

malicious or criminal act or omission. This exclusion does not apply to an act that is an element of a Claim of malicious prosecution. The Pool will provide a defense under the terms of this Coverage Document in any Claim or lawsuit arising or resulting from fraud or dishonesty or any malicious or criminal act by a Member performing a Law Enforcement Activity, who is not identified as the perpetrator of the fraud, dishonesty, or malicious or criminal act and is sued in his or her official capacity only. This exclusion does not apply to a Claim against a Member that seeks to impose personal liability on the Member for actions he or she takes under color of state law.

3. Unfair, discriminatory or unlawful practices relating to employment or to applicants for employment, trainees or volunteers; any errors, omissions or negligent acts relating to employment, including the processes of hiring and firing and the provision of wages and benefits; any work-related Bodily Injury of a Member for which a Claim for Workers' Compensation could be made.
4. Continuous or repeated exposure to the same or similar conditions in which any exposure existed or happened before the Coverage Document Period or the retroactive date set forth in the CCD, if any.
5. Any interference with or violation of property rights or a reduction or loss in the value of real or personal property other than Property Damage; inverse condemnation, takings as understood under any law, adverse possession, dedication by adverse use or nuisance; or the intentional, negligent or accidental discharge, disbursement, release or escape of pollutants, or potential pollutants including smoke, vapors, soot, fumes, acids, alkalis, toxins, pathogens, chemicals, particulates, fibers, radioactivity or radiation, whether thermal, thermonuclear or otherwise, solids, liquids or gases, waste materials or irritants, contaminants, or other pollutants or potential pollutants of any kind into or upon land, any area below ground, air, the atmosphere, or water; nor to demands or actions arising from any governmental direction or request that the Member test for, monitor, clean up, remove, contain, analyze, examine, treat, detoxify or neutralize pollutants or potential pollutants. Except that tear gas, mace or similar substances are not considered pollutants or potential pollutants when used or handled in the performance of a Law Enforcement Activity.
6. Any premise defect on the real property of Member or on real property under the control of Member.
7. The performance or non-performance of judicial acts or judicial duties; nor to the performance or non-performance of prosecutorial acts or prosecutorial duties.

B. THIS COVERAGE DOCUMENT ALSO DOES NOT APPLY TO:

1. Any Claim which alleges, involves or arises from any liabilities, responsibilities, duties or activities assumed, undertaken or accepted by any Member pursuant to

any contract or agreement whether written, oral, or implied. This exclusion does not apply to Claims brought against a Member that are otherwise covered under this Coverage Document that arise from the Law Enforcement Activities of an employee of the Named Member pursuant to a mutual law enforcement assistance agreement, so long as the employee has been assigned to perform the activities as part of his or her employment with the Named Member.

For the purposes of this Section, **Employee** means an individual who: (1) is deputized or appointed by either the governing body or an elected official of the Named Member; (2) is paid a salary by the Named Member; and (3) is entitled to receive as compensation from the Named Member the same benefits afforded to other employees of the Named Member. This Section does not provide coverage to any individual who is not an employee of the Named Member as defined in this Section.

This Coverage Document does not provide coverage to any entity other than the Named Member. Coverage is not provided for any entity that is created by a mutual law enforcement assistance agreement to which the Named Member is a party. Coverage is not provided to any other entity that enters into a mutual law enforcement assistance agreement with the Named Member. The terms of a mutual law enforcement assistance agreement do not become a part of this Coverage Document.

2. Any act, service, or duty for which an individual Member is being compensated or otherwise engaged other than by a Law Enforcement Department or Agency or other Agency named in the CCD. Except that a Claim arising out of performance of a Law Enforcement Activity performed by Member during a period of time for which the Member receives compensation from other than Named Member is not excluded if: (a) performance of the Law Enforcement Activity is undertaken on behalf of the Named Member; and (b) the Law Enforcement Activity and compensation are authorized by Named Member;
3. Any Claim for the return of money or other property seized, held, auctioned or sold by Member, including any forfeited money or other property or for the value of the money or other property;
4. Demands or actions seeking equitable relief, or redress in any form other than money Damages; actions or demands for costs, charges, attorney's fees or other fees or expenses in relation to any action, suit or proceeding seeking relief or redress in any form other than money Damages; or any investigatory, administrative, disciplinary, or criminal proceeding against a Member;
5. Any Claim by or through any Member against another Member, either individually or collectively; any Claim by any public official on behalf of a Member against any Member; any Claim by any public official or any governmental department or agency against any Member; any Claim by a volunteer engaged in activities for

any Member against any Member; or any Claim which alleges or involves Property Damage to property of any Member or to property of any employee, Official, agent or Volunteer of the Member arising out of or in the course of activity with or employment by the Member, including loss of use of property. For the purpose of this exclusion, the term Member includes an individual who was a Member at the time the Claim arose.

6. Any medical malpractice Claim, including a health care liability Claim as defined in Section 74.001 of the Texas Civil Practice & Remedies Code, against a physician, physician's assistant or other health care provider.

C. **PRIVACY OR SECURITY EVENT LIABILITY AND EXPENSE COVERAGE EXCLUSION**

1. This Coverage Document does not provide coverage for any liability, loss, penalty or expense arising directly or indirectly from any Privacy or Security Event.
2. For purposes of this exclusion the following definitions apply:

Computer System means computers and associated input and output devices, data storage devices, networking equipment and backup facilities:

- a. Operated by and either owned by or leased to any Member; or
- b. Operated by a third party service provider and used to provide hosted computer application services to the Member or for processing, maintaining, hosting or storing the Member's electronic data pursuant to a written contract with the Member for such services.

Personal Information means an individual's name in combination with one or more of the following:

- a. Information concerning the individual that constitutes "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and implementing regulations;
- b. Medical or health care information concerning the individual, including without limitation protected health information as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and implementing regulations;
- c. The individual's Social Security number, driver's license or state identification number, credit, debit, or other financial account numbers and associated security codes, access codes, passwords or personal

identification numbers that allow access to the individual's financial account information; or

- d. Other nonpublic personally identifiable information, as protected under any local, state, federal or foreign law;

Provided, however, Personal Information does not include information that is lawfully available to the public, including without limitation information lawfully available from any Member or any local, state, federal or foreign governmental entity.

Privacy or Security Event means:

- a. The actual or reasonably suspected theft, Loss or unauthorized disclosure of or access to Personal Information in the care, custody or control of the Named Member or Covered Person or for which the Named Member or Covered Person is legally responsible, regardless of whether such Personal Information is maintained in electronic, paper or any other format; or
- b. A violation or failure of the security of a Computer System, including but not limited to unauthorized access, unauthorized use, a denial of service attack or receipt or transmission of malicious code.

SECTION V – CONDITIONS

A. COMPLIANCE WITH CONDITIONS

If any Member materially breaches any warranty or materially fails to satisfy any condition of this Coverage Document, whether or not the Pool is actually prejudiced, there shall be no coverage, including any obligation to defend, for any Member as to the particular Claim or action in connection with which the breach occurred.

B. CCD

The CCD issued by Pool for any Coverage Document Period constitutes terms and conditions for that Coverage Document Period, and constitutes part of the Coverage Document for the Coverage Document Period. In the case of an extension of coverage, the CCD may be issued in the form of an extension endorsement.

C. DELIVERY OF THIS COVERAGE DOCUMENT

Delivery of this Coverage Document to the Named Member shall be considered delivery to each Member and the Named Member is authorized by each Member to accept delivery on the Member's behalf.

D. APPLICATION FOR COVERAGE

The Application and any Renewal Application for this coverage submitted to the Pool, which is signed by the Named Member or its authorized representative, is part of this Coverage Document for purposes of reliance by the Pool on information contained in the Application. Any substantial mistake or misrepresentation in an Application for coverage which is relied upon by the Pool terminates all the obligations of the Pool under this Coverage Document, including those of payment and defense. The Pool may, at its sole option, elect to waive termination of any part of its obligations.

