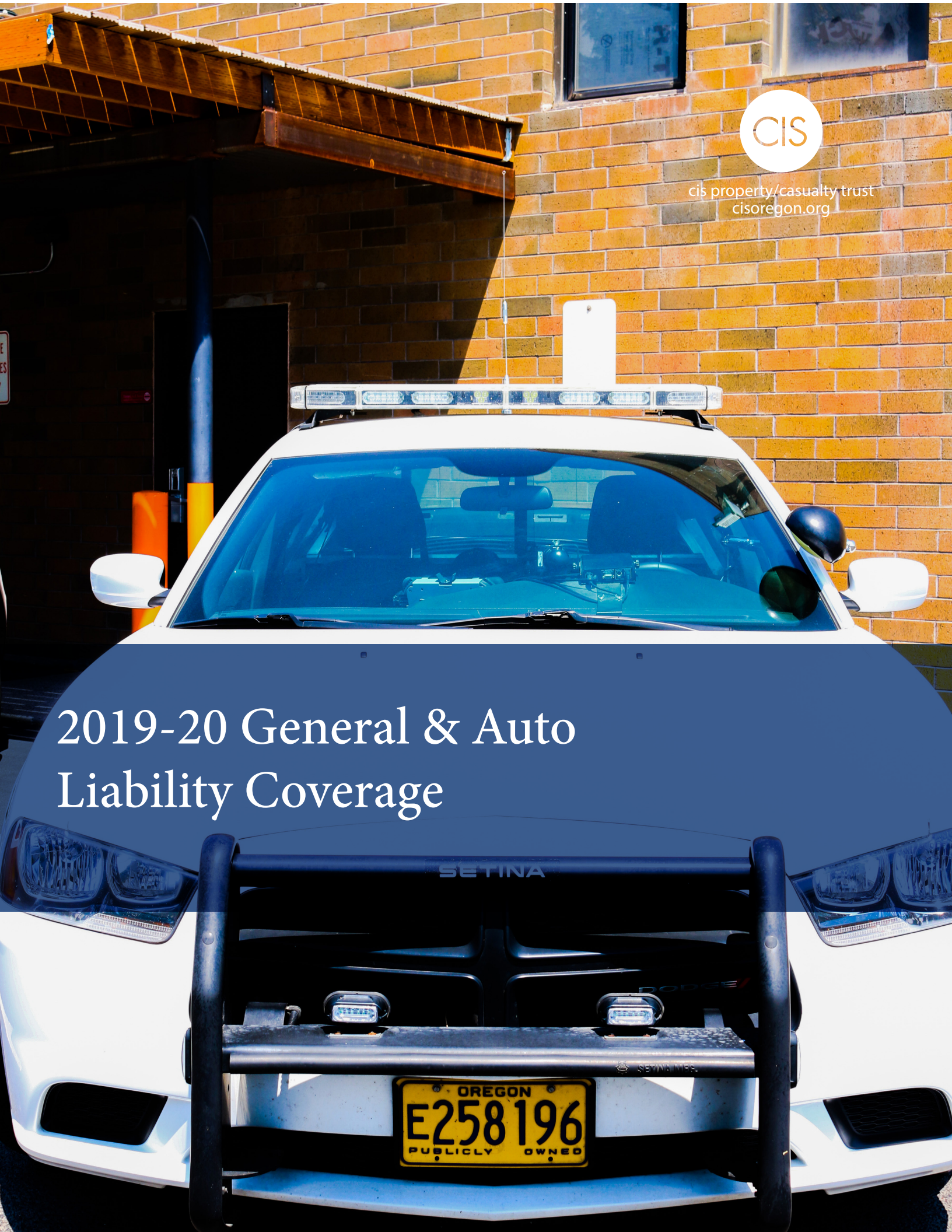




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2019-20 General & Auto Liability Coverage



CIS TRUST GENERAL AND AUTO LIABILITY COVERAGE AGREEMENT

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CIS TRUST

GENERAL AND AUTO LIABILITY COVERAGE AGREEMENT

This is an agreement between the **Trust**, as defined herein, and the **named member** identified in the General & Auto Liability Coverage Declarations as "Named Member" for "Public Entity Liability Coverage" for the applicable coverage period. Various provisions of this agreement restrict coverage. Read the entire coverage agreement carefully to determine rights, duties, and what is and what is not covered. Words or phrases that appear in **bold-faced** type have special meaning and are defined in Sections 1, 10B, 11B, and 12C.

1. DEFINITIONS

A. **"Administration"** means:

- (1) Giving counsel to employees with respect to the **employee benefit programs**;
- (2) Interpreting the **employee benefit programs**;
- (3) Handling records in connection with **employee benefit programs**;
- (4) Effecting enrollment, termination or cancellation of employees under the **employee benefits programs**;

provided all such acts are authorized by the **named member**.

B. **"Airport"** means any area of land or water that is intended for the landing and takeoff of aircraft, and includes its buildings and related facilities, if any.

C. **"Bodily Injury"** means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

D. **"Claim"** means any notice or demand to the **named member** by or on behalf of a party seeking **damages** that reasonably communicates to the **named member** the party's intent to seek money **damages** from the **member**.

E. **"Covered Auto"** means any vehicle designed for land transportation, whether or not licensed for highway use, and owned or operated by the **member**.

F. **"Damages"** means all sums recoverable by law from any liability covered under this coverage agreement, including punitive damages if awarded, but not including any sums awarded for plaintiff's attorney fees, or expert fees, under any statute including but not limited to, 42 U.S. Code, 1988, in any case in which monetary damages are not sought or not awarded. Damages do not include:

- (1) Costs necessary to comply with injunctions or declaratory relief.
- (2) Sums recoverable for breach of contract; express or implied.

