

Board and Executive Liability Coverage Form Directors and Officers Liability Policy

This Board and Executive Liability Coverage Form sets forth coverage for Directors and Officers Liability. When the Declarations Page to this policy indicates that the Directors and Officers Liability Policy has been purchased, the Directors and Officers Liability coverage will be included within the scope of liability coverage provided within the Board and Executive Liability insurance.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words “you” and “your” refer to the entity or entities shown as the Named Member in Item 1 of the Declarations to this policy. The words “we”, “us” and “our” refer to the Company providing this coverage.

The word “Member” means any person or organization qualifying as such under Section II - Who Is A Member of the Directors and Officers Liability Policy.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions of the Directors and Officers Liability Policy.

SECTION I - COVERAGE

1. INSURING AGREEMENT

- A. This Directors and Officers Liability Policy shall, subject to the limit of insurance set forth in the Declarations, pay on behalf of a “Member” all sums which the “Member” shall become legally obligated to pay as “Damages” for “Claims” resulting from any “Wrongful Act” of the “Member” or of any other person for whose “Wrongful Act” the “Member” is legally responsible, but only if such “Wrongful Act” is committed during the policy period. All “Damages” for a “Claim” or “Claims” resulting from the same “Wrongful Act” or a series of continuous or interrelated “Wrongful Acts” will be considered as arising out of one “Wrongful Act” which shall be deemed to have been committed on the date of the first such “Wrongful Act”.
- B. We shall have the right and duty to defend any “Claim” against a “Member” arising from a “Wrongful Act”, subject to the terms and provisions of this Directors and Officers Liability Policy. Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of settlements and judgments. We may at our discretion investigate any allegation of a “Wrongful Act” and settle any “Claim” that may result. The “Member” shall cooperate in providing all information as we may reasonably require.
- C. No “Member” will, except at that “Member’s” own cost, voluntarily make a payment, admit liability for or settle any “Claim” or “Claims” or incur any “Defense Costs” without our prior written consent. We shall not be liable with respect to any settlement or “Defense Costs” to which we have not consented in writing prior to that settlement or incurring of such “Defense Costs”. If we accept the defense of any “Member” to any “Claim” or “Claims”, we have the right to appoint counsel of our choice and to control that defense.
- D. “Defense Costs” are in addition to the applicable Limit of Insurance set forth in Item 3 of the Declarations shown as applicable to the Directors and Officers Each Claim and Aggregate Limit. The payment by us of “Defense Costs” does not reduce the applicable Limit of Insurance.

2. EXCLUSIONS

The coverage extended by this Directors and Officers Liability Policy does not apply to any:

A. Administration of an Employee Benefit Program

Actual or alleged act, error or omission in the "Administration" of any "Employee Benefit Program";

B. Americans with Disabilities Act Costs

Cost or costs of providing reasonable accommodation under the Americans with Disabilities Act or similar federal, state or local laws, including but not limited to, construction or modification of facilities or other property;

C. Assumption of Liability

Actual or alleged liability of others assumed by or on behalf of a "Member" under any contract or agreement, expressed or implied, written or oral;

D. Blood Donation, Drawing or Testing

"Claim" or "Claims" arising out of:

1. the rendering or failure to render services in connection with the making of a blood donation or drawing of blood or testing of blood;
2. an error, omission, defect or deficiency in any test performed or an evaluation, consultation or advice given by or on behalf of any "Member";
3. the reporting of or reliance upon such test, evaluation, consultation or advice;
4. any blood product handled, transported or distributed by or on behalf of a "Member", or reliance upon any representation or warranty made at any time with respect to blood products;
5. the liability of any "Member" for acts or omissions of a doctor, technician, phlebotomist or nurse with respect to any activity identified in 1. through 4. of this exclusion; or
6. the liability of any "Member" for the negligent hiring and/or supervision of a person with respect to any activity listed in 1. through 4. of this exclusion;

E. Bodily Injury and/or Property Damage

"Claim" or "Claims" arising out of, based upon, attributable to, or in any way involving, directly or indirectly, any actual or alleged "Bodily Injury", sickness, disease or death of any person or physical injury or damage to or destruction of any tangible property, including the loss of use of tangible property that is not physically injured;