E. ASSISTANCE AND COOPERATION OF THE MEMBER.

1. The Member shall, without charge to the Pool, provide and assist and cooperate with the Pool in obtaining (whether by discovery in pending litigation against the Member or otherwise) truthful and accurate information pertaining to a Claim and Damages, including information bearing on the existence or nonexistence of coverage for the Claim or Damages under this Coverage Document, and for these purposes shall (a) upon the request of the Pool, or its authorized representative, submit to examination under oath by a representative of the Pool, (b) attend and participate in hearings, (c) attend and testify truthfully in depositions and trials, and (d) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits, in giving accurate and truthful written statements to the Pool's representatives and meeting with the Pool's representatives for the purposes of investigation and defense and for determining whether the Claim or Damages are covered under this Coverage Document.
2. The Member shall not, except at its own cost, make any payment, assume or admit any liability, waive any defense or settle any Claim or action or incur any expense, without the prior written consent of the Pool. Any liabilities admitted, assumed or settled, defenses waived or any payments made, or expenses, including legal expenses, incurred by Member, without prior written consent of the Pool, shall be the sole obligation of the Member.
3. Further, the Member shall not demand, or agree to, arbitration or mediation of any Claim made against the Member without prior written consent of the Pool.
4. Each Member agrees to cooperate with the Pool in the prosecution of Claims, suits, indemnity actions, cross-claims, and counterclaims as the Pool, in its sole discretion, shall deem to be appropriate with respect to any Claim or suit brought against any Member and each Member agrees to execute papers as are required to be executed in the defense of any action against any Member, or with respect to the prosecution of Claims, suits, indemnity actions, cross-claims, and counterclaims.
5. The Named Member is authorized by each Member to give and receive all notices to and from the Pool on the Member's behalf.

F. NOTICE TO THE POOL

As a condition precedent under this Coverage Document, the Member shall:

1. Promptly and as soon as reasonably practicable report to the Pool all events or occurrences that could reasonably be expected to result in the Pool being required to consider a Claim against Member, together with information concerning any particulars known by Members and including any reasonably obtainable information with respect to persons, events, locations and dates involved;
2. Immediately upon receipt of a Claim or Notice of Claim by Member, and during the Coverage Document Period, provide the Pool written notice of any Claim or Notice of Claim made against the Member together with information concerning any particulars known by Members and including any reasonably obtainable information with respect to persons, events, locations and dates involved;
3. If suit is brought against a Member, immediately forward to the Pool any demand, notice, summons or other process received directly or indirectly by the Member or by the Member's representative, along with a precise statement to the Pool of when the demand, notice, summons or other process was received, and by whom it was received;
4. Where conditions precedent in this paragraph require that notice be given to the Pool, immediately render the notice or report to the person or agent specifically designated by the Pool as authorized to receive notice for the Pool. The Pool and the Named Member expressly agree that only notice delivered to an authorized recipient for the Pool can satisfy any notice requirement.

G. ACTION AGAINST THE POOL.

1. No legal action may be brought against the Pool unless there has been full compliance with all terms of this Coverage Document. In addition, no action may be brought against the Pool in regard to any matter involving a Claim or suit or proceeding involving this Coverage Document until the amount of the Member's obligation with respect to the pertinent Claim or suit or proceeding has been finally established either by: (a) final judgment against the Member by the court of last resort after actual trial of the issues and appeal has been determined, or if the time to appeal has expired without an appeal having been taken; or (b) by written agreement of the Member, the Claimant and the Pool.
2. Nothing contained in this Coverage Document shall give the Member or any person, firm, corporation or organization other than the Pool, any right to join the Pool as a party in any action or proceeding against the Member to determine the Member's liability.

3. Any action against the Pool by the Member or any other person must be brought within two years and one day after the cause of action accrues.

H. SUBROGATION

If the Pool makes any payment under this Coverage Document, the Pool shall be subrogated to all of the Member's rights of indemnity or recovery, against any individual, firm, corporation, organization, or any other person. The Member shall execute and deliver instruments and papers and do whatever else shall be reasonably requested to advance the Pool's pursuit of its subrogation rights, and Members shall do nothing after any Claim is made to prejudice the Pool's rights. The Pool shall be entitled to take over and conduct, in the name of the Member, for the Pool's own benefit, any Claim to which the Pool is subrogated against any third party. The Pool may pursue or settle any Claim for its own benefit at its sole discretion.

I. CANCELLATION OR NON-RENEWAL

1. Either party to this Coverage Document may cancel or non-renew this Document by giving notice of such intent to the other party. The notice must be in writing and must be delivered by certified mail, return receipt requested via U.S. Mail to the other party. Except for notice of cancellation or non-renewal by the Pool for nonpayment of Contributions, such notice must be given not less than 60 days prior to the effective date of cancellation.
2. The Pool may, in the Pool's sole discretion, permit the Named Member, upon the Named Member's written request, to terminate this Coverage Document by giving the Pool not less than 30 days' notice.
3. Notice of cancellation by the Named Member must be addressed to:

Texas Association of Counties Risk Management Pool
Attn: Member Services
P.O. Box 2131
Austin, Texas 78768-2131
4. The Pool may cancel or non-renew this Coverage Document:
 - a. For nonpayment of Contributions, unless other provision for payment has been made by express written agreement between the Named Member and the Pool;
 - b. If there is an increase in risk or hazard within the Named Member's control which would result in an increase in the rate or amount of Contribution;
 - c. For fraud in the obtaining of coverage;

- d. If the Pool is placed in supervision, conservatorship, receivership and the cancellation is approved or directed by the supervisor, conservator or receiver;
 - e. If the Named Member does not implement risk management techniques required by the Pool during the initial Coverage Document Period, or if risk management techniques do not result in the Named Member's attaining a risk level sufficient to meet the Pool's underwriting criteria during the initial coverage period;
 - f. If the Interlocal Participation Agreement between the parties is terminated or the Named Member withdraws or is expelled from the Pool; or
 - g. For the Named Member's violation of any of the Named Member's other obligations under the Pool's Bylaws or the Interlocal Participation Agreement between the Named Member and the Pool.
5. If the Pool cancels this Coverage Document for nonpayment of Contributions the cancellation shall be effective at 12:01 a.m. on the 10th day following the Pool's placement of the notice of cancellation in the U.S. Mail. These Conditions do not waive or alter any other applicable provisions of the Pool's Bylaws or the Interlocal Participation Agreement between the Named Member and the Pool.
 6. Notice of cancellation by the Pool may be given to the county judge or presiding officer of the Named Member at the Named Member's address shown in the CCD.

J. RETAINED CONTRIBUTION PROPORTIONS

1. If this Coverage Document is terminated by the Named Member, the Pool shall retain the customary short rate proportion of the contribution.
2. If this Coverage Document is terminated by or on behalf of the Pool, the Pool shall retain the customary pro-rata proportion of the contribution.

K. CERTAIN MODIFIED TERMS

An increase in contribution or deductible, or a reduction in Limits of Liability or Aggregate, or addition of endorsements to this Coverage Document, does not constitute a termination or refusal to renew this Coverage Document.

L. CHANGES

This Coverage Document, the CCD, the Pool's Bylaws, the Interlocal Participation Agreement between the Named Member and the Pool, and the Pool's duly-adopted

underwriting standards and criteria constitute the agreements between the Named Member and the Pool concerning the coverage afforded. The Pool may make changes to this Coverage Document, as permitted by the Pool's Bylaws, the Interlocal Participation Agreement between the Named Member and the Pool, and the laws governing the creation and operation of the Pool. This Coverage Document's terms cannot be amended or waived without the written authorization of the Pool. Any changes to the Pool's Bylaws, the Interlocal Participation Agreement between the Pool and the Named Member, or the Pool's underwriting standards or criteria are incorporated.