- (3) Sums awarded as compensation due or accruing to the benefit of the employee while still employed by the **named member**.
 - (4) Sums sought or awarded for claims of unjust enrichment, money had and received or replevin.
 - (5) Sums due to taxing authorities, insurance programs, or retirement plans as a result of an award of damages or claim settlement.
 - (6) Fines or penalties assessed to the Member for non-payment of taxes, insurance contributions or retirement plan contributions.
- G. **"Employee benefit programs"** shall mean group life insurance, group health insurance, profit sharing plans, pension plan, employee stock subscription plans, workers' compensation, unemployment insurance, social security, disability benefits insurance and travel, savings or vacation plans.
- H. **"Fungus or fungi"** includes but is not limited to any form or type of mold, mushroom or mildew.
- I. **"Hazardous properties"** means radioactive, toxic or explosive properties.
- J. **"Hospital" or "nursing home"** means any facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment including but not limited to providing treatment for 1) acutely ill patients and accident victims, 2) mentally ill patients or 3) patients in special inpatient care facilities. However, in-patient care facilities incidental to correctional facilities shall not be considered a **hospital** or **nursing home**.
- K. **"Member"** means the entity named on the declarations page and its officers, employees and agents including volunteers, authorized to act on behalf of the **named member**, all acting within the scope of their employment or duties whether arising out of a governmental or proprietary function. The term **member** shall also include **additional members** to the extent coverage is afforded under the definition of **additional member**.
- (1) **"Named member"** means the entity named as such on the Declarations page of the coverage agreement,
 - (2) **"Additional member"** means any party whom a public body covered under this coverage agreement has agreed to hold harmless, indemnify or defend pursuant to a contract or other agreement lawfully entered into by such public body. However, in no event shall coverage under this coverage agreement extend to such party for any **claim** arising out of an **occurrence** after the expiration of this coverage agreement or the expiration of the contract or agreement entered into by the public body, whichever shall occur first. Further, in no event shall coverage under this coverage agreement extend to such party for any **claim**, however or whenever asserted, arising out of such party's sole negligence. Except as specified in this paragraph, such party shall have no rights under the **Trust Agreement**, Bylaws or Rules of the **Trust**. The term "additional insured" if used on a certificate of coverage, shall be understood to mean the same as **additional member**.
- L. **"Nuclear Facility"** means:
- (1) Any nuclear reactor;

- (2) Any equipment or device designed or used for:
 - a. separating the isotopes of uranium or plutonium,
 - b. processing or utilizing **spent fuel**, or
 - c. handling, processing, or packaging **nuclear waste**;
- (3) any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **member** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- M. **“Nuclear material”** means **source material**, **special nuclear material** or **by-product material**.
- N. **“Nuclear reactor”** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- O. **“Nuclear waste”** means any waste material:
 - (1) containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore process primarily for its **source material** content, and
 - (2) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of **nuclear facility**.
- P. **“Nursing home”** see **Hospital**.
- Q. **“Occurrence”** means:
 - (1) an incident, event, act, error or omission which occurs during the coverage period:
or
 - (2) a series of related incidents, events, acts, errors or omissions; or a continuous or repeated exposure to substantially the same general conditions, which occur during the coverage period. If the **occurrence** begins in one coverage period and ends in another, the **occurrence** shall be deemed to have taken place during the last such coverage period. Such incidents, events, acts, errors or omissions, or continuous or repeated exposures to substantially the same conditions shall be deemed to be a single **occurrence** for purposes of determining the “per occurrence” limit of liability and deductible, if any. Only the coverage and limits in effect for the last coverage period shall apply and only one “per occurrence” limit shall be available for each such multi-period **occurrence** regardless of the number of coverages under this coverage agreement which may apply to such **occurrence**.

- R. **"Personal Injury"** means false arrest, detention, imprisonment, malicious prosecution, libel, slander, or publication or utterance in violation of the individual's right of privacy, wrongful entry or eviction, or invasion of the right of private occupancy.
- S. **"Pollutants,"** as used in exclusion Section 4.I., means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkali, and chemicals, bacteria, organisms, and pathogens. However, **pollutants** does not include sewage which through the negligence of the **member** escapes the confines of a municipal sewage treatment system owned or operated by the **member**.
- T. **"Property Damage"** means injury to or destruction of tangible property.
- U. **"Source material," "special nuclear material,"** or **"by-product material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- V. **"Spent fuel"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.
- W. **"Spore(s)"** include any reproductive body produced or arising out of any **fungus or fungi**.
- X. **"Trust Agreement"** means the CITY COUNTY INSURANCE SERVICES DECLARATION AND AGREEMENT OF TRUST.
- Y. **"Trust"** means the CIS or CIS Trust, as described in the **Trust Agreement**.
- Z. **"Waste"** as used in exclusion Section 4.I., includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

2. COVERAGES

In accordance with and subject to the General & Auto Liability Coverage Declarations applicable to the **named member** to which this Coverage Agreement applies; the City County Insurance Services Declaration and Agreement of Trust (herein "**Trust Agreement**"); the Bylaws and Rules of the **Trust**; and the terms, conditions, and limitations of this Coverage Agreement and in consideration of the contribution for which this coverage agreement is written, the **Trust** will pay on behalf of the **member** all **damages** arising out of an **occurrence**, not to exceed the Limits of Liability as set further described in Section 4. of this Coverage Agreement because of:

- Coverage A: Liability arising under Oregon Revised Statutes 30.260 to 30.300; asserted pursuant to ORS 30.260 to 30.300.
- Coverage B: Liability arising under 42 U.S. Code 1983; 42 U.S. Code 2000e, et seq. (Title VII of the Civil Rights Act of 1964); 29 U.S. Code 621, et seq. (Age Discrimination in Employment Act of 1967); The Americans with Disabilities Act; The Civil Rights Act of 1991; 42 U.S. Code 1981; 42 U.S. Code 3601, et seq. (The Fair Housing Act); ORS Chapter 659; ORS Chapter 659A; ORS 652.355; ORS 654.062; 29 U.S. Code Sec. 261, et seq. (Family and Medical Leave Act); or any law amendatory thereof.
- Coverage C: Tort liability for **bodily injury, personal injury** and **property damage** for which the **member** is legally liable under the laws of any jurisdiction other than the State of Oregon and other than any United States Federal jurisdiction to which this coverage agreement applies.

- Coverage D: Tort liability for the negligence of others assumed by the **named member** under contract, except as limited in the definition of the term "**member**" in Section 1. of this Coverage Agreement.
- Coverage E: Liability to a **named member's** employee, prospective employee, former employee or the beneficiaries or legal representatives thereof, arising out of, and asserted pursuant to, ORS 30.260 to 30.300, and caused by an **occurrence** consisting of or based upon the **member's** negligent errors or omissions in the **administration** of the **named member's employee benefits program**.
- Coverage F: Uninsured/Underinsured Motorists Coverage as set forth in Section 10. of this coverage agreement, pursuant to ORS 278.215. The Limits of Liability of such coverage with respect to a **member** shall be the Per Occurrence Limit for General and Auto Liability Coverage as set forth in the General and Auto Liability Declarations. The limits of liability of such coverage with respect to a permissive user of a **covered auto**, other than a **member**, shall be the amounts set forth in ORS 806.070 that is the minimum liability limits of the Financial Responsibility Law as provided in the Oregon Vehicle Code and as set forth in Section 8. of this coverage agreement.