F. Breach of Contractual Obligation

Liability for payment, other than "Defense Costs", in connection with any "Claim" or "Claims" made against any "Member" which arises from or is alleged to have arisen from an actual or alleged breach of contractual obligation of the "Member" and is made by a party to or third-party beneficiary of the contract or agreement which gives rise to such obligation. As afforded under this provision, coverage for "Defense Costs" arising out of an alleged breach of contract is subject to per contract and annual aggregate limits of \$250,000, as set forth in Section III. A. Limits of Insurance;

G. Claims by an Employee Claimant

"Claim" or "Claims" by, or liability to, an "employee claimant" or to an obligation to indemnify another because of any "claim" or "claims" by, or liability to, an "employee claimant";

H. Claims by Organization

“Claim” or “Claims” brought or maintained by or on behalf of the “Organization”. However, this exclusion shall not apply to “Claim” or “Claims” brought on behalf of the “Organization” by an Attorney General;

I. Communicable Disease

“Claim” or “Claims” arising out of:

1. The actual or alleged transmission of a “communicable disease”; and/or
2. An act, error or omission by or on behalf of an “member” in:
 - a. The supervision, hiring, employment, training or monitoring of any person who transmits, is infected with, and/or alleged to be infected with a “communicable disease”; and/or
 - b. Testing for a “communicable disease”; and/or
 - c. The actual or alleged failure to prevent the spread of a “communicable disease”; and/or
 - d. The actual or alleged failure to report a “communicable disease” to the authorities, including but not limited to the reporting or failure to report any person who is infected with or is alleged to be infected with a “communicable disease”, and/or any place where there is or is alleged to be a presence or spread of a “communicable disease”.

J. Equitable Relief

“Claim” or “Claims” of equitable relief, including but not limited to, injunctions, restraining orders or restitution; including attorney’s fees and costs requested by or on behalf of any party requesting equitable relief;

K. Failure to Report

“Claim” or “Claims”, regardless of legal form or theory, which arises out of the failure to report an incident of improper sexual conduct or physical abuse to the proper authorities or the withholding of pertinent information concerning improper sexual conduct or physical abuse from such authorities;

L. False Publication or Utterance

“Claim” or “Claims” alleging “Personal Injury” arising out of a publication or utterance concerning any person, organization or business enterprise including that person’s, organization’s or business enterprise’s products or services made by or at the direction of the “Member” with knowledge of the falsity thereof. We will defend the individual Member alleged to have committed the “Personal Injury” until such conduct is proven or liability for the “Personal Injury” is admitted. We will defend and indemnify any “Member” who is included in any such “Claim” or “Claims” but has not participated in the activities identified within this exclusion and had no reasonable basis to know of the falsity contained within the publication or utterance at the time of its issuance;

M. Fiduciary Liability

“Claim” or “Claims” which arise out of a breach of responsibility, obligation or duty imposed upon a “fiduciary”, including but not limited to any actual or alleged violation imposed upon a “fiduciary” by the Employee Retirement Income Security Act of 1974, amendments thereto, or any similar provisions of Federal, State or local statutory law or common law;

N. Fiscal Sponsor Exclusion

1. This insurance does not apply to “Damages” arising out of the status of a “Member” as a “Fiscal Sponsor” until:

- a. The "Organization" enters into a "Fiscal Sponsor Agreement" arising out of or in connection with that entity's status as a "Fiscal Sponsor" for that person, entity or organization;
 - b. the "Organization" provides the "Fiscal Sponsor Agreement" to us; and
 - c. the "Organization" provides to us any underwriting information and pays any additional premium required by us.
2. This insurance does not apply to "Damages" that occur before the "Organization" enters into the "Fiscal Sponsor Agreement" which is applicable to the "Claim" or "Claims" in which the "Damages" are asserted.
3. If there is other insurance available to any individual or entity pursuant to a "Fiscal Sponsor Agreement" for "Damages" which are covered by this policy, including but not limited to a duty to defend any "Member" or entity that is subject to the "Fiscal Sponsor Agreement" by that other insurance, the coverage provided by this endorsement is excess to that other insurance.
4. For purposes of this Fiscal Sponsor Exclusion:
 - a. "Fiscal Sponsor" means the status of the "Organization" as the entity organization which offers its legal and tax-exempt status to another person, entity or organization pursuant to a "Fiscal Sponsor Agreement" and/or who participates in the operations of that person, entity or organization by receiving assets and incurring liabilities for the mutual benefit of pursuing charitable goals and in consideration for the benefit of that person, entity or organization has assumed responsibility to manage programs, events, revenue, grants, contributions, contracts and/or insurance programs.
 - b. "Fiscal Sponsor Agreement" means a written contract or agreement by the "Organization" with a person, entity and/or social organization in which the "Organization" agrees to serve as a "Fiscal Sponsor" for such person, entity and/or social organization;