M. LIBERALIZATION

If the Pool changes this Coverage Document to provide more coverage without additional premium charge, the additional coverage will be effective as of the day indicated in the Pool's written notice of change to the Named Member.

N. WAIVER

Notice to any agent or knowledge possessed by any agent or by any other person of any fact, condition or other matter which might constitute grounds for denial of coverage shall not effect a waiver or a change in any part of this Coverage Document or estop the Pool from asserting any rights, including a right to deny coverage, under this Coverage Document. The terms of this Coverage Document may not be waived or changed except by a written endorsement issued by the Pool.

O. ASSIGNMENT

Assignment of any interest under this Coverage Document shall not bind the Pool without its prior written consent.

P. OTHER COVERAGE OR INSURANCE

If there is or may be other coverage or insurance against any incident, loss or Claim for which coverage is afforded under this Coverage Document, the coverage provided under this Coverage Document shall be deemed to be excess over any valid and collectible coverage or insurance available to any Member against whom a Claim is made. Members shall respond promptly to any reasonable inquiries from the Pool concerning other coverage or insurance that may be afforded to the Member or certain Members.

However, coverage will not be extended under this Coverage Document for any Claim for which a Member has or had occurrence-based coverage or insurance in place at the time of the Wrongful Act or occurrence resulting in any Claim.

Q. JURISDICTION AND VENUE

The validity and interpretation of this Coverage Document will be governed by the laws of the State of Texas. This Coverage Document is performable and enforceable in Travis County, Texas. The state courts in Travis County will be the sole and exclusive venue for any litigation, special proceeding, or other proceeding arising from the performance of this Coverage Document.

R. ENTIRE AGREEMENT

The Coverage Document, the Pool's Bylaws and Plan of Operation and the Interlocal Participation Agreement between the Pool and the Named Member together constitute the entire coverage agreement and this agreement cannot be modified except as agreed in writing.

S. PAYMENT

Payment of contribution to Pool by Named Member, as consideration for this agreement, shall be made as set forth in the CCD.

T. TWO OR MORE COVERAGE DOCUMENTS ISSUED BY THE POOL

If this Coverage Document and any other coverage document issued to the Named Member by the Pool apply to the same Claim, the aggregate maximum limit of liability under all coverage documents shall not exceed the highest applicable limit of liability under any one coverage document. This condition does not apply to any coverage document issued by the Pool specifically to apply as excess coverage over this Coverage Document.

U. EXAMINATION OF THE NAMED MEMBER'S BOOKS AND RECORDS

The Pool may examine and audit the Named Member's books and records as they relate to this Coverage Document or as may be required for the administration of the Pool.

V. INSPECTIONS AND LOSS CONTROL

The Pool has the right but is not obligated to:

1. Make inspections and surveys at any time;
2. Make risk management appraisals of the Named Member's operations, policies, procedures, vehicles, personnel and facilities;
3. Require the Named Member to implement and follow risk management procedures or techniques established by the Pool to reduce risk sufficient to

meet the Pool's underwriting criteria. Any inspections, surveys, reports or requirements relate only to the Named Member's eligibility for liability coverage and the Contribution to be charged. The Pool does not make safety inspections. The Pool does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public, nor does the Pool warrant that conditions are safe or healthful or comply with laws, regulations, codes or standards.

This condition applies not only to the Pool, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

SECTION VI - EXTENDED REPORTING PERIOD

- A. If the Pool terminates or refuses to renew this Coverage Document for reasons other than the Named Member's non-payment of contributions or deductibles or non-compliance with the terms and conditions of this Coverage Document, or if the Named Member terminates or refuses to renew this Coverage Document, the Named Member, upon payment of an additional contribution as set forth below, shall have the option to extend the Claims made coverage afforded by this Coverage Document to apply to Claims first made against the Named Member during the 12 or 24 month period immediately following the Effective Date of the termination. An Optional Extended Reporting Period is limited to and shall only be effective for purposes of any error, omission or negligent act committed before the date on which the Optional Extended Reporting Period began and after the retroactive date set forth in the CCD, if any, subject to the terms, conditions, definitions, Limits of Liability, exclusions and deductible provisions of the Coverage Document in effect on the date the Optional Extended Reporting Period is exercised.
- B. An increase in contribution or deductible, or reduction in Limits of Liability or Aggregate, does not constitute a termination or refusal to renew this Coverage Document that would trigger an option to elect an Optional Reporting Period.
- C. The extension of coverage for Claims made and reported subsequent to termination of the Coverage Document shall be endorsed, if purchased, and shall be referred to in this Coverage Document as the Optional Extended Reporting Period. Individual Claims made and reported during any Optional Extended Reporting Period shall be deemed to have occurred during the most recent Coverage Document Period and all terms of the Coverage Document shall apply.
- D. The contribution for the Optional Extended Reporting Period elected by the Named Member shall be:
 - 1. For a 12 month Optional Extended Reporting Period: 100 percent of the full annual contribution for coverage under this Coverage Document;

2. For a 24 month Optional Extended Reporting Period: 150 percent of the full annual contribution for coverage under this Coverage Document.
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- E. As a condition precedent to the Named Member's right to purchase the Optional Extended Reporting Period coverage, the Named Member must tender payment of all contributions and any unpaid deductibles due for the preceding period of coverage. The Named Member's right to purchase the Optional Extended Reporting Period coverage must be exercised by notice in writing and tendering of the contribution due not later than 10 days after the termination of this Coverage Document. If notice and contributions are not timely and properly made to the Pool, the Named Member shall not at a later date have any right to elect an Optional Extended Reporting Period.
 - F. At the beginning of any Optional Extended Reporting Period, the entire contribution shall be deemed earned, and if the Named Member terminates the Optional Extended Reporting Period before the expiration of its full term for any reason, the Pool shall not be liable to return to the Named Member any portion of the contribution for the Optional Extended Reporting Period.



TEXAS ASSOCIATION *of* COUNTIES

RISK MANAGEMENT POOL

PUBLIC OFFICIALS LIABILITY COVERAGE DOCUMENT

PUBLIC OFFICIALS LIABILITY COVERAGE

**THIS IS A CLAIMS MADE COVERAGE DOCUMENT.
PLEASE READ THE ENTIRE COVERAGE DOCUMENT CAREFULLY.**

The Texas Association of Counties Risk Management Pool (Pool) was and is created to enable Member to purchase coverage against liability Claims. This is not a contract of insurance, but is an agreement for liability coverage pursuant to the provisions of Chapter 119 of the Texas Local Government Code, and under Chapters 791 and 2259 of the Texas Government Code. Under this agreement, political subdivisions create and contribute to a pool as an alternative to commercial insurance markets.

Except to the extent as may otherwise be provided herein, the coverage of this Coverage Document is limited to only those Claims THAT ARE FIRST MADE AGAINST THE MEMBER DURING THE COVERAGE DOCUMENT PERIOD AND TIMELY REPORTED TO POOL.

The Contribution and Coverage Declarations (CCD) issued to the Named Member by the Pool is part of this Coverage Document, subject to the terms, conditions, definitions, exclusions, and sublimits contained in this Coverage Document, any endorsements, and the Interlocal Participation Agreement (IPA).

Words and phrases that are capitalized have special meaning. Refer to SECTION II-DEFINITIONS

SECTION I - CLAIMS MADE COVERAGE AGREEMENT: PAYMENT AND DEFENSE

In consideration of the Member's contribution to the Pool, and in reliance upon the representations made by Member in the Application for this coverage, and subject to all provisions contained in this Coverage Document, including any endorsements, the Pool agrees as follows:

A. WHAT WE WILL PAY

The Pool will pay on behalf of the Member, subject to all provisions contained in this Coverage Document, any sums which the Member shall become legally obligated to pay as Damages or Claims Expenses solely by reason of any Wrongful Act stated in a Claim.

