

Not For Profit Directors and Officers and Organization Liability Coverage Element

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all the terms and conditions of this policy, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Individual Insurance Coverage

The **Insurer** shall pay **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any actual or alleged **Wrongful Act** of such **Individual Insured**, except when and to the extent that an **Organization** has indemnified the **Individual Insured** for such **Loss**.

Coverage B: Organization Reimbursement Coverage

The **Insurer** shall pay **Loss** of an **Organization** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable for any actual or alleged **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Organization** has indemnified such **Individual Insured** for such **Loss**.

Coverage C: Organization Coverage

The **Insurer** shall pay **Loss** of an **Organization** arising from a **Claim** first made against an **Organization** during the **Policy Period** or the Extended Reporting Period if applicable for any actual or alleged **Wrongful Act** of an **Organization**.

Coverage D: Adverse Media Event Coverage

The **Insurer** shall pay **Adverse Media Event Loss** incurred by an **Organization** solely with respect to an **Adverse Media Event** that first occurs and is reported to the **Insurer** during the **Policy Period**. Payment of any **Adverse Media Event Loss** under this **Coverage Element** shall not waive any of the **Insurer's** rights under this policy or at law. Coverage under this Coverage D shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Adverse Media Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the **Claim** being made.

II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Element**, whether in singular or in plural, shall have the meanings indicated.

- A. **Adverse Media Event** means a public announcement first made during the **Policy Period** of one of the following events which, in the good faith opinion of an **Organization**, did cause or is reasonably likely to cause the publication, broadcast or circulation of unfavorable information regarding an **Organization** which can reasonably be expected to lessen public confidence in the competence of the **Organization** or its products or services:
1. the death, incapacity or criminal indictment of any **Individual Insured** for whom an **Organization** maintains key person life insurance;
 2. an **Organization** intends to file for bankruptcy protection or a third party is seeking to file for involuntary bankruptcy on behalf of such **Organization**;
 3. an **Organization** has defaulted or intends to default on any debt obligation;
 4. the closing or forced sale of a department, unit, or division of an **Organization**;
 5. the commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
 6. an accusation that an **Individual Insured** (or an individual for which an **Insured** is legally responsible) has intentionally caused bodily injury to or death of any person in the performance of his or her duties with a **Organization**;
 7. an **Employee** was the victim of a violent crime while on the premises of an **Organization**;
or
 8. a child was abducted or kidnapped while under the care or supervision of an **Organization**.

- B. **Adverse Media Event Loss** means the reasonable and necessary consulting fees and expenses charged by a risk management, public relations or law firm, including any related costs of printing, advertising or mailing by such firm of materials related thereto, and which are incurred with the **Insurer's** prior written consent:
1. for the purposes of minimizing potential harm to or maintaining or restoring public confidence in an **Organization** because of an **Adverse Media Event**, and
 2. during the pendency of or within the 90 day period prior to and in anticipation of an **Adverse Media Event**, and only until the time when a risk management, public relations or law firm advises an **Organization** that such **Adverse Media Event** no longer exists.
- C. **Claim** means
1. a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges; or
 3. a civil, criminal, administrative or regulatory investigation of an **Individual Insured** for a **Wrongful Act** once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in paragraph 2 of this Definition may be commenced.
- D. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- E. **Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
1. any part-time, seasonal and temporary employee,
 2. volunteer, individual who is contracted to perform work for an **Organization**, or independent contractor for an **Organization** in his or her capacity as such, or
 3. any individual who is leased to an **Organization**, but only if such **Organization** provides indemnification to such employees, volunteers and individuals in the same manner as is provided to such **Organization's** own employees. An **Organization** may request that no coverage be provided under this **Coverage Element** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Element** shall apply as if the **Organization** determined that such independent contractor shall receive coverage.
- F. **Excess Benefit** means an "excess benefit" as defined in Section 4958 of the Internal Revenue Code, 26 U.S.C. §4958.
- G. **Executive** means
1. any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee);
 2. any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in subparagraph 1 of this Definition; or
 3. any past, present or future General Counsel or Risk Manager (or equivalent position).