O. Fraud or Dishonesty

"Claim" or "Claims" brought about or contributed to by the fraud or dishonesty of any "Member". We will defend that "Member" until there is a finding of liability or an admission of fraud or dishonesty by that "Member". We will defend and indemnify any "Member" who is included in any "Claim" or "Claims" but has not participated in the activities identified within any such "Claim" or "Claims" or had no reasonable basis to know of the fraud or dishonesty at the time of its commission;

P. Improper Sexual Conduct

"Claim" or "Claims", regardless of legal form or theory, which arises from or is in any way related to improper sexual conduct, including, but not limited to, any actual, alleged, attempted, proposed or threatened sexual abuse or molestation, erotic physical contact or sexual harassment of any person. This exclusion does not apply to any "Claim" or "Claims" of sexual harassment of a third-party business invitee or volunteer of the Organization while that person is acting in his or her capacity as a third-party business invitee or volunteer;

Q. Matters Deemed Uninsurable

Fines, penalties, sanctions, punitive or exemplary "Damages", the multiplied portion of multiplied "Damages", taxes, insurance plan benefits, accommodation costs, wage and hour law amounts, future wages, non-pecuniary relief or liability arising from matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;

R. Mold, Fungus or Microbial Contamination

“Claim” or “Claims” arising out of or contributed to by mold, fungus or “microbial contamination”.

This exclusion applies to but is not limited to, any loss, cost or expense arising out of any:

1. Request, demand, order or statutory or regulatory requirement that any “Member” or others investigate, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or address the effects of mold, fungus or “microbial contamination”; or
2. demand on behalf of a governmental authority for “Damages” due to investigating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of mold, fungus or “microbial contamination”;

S. Other Entity Liability

Actual or alleged act or omission by a director, trustee, officer, employee, committee member, student-in-training, intern or volunteer in his or her capacity or by reason of his or her status as a director, trustee, officer, employee, committee member, student-in-training, intern or volunteer of any entity other than the “Organization”.

T. Penal Statute or Ordinance

“Claim” or “Claims” alleging “Personal Injury” arising out of the violation of a penal statute or ordinance committed by or with the knowledge or consent of the “Member”. We will defend the individual “Member” alleged to have committed the “Personal Injury” until such conduct is proven or liability for the “personal injury” is admitted. We will defend and indemnify any “Member” who is included in any such “Claim” or “Claims” but has not participated in the activities identified within this exclusion and had no reasonable basis to know of such “Personal Injury” at the time of its commission;

U. Personal Profit or Advantage

“Claim” or “Claims” based upon or attributable to a “Member” having gained any personal profit or advantage to which that Member was not legally entitled. We will defend the individual Member alleged to have committed such “Wrongful Act” until such conduct is proven or liability for the “Wrongful Act” is admitted. We will defend and indemnify any “Member” who is included in any “Claim” or “Claims” but has not participated in the activities identified within any such “Claim” or “Claims” or had no reasonable basis to know of those activities at the time of its commission;

V. Physical Abuse

“Claim” or “Claims”, regardless of legal form or theory, which arises from or is in any way related to any form of physical abuse, including but not limited to, assault, including assault with a deadly weapon or with force likely to produce “Bodily Injury”, battery or unreasonable physical restraint or constraint of any person;

W. Pollution

“Claim” or “Claims” where all or part of such “Claim” or “Claims” is, directly or indirectly, based upon, attributable to, arising out of, resulting from or in any manner related to, or in consequence of:

1. the actual, alleged or threatened presence, discharge, dispersal, seepage, migration release or escape of “pollutants”, or
2. any “Claim”, “Claims” or expense arising out of any:
 - a. Request, demand, order or statutory or regulatory requirement that any “Member” or others investigate, test for, monitor, clean up, remove, contain, treat, detoxify or

neutralize or in any way respond to or address the effects of "Pollutants"; or

- b. demand on behalf of a governmental authority for "Damages" due to investigating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "Pollutants";

X. Printing of Materials

"Claim" or "Claims" based on, arising out of, directly, or indirectly resulting from the printing of periodicals, advertising matter, or any and all jobs taken by any "Member" to be printed for a third party, when the periodical, advertising matter, or other printing is not a regular part of any "Member's" own publication;

Y. Professional Service

"Claim" or "Claims" based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the rendering or failure to render a "Professional Service" in connection with the "Member's" business, including but not limited to:

1. providing medical, surgical, chiropractic, dental, phlebotomy, acupuncture, psychiatric or nursing treatment, diagnosis or services, including the furnishing of food or beverage in connection therewith;
2. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances;
3. providing veterinary services;
4. providing legal services; or
5. offering any advice in connection with a "Professional Service";

Z. Temporal Requirements

Actual or alleged "Wrongful Act" that is committed prior to or after this policy period;

AA. Wage and Hour Law Violation

Liability for payment of any "Claim" or "Claims" under federal, state or local wage and hour or similar laws.

SECTION II - WHO IS A MEMBER

1. "Member" means:

A. The entity or entities identified as the "Organization". Any such entity or entities must:

1. be organized chiefly to provide or fund charitable, religious, educational, scientific, health or human services;
2. be an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a), or any corresponding sections of any future federal tax code. Any member which receives a final determination that it no longer qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code, shall immediately notify the Company of such determination and the effective date of such determination.
3. have the Named Member incorporated in California or qualified to do business in California, if the policy is issued by the Nonprofits Insurance Alliance of California.

- B. any natural person who was, is, or becomes duly elected as a director or trustee, or duly elected or appointed officer, committee member or volunteer of the "Organization", solely in his or her capacity as such. "Member" also means the spouse or "Domestic Partner" of a director, trustee, officer, committee member, or volunteer, of the "Organization" for a claim arising solely out of his or her status as the spouse or "Domestic Partner" of a "Member", provided, however, that no coverage shall be afforded for any "Claim" or "Claims" based on or arising out of a "Wrongful Act" of that spouse or "Domestic Partner".

2. EXTENSIONS AND LIMITATIONS

A. Estates & Legal Representatives

Subject otherwise to all the terms and conditions of this policy, coverage hereunder shall extend to "Claims" for a "Wrongful Act" of a "Member" who is deceased or against the estate, heirs or legal representatives of such "Member".

B. Existing Subsidiary

To be covered under the terms and conditions of this policy, a "Subsidiary" existing at the time of policy inception must be designated in Item 1 of the Declarations to this policy as a Named Member.

C. Newly Created or Acquired Subsidiary

- 1. If any "Subsidiary" which qualifies as a tax-exempt organization under the provision of Internal Revenue Code section 501(c)(3) is created or acquired by a "Member" after the inception of this policy, such "Subsidiary" shall be included under the terms and conditions of this policy subject to:

- a. the giving of written notice to us of such creation or acquisition as soon as practicable, but in no event more than 120 days following such creation or acquisition; and
- b. the giving of any underwriting information and the payment of any additional premium required by us.

The status of an entity as a "Subsidiary" will not be in effect until:

- a. the receipt by us of the notice by the "Member" of that entity's creation or acquisition by the "Member";
- b. the production to us of underwriting information requested by us; and
- c. the payment of any additional premium required by us.

- 2. If any "Subsidiary" which does not qualify as a tax-exempt organization under the provisions of the Internal Revenue Code section 501(c)(3) is created or acquired by a "Member" after the inception of this policy, such "Subsidiary" shall not be included under the terms and conditions of this policy until a "Member" has:

- a. given written notice of such creation or acquisition together with any underwriting information which may be required by us;
- b. received written approval from us; and
- c. paid any additional premium required.