PROVIDED ALWAYS that the following are true:

1. Notice of Claim occurs during the Coverage Document Period;
2. Notice is provided by the Member to the Pool during the Coverage Document Period (or during the Optional Extended Reporting Period, if applicable);

3. The Wrongful Act for which Claim is made happened during the Coverage Document Period or on or after the retroactive date set forth in the CCD; provided, however that if the Wrongful Act happened before the Coverage Document Period, the Named Member did not give notice to any prior insurer or coverage provider; and
4. The Member had no knowledge or reason to believe at the inception of the Coverage Document Period or any extensions or renewals that any Wrongful Act was likely to result in a Claim being made against any Member.

B. DEFENSE, SETTLEMENT AND ALLOCATION OF DAMAGES

1. Subject to all of the provisions contained in this Coverage Document, including Sections I.B.4 and I.B.5, the Pool has the right and duty to defend any Claim against the Member alleging a Wrongful Act and seeking Damages, even if a Claim is groundless, false or fraudulent. The Pool shall have the right to incur Claims Expenses and to make an investigation and settlement of any Claim or suit as may be deemed expedient by the Pool and the Pool may settle any Claim at its sole discretion and without the consent of the Member. The determination by the Pool as to any settlement and as to the reasonableness of settlements and Claims Expenses shall be conclusive on the Member. The Pool shall have the right, but not the obligation, to appeal any judgment adverse to the Member.
2. The Pool shall have no obligation to pay sums the Member shall become legally liable to pay as Claims or Damages that are not covered by this Coverage Document (including amounts in excess of any applicable sublimits) or to contribute to a settlement of any such Claims or Damages. In negotiating any settlement or Claim payment, the Pool shall have the right to request the Member make an appropriate contribution for uncovered Claims or Damages. If both Damages covered by this Coverage Document and Damages not covered by this Coverage Document are incurred or are to be incurred because a Claim made against the Member or Damages sought from the Member includes both covered and uncovered matters, the Pool and the Member will use their best efforts to determine a fair and appropriate allocation of Damages between that portion of Damages that is covered under this Coverage Document and that portion of Damages that is not covered under this Coverage Document. The Pool and the Member will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense or settlement of, the Claim. In the event the Pool and the Member cannot reach an agreement as to an allocation of Damages, then the parties will each contribute the amount proposed by the Pool until a final amount is agreed upon or determined pursuant to the provisions of this Coverage Document and applicable law.

3. a. Upon written request to the Pool by Named Member for pre-Claim involvement of Pool prior to the formal existence of a Claim, the Pool has the right, but not the duty, to designate attorneys, investigators, or other persons to perform work and incur expenses on behalf of the Named Member where the Pool anticipates a Claim.

b. If, in the sole discretion of the Pool, employing the services of attorneys, investigators, or other persons to perform work and incur expenses on behalf of any Member, or the Pool, is deemed appropriate to protect Pool interests prior to the formal existence of a Claim, the Pool has the right, but not the duty, to employ persons as a Pool operational expense.
4. The Pool shall have the right, but not the duty, to monitor and participate in the defense of any investigatory, administrative or disciplinary proceeding relating to any Wrongful Act of the Member. Should the Pool elect to defend, monitor or participate under this provision, the election shall not constitute a waiver of any rights the Pool may have pursuant to any of the provisions of this Coverage Document.
5. If the Pool determines that the Limits of Liability under this Coverage Document may be insufficient to pay or settle any covered Claim or Claims, or if there are multiple or competing Claims against one or more Members, the Pool may, in its sole discretion, tender the remaining Limits of Liability available under this Coverage Document, either to the treasury of the Named Member, a person authorized to receive funds for the Named Member, or the registry of a court of competent jurisdiction and exhaust the Limits of Liability under this Coverage Document. Tender by the Pool of an amount that would exhaust either the Limits of Liability or the Aggregate shall terminate: (1) the Pool's liability to pay any amounts for unincurred Claims Expenses with regard to any Claim or Claims; (2) the Pool's duties to defend any Member from any Claim or Claims; and (3) the Pool's liability to pay any amount for Damages with regard to any Claim or Claims.
6. Exhaustion of the amount designated as Aggregate in the CCD terminates: (1) the Pool's duties to defend any Member in connection with any Claim or Claims made against the Member after the exhaustion of the Aggregate; and (2) the Pool's liability to pay any amounts for Claims Expenses or Damages for any Claim or Claims.
7. The Pool will provide, subject to the other provisions of the Coverage Document, a defense to a constitutional or statutory takings Claim that is excluded from coverage under Section IV.A.6; provided, however, that the Pool's obligation is limited to \$50,000 per Claim and \$50,000 in the Aggregate. This limited duty to defend is the Pool's sole obligation under this provision. The Pool has no duty to indemnify any Member for sums Member becomes legally obligated to pay as

Damages. All Claims against a Member for Damages subject to Section IV.A.6 are specifically excluded from coverage.

8. The Pool will provide, subject to the other provisions of the Coverage Document, a defense to a malicious or criminal act or omission Claim against a Member that is excluded under Section IV.A.7; provided, however that the Pool's obligation is limited to the defense of the Named Member or any Member not identified as the perpetrator of the malicious or criminal act or omission. The Pool has no duty to indemnify any Member for sums the Member becomes legally obligated to pay as Damages if the Member consented to or had knowledge of the malicious or criminal acts or omissions. All Claims against a Member identified as the perpetrator of a malicious or criminal act or omission subject to Section IV.A.7 for Damages arising from the acts or omissions are specifically excluded from coverage.
9. Claims Expenses shall not be deducted from the Limits of Liability.

SECTION II - DEFINITIONS

- A. **Aggregate** means the Pool's total liability for Damages resulting from all Claims first made against the Members during the Coverage Document Period and shall not exceed the amount stated in the CCD as Aggregate regardless of the time when the Claim is paid. If the Named Member exercises the right to purchase the Optional Extension Coverage, the Aggregate limit for the Optional Extended Reporting Period shall be no more than that which remains of the Aggregate limit from the immediately preceding Coverage Document Period.
- B. **Claim** means a written demand received by the Member specifically for money Damages, including punitive or exemplary damages and back wages, against the Member, but does not include:
 1. Any demand or suit based upon a Wrongful Act performed while Member was engaged in any activity for which Member received compensation from any source other than the Named Member or was engaged other than by and through the specific authority of the Named Member;
 2. Any demand or suit arising out of a contractual obligation or the breach of a contract, including constructive and implied contracts and demands or suits under a theory of quantum meruit or under any theory of estoppel.

Claims based on or arising out of the same Wrongful Act or interrelated Wrongful Acts, involving one or more of the Members, shall be considered a single Claim, and a Claim so considered shall be deemed to have been made solely during the one Coverage Document Period which includes the time the Claim is initially made.

C. **Claims Expenses** means:

1. Fees incurred by the Pool for an attorney designated by the Pool;
2. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, if incurred by the Pool, except for those fees, costs, and expenses of the employees of the Texas Association of Counties, or expenses of a Claims adjustment contractor for the Pool;
3. Fees charged by any attorney designated by the Member with the written consent of the Pool, but only as to those fees incurred after receipt by Member of written consent from the Pool; and
4. Expenses incurred where the Pool, in accordance with Section I.B.3.a. of this Coverage Document, responds to a written request by Named Member for pre-Claim involvement of the Pool prior to the formal existence of a Claim to perform work and incur expenses on behalf of the Named Member.

D. **Contribution and Coverage Declarations** (CCD) means the document that sets forth the specific indication of the coverage, limits and deductibles, Contributions and special provisions elected by each Member, including any modifications made by issuance of any amendatory CCD or endorsement.

E. **Coverage Document** means this agreement between the Pool and Member, including any endorsements.

F. **Coverage Document Period** means that one-year period Designated in the CCD, unless otherwise specified, or the period as shortened by termination, if any.

If the Optional Extended Reporting Period coverage is purchased by the Member, it shall in no way increase the Coverage Document Period or any renewal, except that any Optional Extended Reporting Period shall be included in the previous Coverage Document Period for purposes of application of the Aggregate limit of the Pool's liability.