- H. **Individual Insured** means any
1. **Executive**;
 2. **Employee**; or
 3. **Outside Entity Executive**
- I. **Insured** means any
1. **Organization**; or
 2. **Individual Insured**.
- J. **Loss** means
1. the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
 - (iii) **Excess Benefit** penalty assessed in the amount of ten percent (10%) by the Internal Revenue Service ("IRS") against any **Insured(s)** for an **Executive's** involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any twenty-five percent (25%) penalty assessed by the IRS against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any two hundred percent (200%) penalty assessed by the IRS for failure to correct the award of an **Excess Benefit**;
 2. **Defense Costs**, including those incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following Sections of the Internal Revenue Code of 1986 (as amended): §4911; §4940 (a); §4941; §4942; §4943; §4944; §4945; §6652(c)(1)(A) and (B); §6655 (a)(1); and §6656 (a) and (b);
 3. with respect to Coverage D of this **Coverage Element, Adverse Media Event Loss**.

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
 2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
 3. civil or criminal fines or penalties;
 4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
 5. the costs and expenses of complying with any injunctive relief or other form of non-monetary relief;
 6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
- K. **Non-Indemnifiable Loss** means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, by-laws, operating agreement or similar document of an **Organization**.
- L. **Organization** means:
- (1) the **Named Insured**;
 - (2) any **Subsidiary** thereof;

In the event a bankruptcy proceeding shall be instituted by or against an **Organization**, the term **Organization** shall also mean the resulting debtor-in-possession (or equivalent status outside the United States of America), if any, but only for acts on behalf of an **Organization**. **Organization** does not include and coverage shall not extend under any **Coverage Element** for any **Subsidiary**, or an **Individual Insured** of such **Subsidiary**, for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, during any time when such entity was not a **Subsidiary**.

- M. **Outside Entity** means:
1. any not-for-profit entity, other than a **Subsidiary**; or
 2. any other entity listed as an **Outside Entity** by endorsement to this Policy.
- N. **Outside Entity Executive** means any **Executive** of an **Organization** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of an **Organization**. In the event of a disagreement between an **Organization** and an individual as to whether such individual was acting at the specific request or direction of such **Organization**, this **Coverage Element** shall abide by the determination of the **Named Insured** on this issue and such determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **Coverage Element** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Organization's** specific request or direction.
- O. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- P. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable Limit of Liability and that is acceptable to the claimant.
- Q. **Subsidiary** means:
1. any entity of which the **Named Organization** has **Management Control** ("**Controlled Entity**"), on or before the inception date of the **Policy Period**, either directly or indirectly through one or more **Subsidiaries**;
 2. any not-for-profit entity of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**, and whose assets total less than forty percent (40%) of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**; and
 3. any for-profit entity, whose securities are not publicly traded, of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**, and whose assets total less than 25% of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**. With regard to subparagraphs (1) and (2) of this Definition, the **Named Organization** shall provide the **Insurer** with full particulars of the **Subsidiary** before the end of the **Policy Period**.
- Any entity which becomes a **Subsidiary** during the **Policy Period**, but which exceeds the asset limitations stated in subparagraphs (2) or (3) of this Definition, shall be provided coverage under this Policy, but only upon the condition that within 90 days after the date of its becoming a **Subsidiary** (or until the end of the **Policy Period**, whichever is earlier), the **Named Organization** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the terms and conditions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, the coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Organization** paying, when due, any additional premium required by the **Insurer** relating to such new **Subsidiary**.
- R. **Third Party Violation** means any actual or alleged harassment (including sexual harassment) or unlawful discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability), or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or an applicant for employment with an **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- S. **Wrongful Act** means:
1. with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Individual Insureds** in his or her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his or her status as an **Individual Insured** of an **Organization**;

2. with respect to an **Organization** under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of such **Organization**;
3. with respect to **Outside Entity Executives**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as an **Outside Entity Executive** of an **Outside Entity**;
4. with respect to all **Insureds**, subject to subparagraphs 1, 2 and 3 of this Definition, **Wrongful Act** shall specifically include: (i) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules; (ii) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy; (iii) wrongful entry or eviction or other invasion of the right of occupancy; (iv) false arrest or wrongful detention; (v) plagiarism; and (vi) infringement of copyright or trademark or unauthorized use of title.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. arising out of, based upon or attributable to:
 1. the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or
 2. the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed;
- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior **Insurer's** policy or policy of which this **Coverage Element** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the Continuity Date for this **Coverage Element**, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
- D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the Continuity Date if any **Insured**, as of such Continuity Date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Element**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity, other than as an **Executive** or **Employee** of an **Organization**, or as an **Outside Entity Executive** of an **Outside Entity**;
- F. which is brought by or on behalf of an **Organization** against any **Individual Insured**; provided, however, this Exclusion shall not apply to any derivative **Claim** made on behalf of such **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or such **Organization**;
- G. for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive** if such **Claim** is brought by the **Outside Entity** or any **Executive** thereof;
- H. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress, mental anguish, defamation, invasion of privacy or humiliation arising from a **Wrongful Act**;