D. Consolidation or Merger

In the event that the "Organization" is acquired by merger, or consolidates with, or is merged into or acquired by any other organization or entity after the inception of this policy, immediate written notice, but in no event more than 30 days following that merger, consolidation or acquisition, shall be given to us, together with such information as we may require. In order to continue the coverage extended

by this policy, the "Organization" must pay us any additional premium required by us as a result of that merger, consolidation or acquisition.

E. First Employee Liability Extension

The exclusions within the Directors and Officers Liability Policy regarding an "Employee Claimant" are not applicable for 90 days after the "Organization" hires its first employee during this policy's period, or from the date when the first employee is hired by the "Organization" during this policy's period until the end of the policy period, whichever is shorter.

However, this extension is not automatic and will be afforded only if:

- a. the "Organization" submits an application to us for the Employment Practices Liability Policy before the 91st day after the first employee is employed by the "Organization";
- b. the "Organization" agrees to pay the applicable premium for the Employment Practices Liability Policy calculated for the time beginning when the first employee is hired; and
- c. no "Member" has knowledge prior to the submission to us of the Board and Executive Liability supplemental application of an act, error or omission involving that employee or subsequent employees that a reasonable person would know would give rise to a claim or "suit".

SECTION III - LIMITS OF INSURANCE

A. Limit of Insurance

The Directors and Officers Liability Limit of Insurance as noted in Item 3 of the Declarations is the most we will pay for the sum of all settlements and judgments under this policy regardless of the number of "Members", "Claims" presented or "suits" brought or persons or entities making a "Claim" or "Claims". If a limit for "Defense Costs" is extended pursuant to an exception to an exclusion within Section I-Coverage, 2. Exclusions, only one such limit will be applicable to any one policy year, even if there are multiple "Claims" and/or claimants seeking recovery under that coverage, subject to the Anti-Stacking Condition within Section IV, Condition B. The applicable Limit of Insurance is subject to the Deductible identified in the Declarations unless otherwise specified elsewhere in this policy.

B. Deductible

We shall only be liable for that amount payable in settlement or satisfaction of a "Claim", "Claims" or judgments arising from any "Claim" or "Claims" which is in excess of the Deductible stated in the Declarations applicable to this Directors and Officers Liability policy. A single deductible shall apply to all amounts payable arising from all "Claims" alleging the same "Wrongful Act". The Deductible will apply to "Damages" and "Defense Costs" incurred by us in the defense and/or investigation of a "Claim" or "Claims". If there is no payment by us for "Damages" in any "Claim" or "Claims", the Deductible will still apply to any payment by us of "Defense Costs" incurred with respect to that "Claim" or "Claims".

C. Other Payments

We will pay with respect to any "Claim" or "Claims" we defend:

1. All expenses we incur, including but not limited to, reasonable and customary attorney's fees, costs and disbursements incurred by us in the defense of any "Claim" or "Claims."
2. The cost of an appeal bond, attachment bond or similar bonds, but only for bond amounts within the applicable limit of insurance and for "Damages" which are covered under this policy. We do not have to apply for or furnish the bond or bonds.
3. "Defense Costs" incurred in the appeal of a "Claim" or "Claims" that we have defended, but only if the appeal of the "Claim" or "Claims" seeks "Damages" which are covered under this policy.
4. All costs taxed against a Member in the "Claim" or "Claims", but this does not include attorney's fees or expert witness fees taxed as costs pursuant to statute.

5. Pre-judgment interest awarded against a Member on that part of the judgment which is covered under this policy. If we make an offer to pay the applicable limit of insurance available under this policy, we will not pay any pre-judgment interest based on that period of time after the offer.

The amounts identified within "Other Payments" are in addition to the Limit of Insurance identified in Item 3 of the Declarations for this policy.

SECTION IV - CONDITIONS

A. Action Against Us

No action shall lie against us unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the "Member's" obligation to pay shall have been finally determined either by judgment against the "Member" after actual trial or by written agreement of the "Member", the claimant or claimants and us.