G. **Damages** means actual and compensatory money damages only, including punitive damages, arising out of Wrongful Act of Member, and does not include:

1. penalties, fines, sanctions, unpaid or withheld wages, overtime, back benefits, any similar types of damages, or restitution of any kind for any damages just enumerated, even if designated as compensatory or liquidated damages under any federal or state law;

2. any damages resulting from harm to or interference with property of any Member or any employee, agent or volunteer of the Member arising out of activity with or employment by Member, including loss of use of property;
 3. any damages resulting from property seized, held, auctioned or sold by Member, including any forfeited money or other property or its value, or resulting from violation of or interference with property rights;
 4. any amount which may become due and payable under the terms of any contractual obligation whether imposed by law or by agreement of Member;
 5. attorney's fees and any costs, charges, fees or expenses of litigation if any are demanded from Member without an accompanying demand for other relief which would constitute Damages, or that portion of any attorney's fees and any costs, charges, fees or expenses of litigation demanded from Member which may be attributed or allocated to a Claim or any part of a Claim excluded under this Coverage Document (including any part of a Claim that exceeds a sublimit imposed under this Coverage Document), to any demand for relief other than for actual or compensatory damages, or to any other demand or matter not covered under this Coverage Document.
- H. **Effective Date** means the date the Coverage Document becomes effective in the Coverage Document Period. The Effective Date of any renewal of this Coverage Document shall be considered the Effective Date of a new Coverage Document Period.
- I. **Limits of Liability** the Limits of Liability of the Pool for payment of Damages shall be the applicable Limit shown in the CCD under Limits of Liability.
- J. **Member** means (1) Named Member; (2) those persons, individually or collectively, acting within the scope of their Official Capacity who are duly elected or appointed officials or employees or volunteers of the Named Member; and (3) a board, committee or similar entity that (a) is created solely by the Named Member's governing body, (b) is comprised only of persons appointed by the Named Member's governing body, (c) serves only the Named Member's purposes, and (d) is funded at least in part by Named Member.

The Juvenile Board is a Member, but only if the Juvenile Board serves only the Named Member's county. If the Juvenile Board serves more than one county, the Juvenile Board is a Member only if each county represented on the Juvenile Board is a Member of the Pool. The individuals serving on the Juvenile Board are Members only if they are officials or employees or volunteers of the Named Member.

The district attorney is not a Member, nor is a district judge. An individual serving as criminal district attorney, county/district attorney or another statutorily-created office that is, effectively, a combination of the offices of county attorney and district attorney is a Member, but only when performing functions performed by the county attorney in a county that has a county attorney.

- K. **Named Member** means a county or other political subdivision so designated in the CCD.
- L. **Notice of Claim** means one of the following, whichever occurs first:
1. For a lawsuit against the Member, notice of the suit by service of process or otherwise; or
 2. The Member obtains or receives knowledge or reason to believe that any Wrongful Act may reasonably be expected to result in a Claim.
- M. **Official Capacity** means only those functions and responsibilities that come within the scope of performance of a Member for or on behalf of the Named Member.
- N. **Optional Extension Coverage** means the optional coverage that may be purchased if the Pool, or the Named Member, cancels or refuses to renew this Coverage Document as set forth in Section VII of this Coverage Document.
- O. **Optional Extended Reporting Period** means the period for which the Named Member elects to purchase Optional Extension Coverage.
- P. **Pool** means the Texas Association of Counties Risk Management Pool.
- Q. **Wrongful Act** means any actual or alleged error or misstatement, omission, act of neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the Member, or Members in their Official Capacity, individually or collectively, or any matter claimed against them solely by reason of their having served or acted in an Official Capacity.

SECTION III - LIMITS OF LIABILITY

The following Limits of Liability apply unless otherwise stated on the CCD.

A. LIMITS OF LIABILITY

Regardless of the number of:

1. Members involved in a Claim,

2. Persons or entities who sustain Damages, or
3. Claims made,

Exhaustion of the Limits of Liability shown in the CCD shall terminate the Pool's liability to pay any Damages or Claims Expenses. The Pool shall never be required to pay Damages in excess of the applicable Limits of Liability shown in the CCD in connection with any Claim or Claims.

Claims based on or arising out of the same or related acts, omissions or events involving one or more Members shall be considered a single Claim and only one deductible and one Limits of Liability shall be applicable to the Claim. If Member has, or is a beneficiary of, other Coverage Documents through the Pool, the Pool shall not be required to pay an amount in excess of the appropriate Limits of Liability shown in the CCD in connection with any Claim. The Pool and the Named Member agree that Pool coverages do not combine with respect to payment of Damages or Claims Expenses.

The Pool's total liability for Damages for all Claims during any one Coverage Document Period shall never exceed the Aggregate stated in, Limits of Liability, of the CCD.

Tender by the Pool of an amount that would exhaust either the Limits of Liability for any Claim or the Aggregate Limits of Liability applicable to all Claims to the treasury of the Named Member, a person authorized to receive funds for the Named Member, or the registry of a court of competent jurisdiction, shall terminate the Pool's liability to pay any amounts for Damages or Claim Expenses with regard to any Claim or Claims.

B. SUPPLEMENTARY PAYMENTS

The Pool will pay, in addition to the applicable Claims Expenses and the Limits of Liability, as shown in CCD:

1. Expenses incurred by Texas Association of Counties employees, or Claims adjustment contractors in the monitoring and supervision of Claims;
2. Interest, but only on that portion of any judgment which does not exceed the Pool's Limits of Liability thereon, which accrues after entry of the judgment and before the Pool has paid or tendered or deposited into the court registry that portion of the judgment which is the Pool's liability;
3. Up to \$250 per bond premium on appeal bonds in any suit defended by the Pool and up to \$250 premium on bonds to release attachments in any suit, for an amount not in excess of the Limits of Liability. However, in accordance with its

discretionary right to appeal, the Pool shall have the right, but not the obligation, to apply for or furnish any appeal bond.

C. DEDUCTIBLE

The Pool will pay only those Damages and Claims Expenses, with regard to a Claim, which are in excess of the Deductible amounts stated in the CCD. The Deductible amount stated in CCD shall be borne by Named Member and shall not be borne by the Pool. The Named Member is wholly responsible for paying the entire Deductible shown in the CCD. A Member, other than the Named Member, has no personal responsibility for paying any portion of the Deductible, and is fully covered for the amount of any liability not in excess of \$100,000, as referenced in Texas Civil Practices and Remedies Code Section 108.002.

At the option and discretion of the Pool, the Pool may pay all or part of the Deductible amount to effect settlement, and, upon notification to the Named Member, Named Member shall promptly reimburse the Pool for all expenditures. If the Pool pays any Claims Expenses which fall within the Deductible amount stated in the CCD, the Named Member, upon notification, shall promptly reimburse the Pool for all expenditures.

The Deductible amount stated in the CCD shall be applicable to each Claim and request for pre-Claim assistance under Section I.B.3.a involving each Member and shall include payments for Damages and Claims Expenses.

D. SUBLIMITS

1. County or District Clerk. The Aggregate Limit of Liability is exclusive of a Claim against the county clerk or a deputy county clerk and the district clerk or a deputy district clerk for liability incurred through errors or omissions in the performance of their official duties. The Limit of Liability for a Claim for liability incurred through errors or omissions in the performance of their official duties against the county clerk or a deputy county clerk shall not exceed \$1,000,000. The Limit of Liability for a Claim for liability incurred through errors or omissions in the performance of their official duties against the district clerk or a deputy district clerk shall not exceed \$1,000,000. These Limits of Liability are provided in addition to and are distinct from the Limits of Liability provided under this Coverage Document.
2. Back Wages. The Limits of Liability are inclusive of a Claim against a Member for back wages subject to a sublimit not to exceed \$50,000 per Claim and a \$100,000 annual Aggregate Limit of Liability.
3. Prosecutor. The Limits of Liability are inclusive of a Claim against the county attorney, an assistant county attorney, an assistant district attorney, or other

employee of the county attorney or district attorney for malicious prosecution subject to a sublimit not to exceed \$500,000 per Claim and a \$1,000,000 annual Aggregate Limit of Liability.

