(d) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Defense Expenses** resulting from each **Claim** under INSURING AGREEMENT 1.C(1).

(5) Supplemental Payments Aggregate

The amount set forth in ITEM 3(e) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Defense Expenses** resulting from all **Claims** under INSURING AGREEMENT 1.C(1).

(6) Except as provided in CONDITION A(7) below, **Defense Expenses** payable under INSURING AGREEMENTS I.A or I.B are paid in addition to the applicable Limits of Liability set forth in ITEMS 3(a), (b) or (c) of the Declarations, and payment of **Defense Expenses** by the **Insurer** will not reduce such applicable Limit of Liability.

(7) The **Insurer** shall not be obligated under the Policy to pay more than the applicable Limit of Liability set forth in ITEM 3(c) of the Declarations, for all **Defense Expenses** resulting from **Claims** for which the resulting **Loss** is wholly excluded from coverage under EXCLUSION A of this Policy.

(8) In the event that any **Claim** for which coverage is provided under INSURING AGREEMENT 1.C(1) subsequently becomes a **Claim** for both monetary and **Non-Monetary Relief** for which coverage is provided under INSURING AGREEMENT I.A or I.B, such **Claim** shall become subject to the increased Retention and Limit of Liability applicable under INSURING AGREEMENT I.A or I.B. **Defense Expenses** already reimbursed in connection with such **Claim** by the **Insurer** shall be applied against the applicable Retention, and deemed to reduce the applicable Limit of Liability, under either INSURING AGREEMENT I.A. or I.B.

(9) The obligation of the **Insurer** to pay **Loss** or **Defense Expenses**, or to defend any **Claim**, under INSURING AGREEMENTS I.A, I.B or I.C(1), will only be in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any Retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to advance such amount, in which event the **Insureds** agree to repay the **Insurer** any amounts so advanced.

(10) **Related Claims** will be deemed a single **Claim**, and only one "Each Claim" Limit of Liability, and only one Retention, will apply.

B. Defense and Settlement of Claims:

(1) No **Insured** may incur any **Defense Expenses** or admit liability for, or settle, or offer to settle, any **Claim** without the **Insurer's** written consent.

(2) The **Insurer** will have the right to make investigations and, solely with respect to INSURING AGREEMENTS I.A and I.B, conduct negotiations and enter into the settlement of any **Claim** as the **Insurer** deems appropriate, with the consent of the **Insured**. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, then, subject to the applicable Limit of Liability set forth in ITEM 3 of the Declarations, the **Insurer's** liability for such **Claim** will not exceed:

- (a) the amount for which such **Claim** could have been settled by the **Insurer** plus **Defense Expenses** up to the date the **Insured** refused to settle such **Claim**; plus
 - (b) fifty percent (50%) of any **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above, incurred in connection with such **Claim**. The remaining **Loss** and/or **Defense Expenses** will be carried by the **Insured** at its own risk and will be uninsured.
- (3) It shall be the duty of the **Insured**, and not the **Insurer**, to defend any **Claims** under INSURING AGREEMENT I.C(1). The **Insured** shall have the right to select defense counsel for the investigation and defense of any such **Claim**, subject to the consent and approval of the **Insurer**, which shall not be unreasonably withheld.
 - (4) The **Insurer** will have no obligation to pay **Loss** or **Defense Expenses**, or to defend or continue to defend any **Claim**, under INSURING AGREEMENTS I.A or I.B, after the applicable Limit of Liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss**. If the **Insurer's** maximum aggregate Limit of Liability, as set forth ITEM 3(c) of the Declarations, is exhausted by the payment of **Loss**, the entire premium will be deemed fully earned.
 - (5) The **Insurer** will have no obligation to reimburse **Defense Expenses** in connection with any **Claim** under INSURING AGREEMENT I.C(1) after the **Insurer's** aggregate Limit of Liability, as set forth in ITEM 3(e) of the Declarations, has been exhausted by the reimbursement of **Defense Expenses**.

C. **Other Insurance:**

- (1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance. Other insurance includes, but is not limited to, coverage or benefits provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption.
- (2) Notwithstanding CONDITION C(1) above, with respect to any **Claim** under this Policy for which coverage is available under any insurance policy which applies to claims for bodily injury and/or property damage, the **Insurer** will have no duty to defend such **Claim**, or to pay **Defense Expenses** incurred by or on behalf of any **Insured** in connection with such **Claim** or to contribute to any defense provided to any **Insured** under such other insurance policy, or to reimburse any other insurer, in whole or in part, for **Defense Expenses** incurred in connection with such **Claim**.