In accordance with and subject to the Declarations, the **Trust Agreement**, Bylaws and Rules of the **Trust**, and in consideration of the contribution for which this Coverage Agreement is written, and independent of Coverages A - F above, the **Trust** will pay:

- Coverage G: Legal expenses reasonably incurred by a public official of the **named member** arising out of defense of a complaint alleging violation of ORS 244.040 or 244.120 to 244.135, subject to the terms and conditions set forth in Section 7. ETHICS LEGAL EXPENSE COVERAGE of this coverage agreement.
- Coverage H: The actual or alleged accidental discharge, dispersal, release or escape of pollutants, subject to the terms, conditions, and limitations set forth in this Coverage Agreement, specifically including, without limitation, Section 11. LIMITED POLLUTION LIABILITY COVERAGE.
- Coverage I: Unless such expenses or **damages** are otherwise covered by this Coverage Agreement, CYBER SECURITY EXPENSE COVERAGE as set forth in Section 12.
- Coverage J: (Oregon Pay Equity Act) The **Trust** will reimburse the **named members** for reasonable legal expenses and damages connected with Oregon Pay Equity Act claims filed with the Bureau of Labor and Industries (BOLI) under ORS 659A.820 or in the Oregon Circuit Court under ORS 659A.885. Coverage does not apply to wages or back pay, or civil actions filed under ORS 652.230. The most the **Trust** will pay to or on behalf of a **named member** for any one or more claims in a single year is \$50,000. The most the **Trust** will pay for all **named members** in a single year is \$500,000. Each **named member** will have a \$10,000 deductible per claim, or the deductible on the Declaration page whichever is higher.

The **Trust** shall have the right and duty to defend, with legal counsel selected by the **Trust**, any claim or suit against the **member** seeking **damages**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient. The duty to defend any claim or suit shall terminate, except as provided

hereafter, when such claim or suit ceases to seek **damages** against the **member**. Provided, however, that the duty to defend any claim or suit shall not terminate so long as the claim or suit includes an allegation of breach of an implied contract arising out of an employment relationship with the **named member**.

3. DEDUCTIBLES

A. CONDITIONAL DEDUCTIBLE: Employment Practices

The **named member** is responsible for the first \$15,000 of any settlement, or judgment, or legal defense costs paid by the **Trust** on behalf of the **member** with respect to any claims arising out of the termination or suspension of employment or suspension without pay and benefits of any employee of the **named member**. However, this deductible shall be waived if the **member** has consulted with a Pre-Loss attorney employed by the **Trust**, before such termination or suspension of employment, and has followed all reasonable advice provided to the **member** by the **Trust's** Pre-Loss attorney with respect to such termination or suspension of employment. The \$15,000 deductible, or the applicable portion thereof payable by the **named member**, will be charged to the **named member** by the **Trust** when the first \$15,000 of any settlement, judgment or legal defense cost is paid after settlement of the claim or payment of the judgment by the **Trust**. This conditional deductible provision does not apply to claims of "constructive discharge." If the Employment Practices deductible is charged to the same **named member** more than one time in its five most recent coverage years, the amount of the deductible charged to that **named member** will be as follows, and will be payable to the **Trust** as provided above:

Second instance:	\$30,000
Third instance:	\$45,000
Each instance thereafter:	\$60,000.

B. AGGREGATE / RETROSPECTIVE DEDUCTIBLE

If an Aggregate/Retrospective Deductible amount is shown on the Liability Coverage Declarations page, payments made on behalf of the **member** by the **Trust** for the settlement of liability claims which are determined to have occurred during the coverage period shown on the declarations page, shall be subject to reimbursement by the **named member** to the **Trust**. The Aggregate/Retrospective Deductible limit shown is the maximum amount to be reimbursed to the **Trust** by the Member under this deductible agreement for the coverage period stated on the declarations page.

The amounts to be reimbursed to the Trust under this agreement shall be calculated using the total of:

- (1) All indemnity payments made on the member's behalf, and
- (2) All allocated loss adjusting expenses, including attorney's fees, incurred in the settlement of such liability claims.

C. PER OCCURRENCE DEDUCTIBLE

If a "per occurrence deductible" is shown on the Declarations page or by endorsement to this Coverage Agreement as being applicable to the covered **member**, such deductible amount shall be owed by the **named member** to CIS upon payment by CIS on the **member's** behalf of any amount paid by CIS in excess of the deductible pursuant to the terms of this Coverage Agreement. If such payment by CIS is less than the deductible amount, the **named member** shall reimburse CIS for the full amount paid on its

behalf. Such deductible reimbursements are due and payable within 30 days of receipt by the **named member** of an invoice from CIS.

D. EMPLOYMENT CLAIM PARTICIPATION DEDUCTIBLE

The **named member** pays 10% of any employment practices claim, up to a maximum of \$10,000. At the end of the coverage period after closing an employment practices claim CIS will invoice the **named member** for 10% of expenses, settlement, and judgment paid by the **Trust** to resolve the claim. Any per-occurrence, retrospective or aggregate deductible paid on the claim will be deducted from the total amount of the claim prior to the calculation of the 10% participation deductible. Any applicable Pre-Loss Deductible will be assessed in addition to the 10% participation deductible.

E. OTHER DEDUCTIBLES

Any other deductible provision as provided in a coverage part or endorsement shall apply as specified.

F. MEDICAL CARE JAIL DEDUCTIBLE

A per-occurrence deductible of \$10,000 is applied to claims under the following conditions:

- (1) Inmates are held in custody exceeding eight (8) hours; and
- (2) Medical care was required; and
- (3) The member did not have medical care readily available in the facility by a employed or contracted qualified doctor or nurse.

4. LIMITS OF LIABILITY

A. The "Per Occurrence Limit" listed in the Coverage Declarations, subject to the provisions of this LIMITS OF LIABILITY section, is the most the Trust will pay as damages on behalf of the **member** with respect to a single **occurrence** regardless of the number of:

- (1) Coverages provided in Section 2. of this Coverage Agreement that apply or might apply to the **occurrence**;
- (2) **Claims** asserted;
- (3) Persons or organizations making **claims** arising out of or in connection with that **occurrence**; or
- (4) Additional or supplemental coverages provided under this Coverage Agreement.