4. Takings. The Limits of Liability are inclusive of defense costs for a statutory or constitutional takings Claim up to a sublimit of \$50,000 per Claim and a \$50,000 annual Aggregate Limit of Liability.

SECTION IV - EXCLUSIONS

A. THIS COVERAGE DOCUMENT DOES NOT APPLY TO:

Claims arising out of, in whole or in part, directly or indirectly, or arising in concurrent cause with the following:

1. Fraud, dishonesty or bad faith of any Member, except as an element of a Claim of malicious prosecution; and except that Members shall be defended, under the terms of this Coverage Document, as to any claims upon which suit may be brought against them by reason of any alleged fraud or dishonesty or bad faith on the part of any Member, unless a judgment or other final adjudication adverse to the Member shall establish that acts of dishonesty or fraud committed by the Member were material to the cause of action so adjudicated.
2. Bodily Injury, sickness, assault or battery, disease or death of any person.
3. Physical injury to property or loss of use of property.
4. False arrest, false imprisonment, excessive use of force, wrongful detention, wrongful eviction, wrongful entry, or other invasion of the right of private occupancy, wrongful or improper service of process, humiliation, libel, slander, or violation of an individual's right of privacy.
5. Any acts, services or duties in furtherance of or supervision of the law enforcement pursuits or activities of any law enforcement officials, department or agency of the Named Member including budgeting for law enforcement, except as an element of: (1) a Claim of malicious prosecution; or (2) a Claim arising out of actual or alleged wrongful employment practices brought by employees of the Named Member who are not elected officials of the Named Member.
6. Inverse condemnation, takings as understood under any law, adverse possession, dedication by adverse use or nuisance; nor the intentional, negligent or accidental discharge, disbursal, release or escape of pollutants, or potential pollutants, including smoke, vapors, soot, fumes, acids, alkalis, toxins, pathogens, chemicals, particulates, fibers, radioactivity or radiation, whether thermal, thermonuclear or otherwise, solids, liquids or gases, waste materials or irritants, contaminants, or other pollutants or potential pollutants of any kind into

or upon land, any area below ground, air, the atmosphere, or water; nor demands or actions arising from any governmental direction or request that the Member test for, monitor, clean up, remove, contain, analyze, examine, treat, detoxify or neutralize pollutants or potential pollutants.

7. Malicious or criminal act or omission of any Member who committed, consented to, or had knowledge of the malicious or criminal act or omission. This exclusion does not apply to an act that is an element of a Claim of malicious prosecution. The Pool will provide a defense under the terms of this Coverage Document in any Claim or lawsuit arising or resulting from a malicious or criminal act or omission by a Member for the Named Member and any Member not identified as the perpetrator of the malicious or criminal act or omission and sued in his or her Official Capacity only.
8. Acts or omissions relating to Member's fiduciary capacity as respects any employee benefit plan or as trustee of any employee benefit plan.
9. Continuous or repeated exposure to the same or similar conditions in which any exposure or condition existed or happened before the Coverage Document Period or the retroactive date set forth on the CCD, if any.
10. Laboratory testing or medical malpractice. For the purpose of this exclusion a medical malpractice Claim includes a health care liability Claim as defined in Section 74.001 of the Texas Civil Practice & Remedies Code, against a physician, physician's assistant or other health care provider.
11. A regulatory act or similar act by a Member that restricts limits or prohibits a person or entity's right to: 1) use property owned by the person or entity; or 2) to pursue a certain business.
12. Preparation of bid specifications, failure to supply governmental services, and strikes, riots or civil commotion.
13. The failure to pay: a) any bond, including interest on any bond; or b) any debt, financial guarantee or debenture.
14. The ownership, operation, management, use, control, repair, maintenance, demonstration, loading or unloading, or entrustment to others of any aircraft and any policies, practices, customs, usages or procedures related to the above. For the purposes of this exclusion "aircraft" means any machine capable of flight, including an airplane, helicopter, glider, balloon, or aerial vehicle that is not controlled by a person from within or on the aerial vehicle.

B. THIS COVERAGE DOCUMENT ALSO DOES NOT APPLY TO:

1. Any Claim by or through any Member against another Member, either individually or collectively, nor to any Claim by any public official on behalf of a Member against any Member; nor to any Claim by a volunteer engaged in activities for any Member against any Member; however, this exclusion shall not apply to Claims arising out of actual or alleged wrongful employment practices brought by employees of the Named Member who are not elected officials of the Named Member, nor to any Claim brought against a county clerk or deputy county clerk, or district clerk or deputy district clerk for liability incurred through errors and omissions in the performance of their official duties. For the purpose of this exclusion, the term Member includes an individual that was a Member at the time the Claim arose.
2. Demands or actions seeking equitable relief, or redress in any form other than money Damages; nor to any action, suit or proceeding seeking relief or redress in any form other than money Damages; nor to any investigatory, administrative, disciplinary, or criminal proceeding against a Member.
3. Demands or actions related to a Claim resulting from the actual or reasonably suspected theft, loss or unauthorized disclosure of or access to electronic information or a violation or failure of the security of the Named Member's Computer System, except as provided in Section V, Privacy and Security Liability and Expense Coverage.

SECTION V – PRIVACY OR SECURITY EVENT LIABILITY AND EXPENSE COVERAGE

Terms and definitions below may vary from the terms and definitions set forth in Sections I and II. To the extent terms and definitions between Sections I and II and this Section V conflict, for purposes of a Privacy or Security Event, the terms and definitions under Section V control. Coverage under this Section is only available for a Privacy or Security Event occurring on or after the Retroactive Date.

A. PRIVACY OR SECURITY EVENT LIABILITY AND EXPENSE COVERAGE AGREEMENT

1. Third-Party Liability

- a. The Pool will pay those sums a Member becomes legally obligated to pay as Damages because of a Privacy or Security Event. The Pool will have the right and duty to defend the Member against any Suit seeking such Damages. However, the Pool will have no duty to defend any Member against any Suit seeking Damages to which this coverage does not apply.

The Pool may at its discretion investigate any Privacy or Security Event and settle any Claim that may result.

But:

- i. The amount the Pool will pay for Damages and Claim Expenses is limited as described in Section V. D; and
 - ii. The right and duty of the Pool to defend ends when the applicable limit of liability is exhausted in the payment of judgments or settlements, Regulatory Penalties, Claim Expenses , Privacy Response Expenses, and PCI-DSS Assessments.
- b. This coverage applies only if:
- i. The Privacy or Security Event commenced on or after the Retroactive Date and before the end of the Coverage Period;
 - ii. A Claim for Damages because of the Privacy or Security Event is first made against the Member during the Coverage Period or any Extended Reporting Period provided under Section VII; and
 - iii. The Member gives written notice of the Claim to the Pool in accordance with Section V.E.
- c. A Claim seeking Damages will be deemed to have been made when notice of the Claim is received by any Member or by the Pool, whichever occurs first.

2. Privacy Response Expenses

- a. The Pool will pay for Privacy Response Expenses incurred by the Member in connection with a Privacy or Security Event that results in the actual or reasonably suspected theft, loss or unauthorized disclosure of or access to Personal Information.

But: The amount the Pool will pay for Privacy Response Expenses is limited as described in Section V.D.

- b. This coverage applies only if:
- i. The Privacy or Security Event commenced on or after the Retroactive Date and before the end of the Coverage Period; and

- ii. The Member gives written notice of the Privacy or Security Event to the Pool in accordance with Section V.E.