B. Anti-Stacking

If two or more policies issued by us to you under the Board and Executive Liability Coverage Form apply to a "Claim", "Claims" or "suits" for "Damages" resulting from a "Wrongful Act"; it is our intent that the policies do not provide any duplication or overlap of coverage for the same "Claim", "Claims" or "suits", and the combined maximum Limit of Liability under all such policies shall not exceed the highest applicable Limit of Liability under any one policy identified within the Declarations Page, regardless of the number of "Members", claimants, "Claims" or "suits". Any "Claim" or suit which includes multiple claimants and/or plaintiffs and which arises out of a series of continuous or interrelated "Wrongful Acts" will be considered as arising out of one "Wrongful Act", which is deemed to have been committed on the date of the first such "Wrongful Act", without regard to the status of the respective claimant, claimants, plaintiff and/or plaintiffs at the time of that "Wrongful Act".

C. Arbitration

In consideration of the premium charged, it is hereby understood and agreed that this policy shall be deemed to have been executed in the State of California and any interpretation of the policy relating to its construction, validity and/or performance shall be made in accordance with the laws of the State of California.

It is further understood and agreed that all disputes which may arise under or in connection with this policy, including any determination of the amount of loss, shall be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. Unless otherwise agreed by the parties or ordered by a court of competent jurisdiction, the arbitration will be held in San Francisco, California, U.S.A. The award rendered by the arbitrator(s) shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction thereof.

D. Assignment

This Directors and Officers Liability policy and any and all rights hereunder are not assignable without our written consent.

E. Bankruptcy

Bankruptcy or insolvency of a "Member" or of the estate of that "Member" will not relieve us of our obligations under this policy.

F. Cancellation

1. The "Organization" may cancel this policy by mailing or delivering to us 10 days advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the "Organization" written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver the notice of cancellation to the "Organization's" last mailing address shown in the Declarations.
4. Notice of Cancellation will state the effective date of cancellation. The coverage under this policy will end on the date specified in the Notice of Cancellation.
5. If this policy is canceled, we will send the "Organization" any premium refund determined on a pro rata basis. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of Notice of Cancellation.

G. Changes

The terms of this Policy shall not be waived or changed, except by written endorsement issued to form a part of this policy.

H. Conformance to Statute

Any terms or conditions of this policy which are in conflict with any statute are hereby amended to cover only those provisions and coverages as applicable so as to conform to such statute.

I. Cooperation

Each "Member" shall cooperate with costs in any investigation, settlement or defense of a "Claim". The "Member's" cooperation shall include but not be limited to:

1. promptly sending to us copies of any demands, notices, summonses and legal papers received in connection with a "Claim" or "Claims";
2. authorizing us to obtain records and other information;
3. assisting us in the enforcement of any right against any person or organization which may be liable to the "Member", and
4. attending hearings, trials, and depositions and securing and giving evidence and obtaining the attendance of witnesses.

If a Member fails to satisfy the condition or conditions identified in this Cooperation Condition and if we sustain actual and substantial prejudice as a result of that failure, the coverage under this policy may, at our sole discretion, be voided.

J. Jurisdiction

This policy and each of its provisions, to the extent permitted by applicable law, shall be construed in accordance with the law of California.

K. Non-renewal

If we decide not to renew this Directors and Officers Liability policy, we will mail or deliver to the "Organization" written notice of the non-renewal to the "Organization's" last mailing address shown in the Declarations. If notice is mailed, proof of mailing will be sufficient proof of notice.

L. Notice and Authority

It is agreed that the "Organization" shall act on behalf of each "Member" and all persons extended coverage under this policy with respect to:

1. the giving and receiving of any return premiums that may become due under this policy;
2. the receipt and acceptance of any endorsements amending all or a part of this policy.

M. Notice of Claim and Reporting Provisions

1. If a "Member":
 - a. receives written or oral notice from any person or entity that it is the intention of such person or entity to hold any "Member" responsible for a "Wrongful Act"; or
 - b. becomes aware of any circumstances which may subsequently give rise to a "Claim" or "Claims" being made against a "Member" for a "Wrongful Act";

the "Member" shall give written notice promptly to us. The "Claim" or "Claims" must result from a "Wrongful Act" that is committed during this policy's period.
2. Each "Member" shall, as a condition precedent to the "Member's" rights under this Policy, promptly give us written notice of any actual or potential "Claim" or "Claims" and shall give us such information and cooperation as we may reasonably require.
3. All correspondence relating to notice of a "Claim", "Claims" or "suit" or of circumstances which may result in a "Claim" or "Claims" should be directed to your broker identified in the Declarations page to this Policy and to us, at the following mailing address:
P.O. Box 8507, Santa Cruz, CA. 95061; and email to us at:
claims@insurancefornonprofits.org

N. Other Insurance

1. The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When the insurance extended by this policy is primary and a "Member" has other insurance which is stated to be applicable to the loss on an excess or contingent basis only, the amount of our liability under this policy shall not be reduced by the existence of such other insurance.