B. The "Annual Aggregate" listed on the Declarations Page is the most the **Trust** will pay as **damages** on behalf of the **named member** with respect to all **occurrences** that occur during the coverage period specified in the Coverage Declarations, regardless of the number of:

- (1) Coverages provided in Section 2. of this Coverage Agreement that apply or might

apply to the **occurrences**;

- (2) **Claims** asserted;
 - (5) Persons or organizations making **claims** arising out of or in connection with the **occurrences**; or
 - (6) Additional or supplemental coverages provided under this Coverage Agreement.
- C. Cost of Defense. The **Trust's** obligation to pay the cost of defending **claims** or suits to which the Coverage Agreement applies in addition to, and does not erode, the applicable limits of liability shown in the Coverage Declarations.
- D. The foregoing sections A, B, and C of LIMITS OF LIABILITY do not apply to Coverage I, Cyber Security Expense Coverage, which has its own "Limit of Liability" subsection limiting coverage both on a "per member" basis and in the aggregate for that coverage part.

5. EXCLUSIONS

The coverage agreement does not apply:

- A. To any liability arising out of:
- (1) ownership, maintenance, operation, use, security, loading or unloading of:
 - a. any aircraft owned, or operated by, or rented, or loaned to **any member**; or
 - b. any other aircraft operated by any person in the course of their employment by the **named member**; or
 - c. any non-owned aircraft.
 - (2) any operational, security, or maintenance activities associated in any way with the operation of an **airport**, including liability arising out of the ownership, maintenance, or use of **covered autos** used to service the aircraft and/or service or maintain **airport** runways, taxiways, and similar **airport** facilities while such vehicles are on the **airport** premises.

However, this exclusion does not apply to **named member** boards or commissions, including advisory boards, acting within the scope of their duties as such. The maximum limit of liability available under this exception, however, shall be limited to either the limit of liability provided under Coverage A of this coverage agreement or the limit of primary liability coverage maintained on behalf of the **member** for the ownership and operation of the airport, whichever is less.

- B. To any **occurrence** arising out of the ownership, maintenance or use of watercraft if other liability coverage is in effect and provides coverage for the **member** for liability arising out of the **occurrence**.
- C. To injury or damage to or destruction of any property owned by the **named member** or any of its departments, agencies, boards or commissions.

- D. To any obligation for which **named member**, or any carrier as its insurer, may be held liable under any workers' compensation, unemployment or disability benefits law, or other similar law, including the Jones Act, general maritime law, the Federal Employers Liability Act, Federal Employee Compensation Act, the Defense Base Act, or the US Longshoremen and Harbor Workers' Compensation Act.
- E. To **bodily injury** to any employee of the **named member**, including any volunteer or inmate for whom the **named member** has elected to provide Workers' Compensation coverage under ORS 656.031 or ORS 656.041, arising out of and in the course of the employee's, volunteer's, or inmate's employment by the **named member**.
- F. To any liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, or inverse condemnation, by whatever called, whether such liability accrues directly against the **member** or by virtue of any agreement entered into, by or on behalf of the **named member**. This includes but is not limited to takings and partial takings of private property resulting from the application of land use, zoning, building, subdivision or similar ordinance or regulation. This coverage agreement also does not apply to any claim or action based on, or asserted pursuant to, ORS 197.352 ("Measure 37 Claims") for compensation or damages due to land use regulation.
- G. To liability at any **hospital** or **nursing home** owned or operated by the **named member**, or to any such liability assumed by the **named member** under contract, arising out of or in connection with the care, treatment, rendering of medical professional services or provision of any associated products or devices to any person admitted on an inpatient or outpatient basis or to any person entering or brought to such **hospital** or **nursing home** with the intention that care, treatment, medical professional services or associated products and devices be provided.
- H. To any **claim** against a Hospital Financing Authority created pursuant to ORS 441.525 to 441.596 arising out of the issuance of, use of proceeds from, repayment or default on financial instruments, bonds or revenue bonds.
- I. To any pollution liability claims for **bodily injury, personal injury, property damage**, or cost, loss or damage arising out of contamination by **pollutants**, including expense incurred or demanded for cleaning, remediating or detoxifying contamination except as otherwise insured by Section 11., limited pollution liability coverage.
This exclusion does not apply to **bodily injury** or **property damage** arising out of heat, smoke or fumes from a hostile fire. As used in the exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Exclusion I. does not apply to:

- (1) Fuel, lubricants, fluids or exhaust gases that have leaked from a **covered auto** if they are needed for or result from normal electrical hydraulic or mechanical function of an auto and leak from the part of the auto designed by its manufacturer to hold or dispose of them.
- (2) Damages caused by collision, overturn, or upset of a **covered auto**.
- (3) Firefighting activities, including training burns, intentional demolition or burns for purpose of limiting a fire, or the discharge of **pollutants** for the purpose of controlling a fire.

- (4) **Bodily injury** or **property damage** caused by the **named member's** fire department or hazardous response team responding to a contamination caused by a third party unrelated to the **named member**.
- (5) Liability otherwise covered by this agreement for **property damage** arising out of the **member's** use of pesticides, herbicides, or fungicides, provided each of the following conditions are met:
 - a. The **named member** indicated on the application that pesticides, herbicides, or fungicides are used.
 - b. The use meets all standards of any statute, ordinance, regulation, or license requirement of any federal, state, or local government pertaining to such use.

The liability of the **Trust** arising from any **occurrence** under this exception, exclusion I(5), shall not exceed \$50,000.

J. To any liability arising directly or indirectly out of, resulting from, caused by or contributed to by:

- (1) any **fungus, fungi, or spore(s)**;
- (2) any solid, liquid, vapor, or gas produced by or arising out of any **fungus, fungi, or spore(s)**;
- (3) any material, product, building component, or building structure that contains harbors, nurtures or acts as a medium for any **fungus, fungi, or spore(s)**;
- (4) any intrusion, leakage, or accumulation of water or any other liquid that contains, harbors, nurtures or acts as a medium for **fungus, fungi, or spore(s)**;
- (5) the actual or threatened abatement, mitigation, removal or disposal of **fungus, fungi, or spore(s)** or any material, product, building component, or building structure that contains, harbors, nurtures or acts as a medium for any **fungus, fungi, or spore(s)**;
- (6) any supervision, instruction, recommendations, warnings or advice given or which should have been given in connection with subparagraphs (1), (2), (3), (4), or (5) above; or
- (7) any obligation of the **member** to indemnify any party in connection with subparagraphs (1), (2), (3), (4), (5), or (6) above.