- I. for: (i) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this Exclusion shall not apply to **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting cleanup costs;
- J. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any workers' compensation, unemployment compensation, unemployment insurance, retirement benefits, social security benefits, disability benefits, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto, or any similar federal, state, local or foreign statutory law or common law;
- K. alleging, arising out of, based upon or attributable to:
 - 1. the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered;
 - 2. improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
 - 3. failure to provide or enforce legally required meal or rest break periods;
- L. alleging, arising out of, based upon or attributable to the employment of any individual, a **Third-Party Violation** or any wrongful employment practice, including, but not limited to, wrongful termination, dismissal or discharge, breach of implied contract, harassment, sexual harassment or hostile work environment, discrimination, retaliation, employment-related misrepresentations, libel, slander, humiliation, defamation or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful discipline, demotion, negligent employee evaluation, failure to grant tenure or practice privileges, negligent hiring, training or supervision, or other employment-related claim;
- M. alleging, arising out of, based upon or attributable to any purchase or sale of securities by an **Organization** or **Outside Entity** or **Claims** brought by securities holders of such **Organization** or **Outside Entity** in their capacity as such; provided, however, this Exclusion shall not apply to the issuance by an **Organization** of bond debt or **Claims** brought by bond debt holders;
- N. alleging, arising out of, based upon or attributable to:
 - 1. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
 - 2. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of an **Organization** or any members of their family or any entity with which they are affiliated; or
 - 3. political contributions, whether domestic or foreign.
- O. with respect to Coverage C only:
 - 1. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insurer** under any express contract or agreement; provided, however, this Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
 - 2. alleging, arising out of, based upon or attributable to any actual or alleged patent infringement or misappropriation of trade secrets;
 - 3. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Organization or any other **Insured** under any express contract or agreement. This Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
 - 4. alleging, arising out of, based upon or attributable to any product malfunction or failure of any product to perform as a result of any defect, deficiency, inadequacy or dangerous condition in the product or in the design or manufacture of the product;

5. alleging, arising out of, based upon or attributable to any violation of the United States of America CAN-SPAM Act of 2003 or the United States of America Telephone Consumer Protection Act (TCPA) or 1991 or any rules or regulations promulgated thereunder or any similar provisions of federal, state or local statutory law or common law anywhere in the world or any other law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, cell or mobile phone, telephone facsimile machine, computer or other telephonic or electronic devices by or on behalf of or with consent of the Organization; or
6. for the unlawful collection or acquisition of personal information by, or on behalf of, or with the consent or cooperation of any **Insured**.

For the purpose of determining the applicability of the foregoing Exclusions, other than Exclusions B., C., D., F. and O.: (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (2) only facts pertaining to and knowledge possessed by any past, present or future executive director, chief executive officer or chief financial officer (or equivalent positions) of an **Organization** shall be imputed to such **Organization**.

- P. The **Insurer** shall not be liable to make any payment for **Adverse Media Event Loss** in connection with any **Adverse Media Event** under Coverage D:
1. alleging, arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which has been reported under any policy of which this **Coverage Element** is a renewal or replacement or which it may succeed in time;
 2. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Not For Profit Directors and Officers and **Organization Liability Coverage Element** Declarations, or involving any **Adverse Media Event** which is the same or related to that at issue in any pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
 3. alleging, arising out of, based upon or attributable to any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
 4. alleging, arising out of, based upon or attributable to the hazardous properties of nuclear materials.