D. **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insured** will provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and will do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. At the **Insurer's** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the **Insurer** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The obligations of the **Insured** under this CONDITION D will survive the expiration or cancellation of the Policy.

E. Extended Reporting Period:

- (1) If either the **Insurer** or the **Named Insured** cancels, refuses or declines to renew this Policy for any reason other than nonpayment of premium, and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase the Extended Reporting Period Policy pursuant to one of the available options as set forth below, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** or **Defense Expenses** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION I, whichever is earlier. The Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be purchased if all premiums and retentions due under the Policy have been paid. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.
- (2) Extended Reporting Period Options:
 - (a) a one (1) year extended reporting period for an additional premium of seventy percent (70%) of the Premium set forth in ITEM 6 of the Declarations;
 - (b) a two (2) year extended reporting period for an additional premium of one hundred percent (100%) of the Premium set forth in ITEM 6 of the Declarations; or
 - (c) a three (3) year extended reporting period for an additional premium of one hundred and fifty percent (150%) of the Premium set forth in ITEM 6 of the Declarations.

F. Notice; Timing, and Interrelationship of Claims:

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than seventy-five (75) days after the expiration date of the **Policy Period**.

- (2) If, during the **Policy Period**, the **Insured** first becomes aware of any **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:
 - (a) gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and
 - (c) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

- (3) All notices under CONDITIONS F(1) and F(2) must be sent in writing to the address set forth in ITEM 5 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION F(2), whichever is earlier.

G. Cancellation; No Obligation to Renew:

- (1) The **Insurer** may not cancel this Policy except for failure to pay a premium when due. The **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Named Insured** may cancel this Policy by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in ITEM 6 of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time that cancellation by the **Named Insured** is effective or as soon as practicable thereafter.
- (3) The **Insurer** will not be required to renew this Policy upon its expiration. If the **Insurer** elects not to renew this Policy, the **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal.

H. Representations:

The **Insured** represents that the particulars and statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance upon the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

I. Separation of Insureds; Protection of Innocent Insureds:

- (1) In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void:
 - (a) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and
 - (b) with respect to the **Named Insured**, if, and only if, an elected or appointed official, or the highest ranking member of any board, commission or unit, of the **Named Insured**, or any other person in a functionally equivalent position within the **Named Insured**, knew of such untruth, misrepresentation or omission.
- (2) No act, error or omission of any **Insured** will be imputed to any other **Insured** to determine the application of any Exclusion set forth in Section III of this Policy. If it is determined that an Exclusion applies to an **Insured** in connection with a **Claim**, no coverage shall be available under this Policy for such **Insured**, however, coverage shall continue in effect under this Policy for any other **Insured**, subject to all other terms, conditions, and Exclusions herein.

J. No Action against Insurer:

- (1) No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the **Insurer**.
- (2) No person or entity will have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

K. Insolvency of Insured:

The **Insurer** will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured**.

L. Non-Pyramiding of Limits:

If a **Claim** is made for which coverage is afforded, under this Policy and any other policy or policies underwritten by Darwin Professional Underwriters, Inc. or any entity to which

Darwin Professional Underwriters, Inc. has delegated its underwriting authority, to the **Named Insured** or to any public entity or political subdivision:

- (1) which shares an operational budget with the **Named Insured**; or
- (2) which receives its funding or budget from the same tax base as the **Named Insured**; or
- (3) operates or has jurisdiction over the **Named Insured** or which is operated by or under the jurisdiction of the **Named Insured**;

then the maximum amount payable in the aggregate under this Policy, and all such other policies, shall not exceed the single highest Limit of Liability available under all such policies.

M. Territory:

This Policy applies to **Wrongful Acts** committed by any **Insured**, or to any **Claim** brought against any **Insured**, anywhere in the world.

N. Authorization and Notices:

The **Insureds** agree that the **Named Insured** will act on their behalf with respect to receiving any notices and return premiums from the **Insurer**.

O. Changes:

Notice to or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

P. Assignment:

No assignment of interest under this Policy will bind the **Insurer** without its consent.

Q. Entire Agreement:

The **Insured** agrees that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of its agents relating to this insurance.

R. Headings:

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

In witness whereof, the **Insurer** has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page by a duly authorized representative of the **Insurer**.

In witness whereof, the Insurer has caused this Policy to be executed on the Declarations Page.