Exclusion J. does not apply to:

- a. the **member's** liability for removal of or damage caused by sewage which, through the negligence of the **member**, escapes the confines of a municipal sewage treatment system owned or operated by the **named member**, or
- b. The **member's** liability for negligent building inspection or plan review or approval.

K. To any liability or expense arising from the handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos dust, asbestos fibers, asbestos products, and/or products containing asbestos.

- L. To any liability or expense arising directly or indirectly from:
- (1) the toxic pathological properties of lead, lead compounds or lead contained in any materials; or
 - (2) the actual or threatened abatement, mitigation, removal or disposal of lead, lead compounds or materials containing lead; or
 - (3) any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with parts (1) or (2) above; or
 - (4) any obligation of the member to indemnify any party in connection with subparagraphs (1), (2), or (3) above.
- M. To any liability or expense arising out of any nuclear incident, accident, loss, **occurrence, claim** made or loss discovered; or as the result of the ownership, management, manufacture, design, service, operation, storage, use, existence, handling, processing, sale, distribution, responsibility for, disposal of, or entrustment to others of **nuclear materials**. For purposes of this exclusion, the term "Entrustment to Others" shall include, but not be limited to, involvement of parties other than the **member** pursuant to contracts, licenses, leases, permits, franchises and consignments.
- N. To any liability:
- (1) Of any **member** under this coverage agreement who is an insured under a nuclear energy liability insurance policy issued by Nuclear Energy Liability Insurance Association, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability; or
 - (2) Resulting from the **hazardous properties** of **nuclear material** and with respect to which:
 - a. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - b. The **member** is, or had this coverage agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, with any person or organization.
 - (3) Resulting from the **hazardous properties** of **nuclear material**, if:
 - a. the **nuclear material**:
 - i. is at any nuclear facility owned by, or operated by or on behalf of any **member**; or
 - ii. has been discharged or disposed therefrom;
 - b. the **nuclear material** is contained in **spent fuel** or **nuclear waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any **member**; or
 - c. the liability, including liability resulting from all forms of radioactive contamination of property, arising out of the furnishing by a **member** of

services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, or its territories or possessions, or Canada, then subparagraph c. applies only to damage to property, including damage resulting from all forms of radioactive contamination of property, to or at such **nuclear facility** and any property there at.

- O. To any liability, however caused, arising, directly or indirectly, out of:
- (1) war, including undeclared or civil war; or
 - (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- P. To liability arising out of or connected with the **administration** of an **employee benefits program**, except to the extent such coverage is provided under Coverage E, Employee Benefits Liability.
- Q. With respect to Coverage E, Employee Benefits Liability, only this coverage does not apply to any dishonest, fraudulent, criminal or malicious act, libel, slander, discriminations or humiliation; or to **bodily injury** to any person, or to **property damage**, including the loss of use thereof.
- R. Any **claim** for failure of performance of contract by any Insurer, including failure of any **employee benefit program**.
- S. Any **claim** based upon the **member's** failure to comply with any law concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits.
- T. Any **claim** based upon (1) failure of stock or bond to perform as represented by a **member**, (2) advice given by a **member** to an employee to participate or not to participate in stock subscription plan, (3) the investment or failure to invest, or misappropriation of funds.
- U. Any **claim** based upon the Employee Retirement Income Security Act of 1974, Public Law 93-406, commonly referred to as the Pension Reform Act of 1974 and amendments thereto, or similar provisions of any Federal, State or Local Statutory Law of Common Law.
- V. To any liability to a named member's employee, prospective employee, former employee or the beneficiaries or legal representatives thereof, arising out of or connected to the member's administration of PERS or legislatively imposed changes to PERS, including, but not limited to, any claim alleging negligence, breach of contract, breach of the duty of good faith and fair dealing, or liability arising under 42 USC Section 1983.
- W. To the **member's** actual or alleged failure to comply with ORS 243.303 or any other state or federal law requiring the **named member** to make health care insurance coverage available to retired officers and employees, or their spouses or children.
- X. To liability arising out of any operational, security, or maintenance activities associated with the operation of any railroads owned, leased or controlled by the **named member**. For purposes of this exclusion of coverage, operation of a trolley, streetcar or similar urban transit vehicle is not considered to constitute a railroad.

However, this exclusion does not apply to the activities of member advisory boards not directly involved in the operational decisions of the railroad. It also does not apply to the Member's liability arising from the operation or use of vehicles designed and licensed for use on public highways that would otherwise be included as **covered autos**.

Y. To liability arising out the failure of any **member** to effect, adequately purchase or maintain any insurance, bond, self-insurance fund or employee benefit program.

Z. To liability arising out of or attributable to:

- (1) the **member** gaining profit, advantage, or remuneration to which the **member** is not entitled; or
- (2) the willful violation of any federal, state, or local statute, ordinance, or regulation by the governing body of the **named member** or any officer, employee, or agent of the **named member** acting with the authority and consent of the **named member**.

The actual or alleged conduct of a **member** shall not be imputed to any other **member** for the application of this exclusion.

AA. To liability or **claims** arising out of or connected to any sums due to taxing authorities, non-payment of taxes, non-payment of insurance, or non-payment of retirement plan contributions.

BB. To any claim brought against the **named member** under any cause of action, state or federal, that is based upon the use or assistance of a canine to control the behavior of an inmate in a jail cell or use in a cell extraction.

6. CONDITIONS

A. Duties of **Member** in the Event of a Claim or **Occurrence**.

- (1) In the event of a **claim, occurrence**, suit, tort claim notice, or other communication or circumstance sufficient to reasonably put the **member** on notice of a covered **claim** or suit against the **member**, notice of such claim or suit shall be provided to **Trust** as soon as practicable. Such notice shall include the identity of the **member**, and also reasonably obtainable information as to the time, place, and circumstances of the **occurrence**, and the **member** shall immediately forward to the **Trust** every demand, notice, summons, or other process received by **member**.
- (2) The **member** shall do nothing to prejudice the rights of **Trust** with respect to any such **claim** or **occurrence**, and shall cooperate fully with **Trust** in the defense of such **claim** or **occurrence**, including attending hearings and trials and assisting in securing and providing evidence. The **member** shall not, except at its own cost, voluntarily make any payment, assume any liability or obligation.