IV. Limits of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limits of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Element**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations, or Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Element** shall be deemed completely fulfilled and extinguished.
- B. The maximum limit of the **Insurer's** liability for all **Adverse Media Event Loss** incurred with respect to **Adverse Media Events** occurring during the **Policy Period**, in the aggregate, shall be the **Adverse Media Event Loss** Sub-Limit of Liability set forth in Item 3(b) of the Not for Profit Directors and Officers and **Organization Liability Coverage Element** Declarations. The **Adverse Media Event Loss** Sub-Limit of Liability shall be the maximum limit of the **Insurer** under this **Coverage Element** for all **Adverse Media Event Loss**, regardless of the number of **Adverse Media Events** occurring during the **Policy Period**, and shall be part of, and not in addition to, the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Not for Profit Directors and Officers and **Organization Liability Coverage Element** Declarations which is also part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations, such Retention to be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4(a) of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations shall apply to each **Claim** under Coverage A of this **Coverage Element**. The Retention set forth in Item 4(b) of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations shall apply to each **Adverse Media Event** under Coverage D of this **Coverage Element**.
- D. The Retention set forth in Item 4(c) of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations shall apply to each **Claim** under Coverage B or Coverage C of this **Coverage Element**. The Retention applicable to Coverage B shall apply to **Indemnifiable Loss**, whether or not actual indemnification is made, unless such indemnification is not made by an **Organization** solely by reason of its **Financial Insolvency**. An **Organization's** certificate of incorporation, charter or other organization documents, including by-laws and resolutions, shall be deemed to require indemnification and advancement to an **Individual Insured** to the fullest extent permitted by law.
- E. In the event an **Organization** is unable to pay the applicable Retention due to **Financial Insolvency**, then the **Insurer** shall commence advancing **Loss** within the applicable Retention; provided, however, the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Organization** pursuant to Section VI.C. of this **Coverage Element** and Section X. Subrogation of the General Terms and Conditions.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

- A. Defense
The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**. Notwithstanding the foregoing, and solely with respect to a **Claim** under Coverages A, B and C of this **Coverage Element**, the **Insureds** may at their sole option and pursuant to Section VI.B. of this **Coverage Element** tender to the **Insurer** the defense of any **Claim**. The **Insureds'** option to tender the defense does not apply to the coverage afforded under Coverage D this **Coverage Element**, and it shall remain the duty of the **Organization** and not the duty of the **Insurer** to respond to, investigate or otherwise evaluate any **Adverse Media Event**. The **Insurer** shall be entitled to effectively associate with the **Organization** in its response, investigation, evaluation, negotiation or settlement of any such **Adverse Media Event**.
- B. **Insured's** Option to Tender Defense
The **Insureds** shall have the right to tender the defense of a **Claim** under Coverages A, B and C of this **Coverage Element** to the **Insurer**, which right shall be exercised in writing by the **Named Insured** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Section VI. of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is reported in accordance with Section VI. Reporting and Notice of the General Terms and Conditions. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the

defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of Section VII. of this **Coverage Element**. In the event the **Insurer** accepts the tender of defense of such **Claim**, the **Insurer** shall be responsible for the retention of defense counsel for such **Claim**.

C. Advancement

Regardless of whether the defense is so tendered, the **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the terms and conditions of this **Coverage Element** to payment of such **Loss**.

D. General Provisions

The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

E. Settlement

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs**, **Adverse Media Event Loss** or **Investigation Costs**, or retain a risk management, public relations or law firm, without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs**, **Adverse Media Event Loss** and **Investigation Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Element**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Element**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Element**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Element**.

When the **Insurer** has assumed the defense of a **Claim** and if the **Insureds** do not consent to the first **Settlement Opportunity** within 30 days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to all applicable Limits of Liability, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:

1. the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus
2. 80% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 20% of such covered **Loss** excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured.

Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Not for Profit Directors and Officers and Organization Liability **Coverage Element** Declarations or to those **Claims** for which the **Insurer** has not assumed the defense.

VII. Other Insurance

Such insurance as is provided by this **Coverage Element** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Element**. This policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. For any **Claim** involving an **Outside Entity Executive**, this policy shall be specifically excess of any indemnification by the **Outside Entity** and any insurance coverage afforded to any such **Outside Entity Executive** or **Outside Entity**.

VIII. Allocation

If both **Loss** covered under this **Coverage Element** and loss not covered under this **Coverage Element** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **Coverage Element** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs:** 100% of **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss** subject to Section VI. of this **Coverage Element**; and
- B. **Loss** other than **Defense Costs:** All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of **Loss**:

1. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
2. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one (1) arbitrator selected by the **Insureds**, one (1) arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two (2) arbitrators.

IX. Coverage under Coverage D

It is understood and agreed that the **Organization** shall be entitled to payment:

- A. under Coverage D of this **Coverage Element** for **Adverse Media Event Loss** not greater than 90 days after receiving written consent of the **Insurer**.

X. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **Coverage Element** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to this **Coverage Element**, (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Element**;
- B. then pay such **Loss** for which coverage is provided under Coverage B of this **Coverage Element**; and
- C. then pay such other **Loss** for which coverage is provided under this policy.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for **Loss** otherwise payable under Coverages B, C, or D. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to an **Organization**, or make such **Loss** payment directly to the **Individual Insured** in the event of any **Claim** under Coverage A of this **Coverage Element**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Organization** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Element** pursuant to this Section X.