3. Regulatory Proceedings and Penalties

- a. The Pool will pay for Regulatory Penalties the Member becomes legally obligated to pay as a result of a Regulatory Proceeding resulting from a Privacy or Security Event. The Pool will have the right and duty to defend the Member against any Regulatory Proceeding to which this coverage applies. The Pool may at its discretion investigate any Privacy or Security Event and settle any Claim that may result.

But:

- i. The amount the Pool will pay for Regulatory Penalties and Claim Expenses resulting from a Regulatory Proceeding is limited as described in Section V.D; and
 - ii. The duty of the Pool to defend a Regulatory Proceeding ends when the applicable limit of liability is exhausted.
- b. This coverage applies only if:
 - i. The Privacy or Security Event commenced on or after the Retroactive Date and before the end of the Coverage Period;
 - ii. A Regulatory Proceeding because of the Privacy or Security Event is initiated against the Member during the Coverage Period or any Extended Reporting Period Provided under Section VII; and
 - iii. The Member gives written notice of the Regulatory Proceeding to the Pool in accordance with Section V.E.
 - c. A Regulatory Proceeding will be deemed to have been initiated when notice of the Regulatory Proceeding is received by the Member or by the Pool, whichever occurs first.

4. PCI-DSS Assessments

- a. The Pool will pay for PCI-DSS Assessments for which a Covered Person is liable if the PCI-DSS Assessments are due to noncompliance by the Covered Person with PCI Data Security Standards and the noncompliance resulted in a Privacy or Security Event.

But: The amount the Pool will pay for PCI-DSS Assessments is limited as described in Section V.D.

- b. This coverage applies only if:
 - i. The Privacy or Security Event commenced on or after the Retroactive Date, if any, shown in the Declarations and before the end of the Coverage Period;
 - ii. A Claim for PCI-DSS Assessments is first made against the Covered Person during the Coverage Period or any Extended Reporting Period provided under Section VII; and
 - iii. The Named Member gives written notice of the Privacy or Security Event to the Pool in accordance with Section V.E.

B. DEFINITIONS

The following definitions apply to this coverage:

1. **General Aggregate** means the Pool's total liability for Damages resulting from all Claims first made during the Coverage Document Period and shall not exceed the amount stated in this Section as the General Aggregate regardless of the time when the Claim is paid. If the Named Member exercises the right to purchase the Optional Extension Coverage, the General Aggregate for the Optional Extended Reporting Period shall be no more than that which remains of the General Aggregate from the immediately preceding Coverage Document Period.
2. **Bodily Injury** means physical injury, sickness or disease sustained by any person, including death resulting from these at any time. Bodily Injury also means mental illness, mental anguish or emotional distress, pain or suffering or shock sustained by any person, whether or not resulting from physical injury, sickness, disease or death of any person.
3. **Claim** means any demand for money Damages, Suit for Damages or Regulatory Proceeding resulting from a Privacy or Security Event. All Claims because of a single Privacy or Security Event will be deemed to be a single Claim and to have been made at the time the first such Claim is made against any Member, regardless of the number of individuals or entities making such Claims or the time period over which such Claims are made, even if subsequent Claims are made after the Coverage Period or any Extended Reporting Period provided under Section VII.

4. **Claim Expenses** means:

- a. Reasonable and necessary fees charged by attorneys designated by the Pool or designated by the Member with the Pool's prior consent to assist with the investigation, adjustment, negotiation, arbitration, defense or appeal of a Claim;
- b. All other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, defense or appeal of a Claim and incurred by the Pool or by the Member with the Pool's prior consent; and
- c. Premiums on appeal bonds, attachment bonds or similar bonds; however, the Pool is not obligated to apply for or furnish any such bond;

Provided, however, Claim Expenses do not include:

- a. Any internal salary, administrative, overhead or other related expenses of any Member or any charges by a Member for time spent cooperating with the investigation and defense of any Claim;
- b. Privacy Response Expenses; or
- c. PCI-DSS Assessments.

5. **Computer System** means computers and associated input and output devices, data storage devices, networking equipment and backup facilities:

- a. Operated by and either owned by or leased to the Member; or
- b. Operated by a third party service provider and used to provide hosted computer application services to the Member or for processing, maintaining, hosting or storing the Member's electronic data pursuant to a written contract with the Member for such services.

6. **PCI-DSS Assessment** means any monetary penalty owed by a Member due to the Member's noncompliance with Payment Card Industry Data Security Standards (PCI-DSS) under an agreement between the Member and a financial institution or other person enabling the Member to accept credit cards, debit cards, prepaid cards, or other payment cards.

7. **Personal Information** means an individual's name in combination with one or more of the following:

- a. Information concerning the individual that constitutes "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and implementing regulations;
- b. Medical or health care information concerning the individual, including without limitation "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and implementing regulations;
- c. The individual's Social Security number, driver's license or state identification number, credit, debit, or other financial account numbers and associated security codes, access codes, passwords or personal identification numbers that allow access to the individual's financial account information; or
- d. Other nonpublic personally identifiable information, as protected under any local, state, federal or foreign law;

Provided, however, Personal Information does not include information that is lawfully available to the public, including without limitation information lawfully available from any Member or any local, state, federal or foreign governmental entity.

8. Privacy or Security Event means:

- a. The actual or reasonably suspected theft, loss or unauthorized disclosure of or access to Personal Information in the care, custody or control of the Member or for which the Member is legally responsible, regardless of whether such Personal Information is maintained in electronic, paper or any other format; or
- b. A violation or failure of the security of a Computer System, including but not limited to unauthorized access, unauthorized use, a denial of service attack or receipt or transmission of malicious code.

Any Privacy or Security Event that is continuous or part of a series of repeated or related Privacy or Security Events will be considered to be a single Privacy or Security Event and will be considered to have commenced when the first such Privacy or Security Event commenced regardless of:

- a. The number of individuals or entities engaged in such Privacy or Security Events;
- b. The number of individuals or entities affected by such Privacy or Security Events;
- c. The number of locations where such Privacy or Security Events occurred; or

- d. The number of such Privacy or Security Events occurring or period of time over which they occur, even if subsequent Privacy or Security Events take place after the Coverage Period.

9. **Privacy Response Expenses** means the following reasonable and necessary costs incurred by the Member within one year of the discovery of a Privacy or Security Event that results in the actual or reasonably suspected theft, loss or unauthorized disclosure of or access to electronic Personal Information in the care, custody or control of the Member or for which the Member is legally responsible:

- a. For the services of a security expert designated by the Pool to determine the scope and cause of a Privacy or Security Event and the extent to which Personal Information was disclosed to or accessed by unauthorized persons;
- b. For the services of consultants or attorneys designated by the Pool to determine the Member's obligations, if any, under applicable law to give notice to affected individuals;
- c. To notify affected individuals if required by applicable law or if the Member voluntarily elects to give such notice, and for the services of a contractor designated by the Pool to assist with providing such notice and responding to questions and concerns raised by individuals who are notified;
- d. For the services of a contractor designated by the Pool to provide identity theft protection services to affected individuals if the Member elects to provide such services; and
- e. For the services of a public relations consultant designated by the Pool to avert or mitigate damage to the Member's reputation as a result of the Privacy or Security Event;

Provided, however, Privacy Response Expenses do not include:

- a. Any internal salary, administrative, overhead or other related expenses of any Member or any charges by a Member for time spent cooperating with the investigation and response to any Privacy or Security Event;
- b. Claim Expenses; or
- c. PCI-DSS Assessments.

10. **Property Damage** means physical injury to tangible property, including all resulting loss of use or loss of use of tangible property that is not physically injured. For purposes of this definition tangible property does not include

information or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, compact disks, tapes, drives, cells, data processing devices or any other media that are used with electronically controlled equipment.

11. **Regulatory Penalties** means any civil fine or civil monetary penalty imposed in a Regulatory Proceeding payable by a Member to the governmental entity bringing the Regulatory Proceeding and any sum of money that a Member is legally obligated to deposit in a fund as equitable relief for the payment of consumer Claims due to an adverse judgment or settlement of a Regulatory Proceeding.