B. Action Against the **Trust**.

As a condition precedent to action against the **Trust**, the **member** shall have fully complied with all the terms of this coverage agreement and the amount of the obligation shall have been finally determined either by judgment after actual trial or by written agreement between the **member**, the claimant and the **Trust**. No person or organization shall have the right under this coverage agreement to join the **Trust** as a party to any action against

the **named member**. Bankruptcy or insolvency of the **named member** or of the covered estate shall not relieve the **Trust** of any of its obligations hereunder.

C. Subrogation.

In the event of any payment under this coverage agreement, the **Trust** shall be subrogated to all the **member's** rights to recovery thereof against any person or organization and the **member** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **member** shall do nothing to prejudice such rights.

D. Changes.

The terms of this coverage agreement shall not be waived or changed, except by an endorsement issued to form a part of this coverage agreement, signed by the **Trust's** authorized representative, and delivered to the **named member**.

E. Cancellation.

This coverage agreement may be canceled by the **named member** upon such notice as required by the **Trust** Bylaws, in which event the end of such notice period shall become the end of coverage period. The **Trust** agrees to remain on the risk subject to the termination provisions of the **Trust** Bylaws. Notice to the **named member** of any action taken pursuant to such provisions shall be sixty (60) days, except in the event of non-payment of any contribution due and owing, in which case notice shall be ten (10) days. Notice shall be in writing to the **named member** at the last address known by the **Trust** for the **named member**.

F. Non-Assignable.

The interest of the **member** under this coverage agreement shall not be assignable.

G. Coverage Period/Territory.

This coverage agreement applies to **occurrences** during the coverage period which take place anywhere, provided that resulting claims or suits are asserted within the United States of America, its territories or possessions, or Canada. Unless specifically stated otherwise, the time coverage becomes effective and terminates shall be understood to be 12:01 AM of the date so indicated.

H. Government Instrumentality.

The issuance of this coverage shall not be deemed a waiver of any statutory immunities as to any **member** nor of any statutory limits on the monetary amount of liability applicable to any **member** were this coverage agreement not in effect. The **Trust** expressly reserves any and all rights to deny liability by reason of such immunity and to assert any limitation provided by law as to amount of liability.

I. Other Coverage.

It is a condition of this coverage agreement that if, at the time of loss, there is other collectable insurance available to the **member** of any kind, this coverage shall become excess coverage and in no event contributing coverage and then only for the amount due the **member** under such forms of coverage. In no event, however, shall the liability hereunder exceed the limit of liability set forth herein.

J. No Stacking of Coverage Limits.

In the event an **occurrence** results in, or is alleged to have resulted in, injury or **damages** that continue in successive coverage years, only one “per occurrence” limit shall apply and there will be no “stacking” of coverage limits from more than one coverage year.

7. ETHICS LEGAL EXPENSE COVERAGE

- A. The amount the **Trust** will pay shall be limited to \$7,500 for any individual public official for all complaints arising in any one Fund Year.
- B. The amount the **Trust** will pay shall be limited to \$15,000 for all public officials of any one **named member** for all complaints arising in any one Fund Year.
- C. The **Trust** shall have no obligation to pay for legal expenses under this section unless the public official notifies the **Trust** of a complaint within 30 days of first communication with the Oregon Governmental Standards and Practices Commission.
- D. The **Trust** shall have no obligation to pay for legal expenses under this section unless defense counsel has been selected by the **Trust** or, if selected by the public official, approved by the **Trust**. Such approval shall not be unreasonably withheld.
- E. The **Trust** shall have the right, but not the duty, to independently investigate any complaint alleging violation of ORS 244.040 or 244.120 to 244.135. As a condition precedent to any right to payment under this section, the public official shall fully and completely cooperate with such investigation. The costs, if any, of such investigation shall not reduce the payments otherwise payable under this section.
- F. Payments for legal expenses shall normally be made as such costs are incurred, upon receipt by the **Trust** of adequate documentation. However, the **Trust**, in its sole discretion, shall have the right at any time to withhold payment until final resolution of a complaint. In such a case, no payment shall be made unless the public official shall have prevailed.
- G. The **Trust** shall be subrogated, to the extent of any payments made under this section, to any amounts recoverable by the public official from the public body, other collectible insurance or pursuant to ORS 244.400.

8. FINANCIAL RESPONSIBILITY LAW

With respect to the ownership, operation, or use of **covered autos**, this coverage agreement is intended to satisfy the **named member's** self-insurance requirements under the Oregon Financial Responsibility Law as set for as ORS 806.130(2), including coverage for persons using **covered autos** within the scope of permission granted to such person by an officer, employee, or agent of the **named member** with the authority to grant such permission. Provided, however, if such permissive user of a covered auto is not a **member**, this coverage shall apply only if there is no applicable insurance in force to comply with the Oregon Financial Responsibility Law (ORS 806.010 to 806.300) as to that person's use of the **covered auto**.

9. LIMITED MEDICAL PROVISIONS AVAILABLE FOR CERTAIN AUTOS

The **Trust** will advance payment for the reasonable expenses incurred by the **member**, the **member's** spouse, or the member's children for necessary medical treatment resulting from injury sustained while occupying a **named member's** vehicle which is a **covered auto** under this

coverage agreement and which is being used within the scope of permission granted by the **named member**. In the event of payment to any person under this provision, such payment made shall be with the understanding and agreement that the **Trust** shall be entitled to reimbursement up to the full amount of the **Trust's** payments from any other medical, workers' compensation, or auto personal injury protection coverage available to that person. The maximum amount available under this provision is \$10,000 per person, per occurrence.

10. UNINSURED/UNDERINSURED MOTORIST COVERAGE

A.