When both this policy and other insurance apply to the loss on the same basis, whether primary, excess or contingent, we shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below.

- a. Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, we shall not be liable for a greater

proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurer or insurers then continue to contribute equal shares of the remaining amount of the loss until each has paid its limit in full or the full amount of the loss is paid.

- b. Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, we shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

- 2. Subject to the Anti-Stacking Condition within Condition B, no coverage shall be afforded by this policy if coverage for the "Claim" or "Claims" is afforded under any other policy issued by us to the "Organization" or to any "Member" against whom the "Claim" or "Claims" is asserted.

O. Representations

You have represented that the representations and statements contained in the application for this policy are true and are the basis of which this policy has been issued. The representations and statements in the application for this policy are to be considered as incorporated in and constituting part of this policy. We have relied on the representations and statements contained in the application for insurance in issuing this policy and would not have issued this policy but for the representations and statements contained within the application.

P. Separation of Members

Except with respect to the Limits of Insurance, the information contained in the application for this policy and any right or duty specifically assigned to the "Organization", this insurance applies:

- 1. as if each "Member" were the only "Member" to which coverage under this policy applies;
- 2. separately for each Member against whom a "Claim" or "Claims" is made; and
- 3. no fact pertaining to knowledge possessed by any "Member" shall be imputed to any other "Member" to determine if coverage for the "Claim" or "Claims" is available.

Q. Territory

Coverage shall extend to any "Wrongful Act" of a "Member" committed anywhere in the world, but only if that "Member's" responsibility to pay "Damages" is determined in a "suit" on the merits which is determined within the United States of America.

R. Transfer of Rights of Recovery against Others to Us

If any Member has rights to recover all or part of any payment or payments we have made under this policy from any other person or entity, those rights are transferred to us. The "Member" shall execute all documents required to effect that transfer and shall do everything that may be necessary for us to secure such rights including the execution of such documents necessary to enable us to bring suit in the name of the "Member". Upon our request, the Member will do all things reasonably necessary to assist us in enforcing those rights.

SECTION V - DEFINITIONS

The following definitions are applicable to the insurance provided by this policy:

- A. "Administration" means giving information to employees about an "Employee Benefit Program", interpreting an "Employee Benefit Program", handling of records or enrolling an employee in an

"Employee Benefit Program".

- B. "Bodily Injury" means bodily injury, sickness, disease or death including emotional distress or mental anguish sustained by a person.
- C. "Claim" or "Claims" means any demand or any judicial or administrative "suit" or proceeding against any "Member", including any appeal therefrom, which seeks monetary "Damages". It is understood that:
 - 1. The "Claim" or "Claims" must result from a "Wrongful Act" that is committed during the time that this Policy is in effect;
 - 2. Multiple demands, "suits" or proceedings arising out of the same "Wrongful Act" shall be deemed to be a single "Claim".
- D. "Communicable Disease" means any contagious disease, illness or syndrome which is or has been transmitted to a person or place by bacteria, virus, fungi, protozoa, a toxic agent or a combination of these.
- E. "Damages" means a monetary judgment for compensatory damages, including claimant's attorney's fees or expert witness fees awarded pursuant to a contract, a statute or law but only if the "suit" or proceeding seeks compensatory damages. "Damages" does not include taxes, severance payments, amounts to reimburse an employee for expenses incurred as a result of employment, equitable or injunctive relief and/or matters uninsurable under the law pursuant to which this policy is construed.
- F. "Defense Costs" means reasonable and necessary fees, costs and expenses, incurred by us or by the "Member" with our prior written consent, in the investigation, adjustment, defense and appeal of any "Claim" or "Claims" against the "Member" but excluding salaries of any "Member" and excluding loss of earnings by any "Member." "Defense Costs" do not include claimant's attorney fees or expert witness fees awarded pursuant to a contract, a statute or law.
- G. "Domestic partner" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law pursuant to which this policy will be construed.
- H. "Employee claimant" means an employee, applicant for employment, former employee, officer, former officer, director and/or former director, intern or student-in-training of any "Member" while acting in that capacity as well as any derivative "Claim" or "Claims" of any spouse, "Domestic Partner" child, brother, sister, parent, dependent, successor, subrogee or assignee of any such employee, applicant for employment, former employee, officer, former officer, director, former director, intern or student-in-training.
- I. "Employee Benefit Program" means:
 - 1. group life insurance, group accident or health insurance dental, vision and hearing plans and flexible spending accounts, provided that no one other than an employee of the "Organization" may subscribe to such benefits and such benefits are made generally available to those employees who satisfy the plan's eligibility requirements;
 - 2. profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided no one other than an employee of the "Organization" may subscribe to such benefits and such benefits are made generally available to all employees who are eligible under the plan for such benefits;
 - 3. unemployment insurance, social security, workers' compensation, disability benefits, and any other similar plan;

4. vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation health club subsidiaries; and
 5. any other similar benefits designated and added to this Policy by endorsement.
- J. "Fiduciary" means any "Member" or "Organization" with a responsibility, obligation or duty involving financial interests or obligations of that "Member" or "Organization", including the management of investments and/or assets of others', or the management and/or oversight of an employment-related plan for the benefit of the employees of the "Organization" including but not limited to any "Employee Benefit Program".
- K. "Microbial contamination" means: any contamination, either airborne or surface, which arises out of or is related to the presence of mold, fungus or spores, including, without limitation, *Penicillium*, *Aspergillus* or *Stachybotrys chartarum*.
- L. "Organization" means the entity or entities designated in Item 1 of the Declarations to this Policy as the Named Member.
- M. "Personal injury" means an injury arising out of one or more of the following offenses committed in the course of the business of the "Organization":
1. false arrest, wrongful detention or imprisonment, abuse of process or malicious prosecution;
 2. libel, slander, defamation of character, or invasion of privacy;
 3. wrongful entry, eviction or other invasion of the right of privacy;
 4. infringement of copyright or trademark or unauthorized use of title; or
 5. plagiarism or misappropriation of ideas.
- N. "Pollutants" means any substance identified on a list of hazardous substances issued by the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. "Pollutants" includes but are not limited to solids, liquids, gaseous or thermal irritants or contaminants, infectious or otherwise including smoke, vapor, soot, acid rain, fumes, acids, alkalis, chemicals and "waste." "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed. "Pollutants" shall also mean any unlisted substance exhibiting characteristics of ignitability, corrosivity, reactivity or toxicity to a degree which would cause it to be so listed if the subject were to be addressed by the Environmental Protection Agency or state, county, municipality or locality counterpart thereof.
- O. "Professional Service" means conduct arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.
- P. "Subsidiary" means any entity which is more than 50% owned by the "Organization", or which is more than 50% owned by one or more "Subsidiary".
- Q. "Suit" means a civil proceeding in which monetary "Damages" to which this insurance applies are alleged. "Suit" includes:
1. An arbitration proceeding in which such "Damages" are claimed and to which the "Member" must submit or does submit with our consent; or
 2. Any other alternative dispute resolution proceedings in which such "Damages" are claimed and to which the "Member" submits with our consent.

R. "Wrongful Act" means any breach of duty, error, neglect, omission or act committed during the policy period and solely in the course of the activities of the "Organization", including but not limited to:

1. "personal injury";
2. "Claim" or "Claims" of harassment, sexual or otherwise, or discrimination brought by a past or present volunteer of the "Organization", solely in his or her capacity as a volunteer;
3. "Claim" or "Claims" of harassment, sexual or otherwise, or discrimination, brought by a third-party business invitee of the "Organization" in his or her capacity as a business invitee.

All "Damages" for "Claims" resulting from the same "Wrongful Act" or a series of continuous or interrelated "Wrongful Acts" will be considered as arising out of one "Wrongful Act" which shall be deemed to have been committed on the date of the first such "Wrongful Act".