12. **Regulatory Proceeding** means a civil investigative demand, Suit, civil investigation or civil proceeding commenced by or on behalf any local, state, federal or foreign governmental entity in the entity's regulatory or Official Capacity.

13. **Suit** means a civil proceeding arising out of a Privacy or Security Event and includes an arbitration proceeding or other alternative dispute resolution proceeding and to which the Member must submit or does submit with the consent of the Pool.

C. DEDUCTIBLE

For each Privacy or Security Event, the Pool will pay only such amounts as are in excess of the deductible amount shown in the CCD.

D. LIMITS OF LIABILITY

The following Limits of Liability apply unless otherwise stated on the CCD.

1. The Limits of Liability stated below establish the most the Pool will pay regardless of the number of Privacy or Security Events, Members, Claims made, Suits or Regulatory Proceedings brought or individuals or entities making Claims or bringing Suits or Regulatory Proceedings. The Limits of Liability and sublimits stated below are provided in addition to and are distinct from the Limits of Liability and sublimits provided under Section III of this Coverage Document.
2. The following General Aggregate applies: The Pool will pay no more than \$2,000,000, less applicable deductible amounts, for the sum of the following:
 - a. All Damages and Claim Expenses covered under Section V. A.1;
 - b. All Privacy Response Expenses covered under Section V.A.2;

- c. All Regulatory Penalties and Claim Expenses covered under Section V.A.3; and
 - d. All PCI-DSS Assessments covered under Section V.A.4.
- 3. The following per Privacy or Security Event limit applies: Subject to the General Aggregate specified in Section V.D.2, for any one Privacy or Security Event, the Pool will pay no more than \$2,000,000, less the applicable deductible amount, for the sum of the following:
 - a. All Damages and Claim Expenses covered under Section V.A.1;
 - b. All Privacy Response Expenses covered under Section V.A.2;
 - c. All Regulatory Penalties and Claim Expenses covered under Section V.A.3; and
 - d. All PCI-DSS Assessments covered under Section V.A.4.

This per Privacy or Security Event limit is within the General Aggregate specified in Section V. D.2. and does not add to that limit.

- 4. The following sublimit applies: Subject to the General Aggregate and per Privacy or Security Event limits specified in Section V.D.2 and D.3, the Pool will pay no more than \$500,000 in aggregate, less applicable deductible amounts, for all Privacy Response Expenses covered under Section V.A.2. This sublimit is within the General Aggregate and per Privacy or Security Event limits set forth in Sections V.D.2 and D.3 and does not add to those limits.
- 5. The following sublimit applies: Subject to the General Aggregate and per Privacy or Security Event limits specified in Sections V.D.2 and D.3, the Pool will pay no more than \$250,000 in aggregate, less applicable deductible amounts, for all Regulatory Penalties and Claims Expenses covered under Section V.A.3. This sublimit is within the General Aggregate and per Privacy or Security Event limits set forth in Sections V.D.2 and D.3 and does not add to those limits.
- 6. The following sublimit applies: Subject to the General Aggregate and per Privacy or Security Event limits specified in Sections V.D.2 and D.3, the Pool will pay no more than \$250,000 in aggregate, less applicable deductible amounts, for all PCI-DSS Assessments covered under Section V.A.4. This sublimit is within the General Aggregate and per Privacy or Security Event limits set forth in Sections V.D.2 and D.3 and does not add to those limits.

E. NOTICE TO THE POOL

1. As a condition precedent to the obligations of the Pool under this coverage, the Member must give written notice to the Pool of any Claim made against the Member as soon as practicable, but in no event later than the end of the Coverage Period or any Extended Reporting Period provided under Section VII.
2. If during the Coverage Period, any Member becomes aware of a Privacy or Security Event that may reasonably be expected to give rise to a Claim against any Member, Privacy Response Expenses, or PCI-DSS Assessments, the Member must give written notice to the Pool of such Privacy or Security Event as soon as practicable, but in no event later than the end of the Coverage Period or any Extended Reporting Period provided under Section VII. Notice must include:
 - a. A specific description of the Privacy or Security Event, including all relevant dates;
 - b. The names of persons involved in the Privacy or Security Event, including names of potential claimants and a specific description of any Personal Information actually or reasonably suspected to have been subject to theft, loss or unauthorized access or disclosure;
 - c. The specific reasons for anticipating that a Claim may result from such Privacy or Security Event;
 - d. The specific nature of the alleged or potential Damages arising from such Privacy or Security Event; and
 - e. The specific circumstances by which the Member first became aware of the Privacy or Security Event.

Any Claim subsequently made against any Member arising out of such Privacy or Security Event shall be deemed to be a Claim made during the Coverage Period in which the Privacy or Security Event was first reported to the Pool.

F. EXCLUSIONS

The following exclusions apply to this Privacy or Security and Expense coverage in addition to all exclusions set forth in Section IV of this Coverage Document.

This coverage does not apply to any Claim, Suit, Regulatory Proceeding, Damages, Regulatory Penalties, Claim Expenses, Privacy Response Expenses, or PCI-DSS Assessments:

1. For, arising out of, or resulting from Bodily Injury or Property Damage;
2. For, arising out of, or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written; provided, however, that this exclusion shall not apply:
 - a. To the extent the Member would have been liable in the absence of such contract or agreement; or
 - b. To amounts payable as PCI-DSS Assessments.
3. For, arising out of, or resulting from any actual or alleged antitrust violation, restraint of trade, unfair competition, or false or deceptive or misleading advertising or violation of the Sherman Anti-Trust Act, the Clayton Act, or the Robinson-Patman Act, as amended;
4. For, arising out of or resulting from any actual or alleged false, deceptive or unfair trade practices; however, this exclusion does not apply to any Claim or loss covered that results from a theft, loss or unauthorized disclosure of or access to Personal Information;
5. For, arising out of or resulting from:
 - a. The actual or alleged unlawful collection or acquisition of Personal Information by or on behalf of the Member; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (i.e., opt-in or opt-out) from the collection, disclosure or use of Personal Information; or
 - b. The distribution of unsolicited email, direct mail, or facsimiles, wiretapping, audio or video recording, or telemarketing, if such distribution, wiretapping, recording or telemarketing is done by or on behalf of the Member;
6. For, arising out of, or resulting from any of the following conduct by a Member:
 - a. Any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as the Racketeer Influenced and Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or law of any state, locality or foreign government, whether such law is statutory, regulatory or common law;
 - b. Any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state blue sky or securities law, any other federal securities law or legislation, or any other

- similar law or legislation of any state, locality or foreign government, or any amendment to such laws, or any violation of any order, ruling or regulation issued pursuant to such laws;
 - c. Any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, the Employee Retirement Security Act of 1974 or any similar law or legislation of any state, locality or foreign government, or any amendment to such laws, or any violation of any order, ruling or regulation issued pursuant to such laws; or
 - d. Any actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
7. For, arising out of, or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional security breach, or any intentional or knowing violation of the law committed by any Member; provided, however, this exclusion shall not apply unless there is a final adjudication of such conduct, an admission of such conduct by the Member, or in a criminal proceeding a plea of guilty, *nolo contendere*, no contest or any similar plea by the Member;
8. For, arising out of or resulting from any actual or alleged:
- a. Infringement of patent or patent rights or misuse or abuse of patent; or
 - b. Infringement of copyright arising from or related to software code or software products; or
 - c. Use or misappropriation of any ideas or trade secrets by a Member or on behalf of, or in collusion with a Member;
9. Arising out of or resulting from any of the following:
- a. Trading losses, trading liabilities or change in value of accounts;
 - b. Any loss of monies, securities or tangible property of others in the care, custody or control of the Member;
 - c. The monetary value of any electronic fund transfers or transactions by or on behalf of the Member that is lost, diminished, or damaged during transfer from, to or between accounts; or