- (1) Subject to the terms, conditions, and limitations of this Section 10., the **Trust** will pay all sums that the **member**, the heirs, or the legal representative of the **member** shall be legally entitled to recover as general and special damages from the owner or operator of an **uninsured vehicle** because of bodily injury sustained by the **member** caused by accident and arising out of the ownership, maintenance or use of the **uninsured vehicle**. Determination as to whether the **member**, the **member's** heirs or the **member's** legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the **member** and the **Trust**, or, in the event of disagreement, may be determined by arbitration as provided in subsection J. of this section. **Uninsured vehicle** includes **underinsured vehicle**, which is a **vehicle** with respect to which there is motor vehicle liability insurance that provides recovery in an amount that is less than the limit of liability applicable to **bodily injury** claims under this coverage agreement.
- (2) No judgment against any person or organization alleged to be legally responsible for **bodily injury**, except for proceedings instituted against the **Trust** as provided in this policy, shall be conclusive, as between the **member** and the **Trust**, on the issues of liability of the person or organization or of the amount of damages to which the **member** is legally entitled.

B. ADDITIONAL DEFINITIONS

As used in this section:

- (1) "**Bodily injury**" means bodily injury, sickness or disease, including death resulting there from.
- (2) "**Hit-and-run vehicle**" means a vehicle that causes bodily injury to a **member** arising out of physical contact of the vehicle with the **member** or with a vehicle the **member** is occupying at the time of the accident, provided:
 - a. The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascertained;
 - b. The **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer, to the department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the **Trust** within 30 days thereafter a statement under oath that the **member** or the legal representative of the **member** has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

- c. At the **Trust's** request, the **member** or the legal representative of the **member** makes available for inspection the vehicle the **member** was occupying at the time of the accident.
- (3) "**Member**," when unqualified and when applied to uninsured motorist coverage, means the **named member** as described in this Trust coverage agreement and any other person required to be designated as an "insured" under ORS 742.504 (2)(A).
- (4) "**Member vehicle**," except as provided in paragraph (5) of the provision means:
- a. the **vehicle** described in the most recent auto schedule on file with the **trust** or a newly acquired or substitute vehicle; or
 - b. a non-owned **vehicle** operated by the member provided that the actual use thereof is with the permission of the owner of the **vehicle** and the **vehicle** is not owned by nor furnished for the regular or frequent use of the **member**.
- (5) "**Member vehicle**" does not include a trailer of any type unless the trailer is a described vehicle in this coverage agreement.
- (6) "**Occupying**" means in or upon or entering into or alighting from.
- (7) "**Phantom vehicle**" means a **vehicle** that causes bodily injury to a **member** arising out of a motor vehicle accident that is caused by a **vehicle** that has no physical contact with the **member** or the **vehicle** the **member** is occupying at the time of the accident, provided:
- a. the identity of either the operator or the owner of the **phantom vehicle** cannot be ascertained;
 - b. the facts of the accident can be corroborated by competent evidence other than the testimony of the **member** or any person having an uninsured motorist claim resulting from the accident; and
 - c. the **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the **Trust** within 30 days thereafter a statement under oath that the **member** or the legal representative of the **member** has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof.
- (8) "**State**" includes the District of Columbia, a territory or possession of the United States and a province of Canada.
- (9) "**Stolen vehicle**" means a **member vehicle** that causes bodily injury to the **member** arising out of a motor vehicle accident if:
- a. The **vehicle** is operated without the consent of the **member**;
 - b. The operator of the **vehicle** does not have collectible motor vehicle bodily injury liability insurance;

- c. The **member** or someone on behalf of the **member** reported the accident within 72 hours to a police, peace or judicial officer or to the equivalent department in the state where the accident occurred; and
- d. The **member** or someone on behalf of the **member** cooperates with the appropriate law enforcement agency in the prosecution of the theft of the **vehicle**.

(10) "**Uninsured vehicle**," except as provided in paragraph (11) of this provision, means:

- a. A **vehicle** with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the **vehicle**, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a **vehicle** is uninsured in the event the member and the **Trust**, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident.
- b. A **hit-and-run vehicle**.
- c. A **phantom vehicle**.
- d. A **stolen vehicle**.

(11) "**Uninsured vehicle**" does not include:

- a. A **member** vehicle, unless the **vehicle** is a stolen vehicle;
- b. A **vehicle** that is owned or operated by a self-insured within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A **vehicle** that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;
- d. A land motor **vehicle** or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a **vehicle**;
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or
- f. A **vehicle** owned by or furnished for the regular or frequent use of the **member**.

(12) "**Vehicle**" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

- C. This coverage applies only to accidents that occur on and after the effective date of this coverage agreement, during the coverage period and within the United States of America, its territories or possessions, or Canada.
- D.
- (1) This coverage does not apply to bodily injury of a **member** with respect to which the **member** or the legal representative of the **member** shall, without the written consent of the **Trust**, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefore.
 - (2) This coverage does not apply to bodily injury to a **member** while occupying a **vehicle**, other than a **vehicle** covered by the Trust, owned by, or furnished for the regular use of, the **named member** or through being struck by the **vehicle**.
 - (3) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insured under any workers' compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.
 - (4) This coverage does not apply with respect to **underinsured motorist** benefits unless:
 - a. The limits of liability under any bodily injury liability insurance applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;
 - b. The described limits have been offered in settlement, the **Trust** has refused consent under paragraph (1) of this subsection and the **member** protects the **Trust's** right of subrogation to the claim against the tortfeasor;
 - c. The **member** gives credit to the **Trust** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the **Trust** has consented under paragraph (1) of this subsection; or
 - d. The **member** gives credit to the **Trust** for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the **Trust** has refused consent under paragraph (1) of this subsection, the **member** protects the **Trust's** right of subrogation to the claim against the tortfeasor.
 - e. When seeking consent under paragraph (1) or (4) of this subsection, the **member** shall allow the **Trust** a reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The **member** shall provide promptly to the **Trust** any information that is reasonably requested by the **Trust** and that is within the custody and control of the **member**. Consent will be presumed to be given if the **Trust** does not respond within a reasonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the **Trust's** receipt of a written request for consent, unless the **member** and the **Trust** agree otherwise.

E.

- (1) As soon as practicable, the **member** or other person making claim shall give to the **Trust** written proof of **claim**, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The **member** and every other person making **claim** hereunder shall submit to examinations under oath by any person named by the **Trust** and subscribe the same, as often as may reasonably be required. Proof of **claim** shall be made upon forms furnished by the **Trust** unless the **Trust** fails to furnish the forms within 15 days after receiving notice of **claim**.
- (2) Upon reasonable request of and at the expense of the **Trust**, the injured person shall submit to physical examinations by physicians selected by the **Trust** and shall, upon each request from the **Trust**, execute authorization to enable the **Trust** to obtain medical reports and copies of records.

F.

If, before the **Trust** makes payment of loss hereunder, the **member** or the legal representative of the **member** institutes any legal action for **bodily injury** against any person or organization legally responsible for the use of a **vehicle** involved in the accident, a copy of the summons and complaint or other process served in connection with the legal action shall be forwarded immediately to the **Trust** by the **member** or the legal representative of the **member**.

G.

- (1) The limit of liability stated in the declarations under Coverage F as applicable to "each person" is the limit of the **Trust's** liability for all damages because of **bodily injury** sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages because of **bodily injury** sustained by two or more persons as the result of any one accident.
- (2) Any payment made under this coverage to or for a **member** shall be applied in reduction of any amount that the **member** may be entitled to recover from any person who is a **member** under the bodily injury liability coverage of this policy.
- (3) Any amount payable under the terms of this coverage because of **bodily injury** sustained in an accident by a person who is a **member** under this coverage shall be reduced by:
 - a. This coverage shall be excess over any other collateral benefits to which the injured member is entitled due to injury arising from the use of an uninsured vehicle, including, but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits.
 - b. Any amount payable under the terms of this coverage because of **bodily injury** sustained in an accident by a person who is a **member** under this coverage shall be reduced by the credit given to the **Trust** pursuant to subsection D. (4) c. or d. of this section.
 - c. The amount payable under the terms of this coverage may not be reduced by the amount of liability proceeds offered, described in subsection D. (4) b. or d. of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the **Trust's** refusal to consent. The **member** shall

cooperate so as to permit the **Trust** to proceed by subrogation or assignment to prosecute the **claim** against the uninsured motorist.

- H. No action shall lie against the **Trust** unless, as a condition precedent thereto, the **member** or the legal representative of the **member** has fully complied with all the terms of this policy.
- I. With respect to **bodily injury** to a **member**:
- (1) While occupying a **vehicle** owned by a **named member** under this coverage, the insurance under this coverage is primary.
 - (2) While occupying a **vehicle** not owned by a **named member** this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess coverage shall then apply only in the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the applicable limits of liability of all primary insurance available to the occupant.
 - a. If a **member** is an insured under other primary or excess insurance available to the **member** that is similar to this coverage, then the **member's** damages are deemed not to exceed the higher of the applicable limits of liability of the additional primary coverage or excess insurance available to the **member**, and the **Trust** is not liable under this coverage for a greater proportion of the **member's** damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this coverage and other primary or excess insurance available to the **member**.
 - b. With respect to **bodily injury** to a **member** while occupying any motor vehicle used as a public or livery conveyance, this coverage shall apply only as excess coverage over any other insurance available to the **member** that is similar to this coverage, and this coverage shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.
- J. If any person making **claim** hereunder and the **Trust** do not agree that the person is legally entitled to recover damages from the owner or operator of an **uninsured vehicle** because of **bodily injury** to the **member**, or do not agree as to the amount of payment that may be owing under this coverage, then, in the event the **member** and the **Trust** elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbitration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the costs to the **member** of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are borne by the **Trust**. "Costs" as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. The Member and the **Trust** each agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the **member**, the arbitration shall be held:
- (1) In the county and state of residence of the **member**;

- (2) In the county and state where the **member's** cause of action against the uninsured motorist arose; or
- (3) At any other place mutually agreed upon by the **member** and the **Trust**.

K. In the event of payment to any person under this coverage:

- (1) The **Trust** shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the **bodily injury** because of which payment is made;
- (2) The person shall hold in **Trust** for the benefit of the **Trust** all rights of recovery that the person shall have against such other uninsured person or organization because of the damages that are the subject of claim made under this coverage, but only to the extent that the claim is made or paid herein;
- (3) If the **member** is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the **member** shall have the election to receive from the **Trust** any payment to which the **member** would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the **member** may, with the written consent of the **Trust**, proceed with legal action against any or all persons claimed to be liable to the **member** for the injuries. If the **member** elects to receive payment from the **Trust** under this coverage, then the **member** shall hold in trust for the benefit of the **Trust** all rights of recovery the **member** shall have against any other person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent of the actual payment made by the **Trust**;
- (4) The **member** shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (5) If requested in writing by the **Trust**, the **member** shall take, through any representative not in conflict in interest with the **member**, designated by the **Trust**, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of the **member**, but only to the extent of the payment made hereunder. In the event of a recovery, the **Trust** shall be reimbursed out of the recovery for expenses, costs and attorney fees incurred by the **Trust** in connection therewith; and
- (6) The **member** shall execute and deliver to the **Trust** any instruments and papers as may be appropriate to secure the rights and obligations of the **member** and the **Trust** established by this provision.

L.

- (1) The parties to this coverage agree that no cause of action shall accrue to the **member** under this coverage unless within two years from the date of the accident:
 - a. Agreement as to the amount due under the policy has been concluded;
 - b. The **member** or the **Trust** has formally instituted arbitration proceedings;
 - c. The **member** has filed an action against the **Trust**; or

- d. Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the **member** has formally instituted arbitration proceedings or filed an action against the **Trust**.

(2) For purposes of this subsection:

- a. "Date of settlement" means the date on which a written settlement agreement or release is signed by a **member** or, in the absence of these documents, the date on which the **member** or the attorney for the **member** receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.
- b. "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment.

11. LIMITED POLLUTION LIABILITY COVERAGE

A. Subject to the provisions of this Section, and notwithstanding exclusion Section 4.I., the **Trust** will pay, up to the limits of coverage set forth in this section, the following, provided they arise out of and directly result from, a **pollution occurrence**:

- (1) All sums the **member** shall be legally obligated to pay as damages because of **bodily injury** or **property damage**;
- (2) Legal costs necessarily incurred in defense of the **member** in **claims** or lawsuits against the **member** alleging covered **claims**;
- (3) Loss, cost, or expense arising out of the legal requirement or government direction or government request that the named **member** clean up, remove, treat, detoxify or neutralize **pollutants**; all arising out of a **pollution occurrence**.

B. ADDITIONAL DEFINITION – As used in this Coverage Part:

"Pollution Occurrence" is applicable only to the LIMITED POLLUTION LIABILITY COVERAGE section of the Coverage Agreement, and means the actual or alleged accidental discharge, dispersal, release, or escape of **pollutants** at or from the **named member's** premises or facilities, or in connection with operations performed by the **named member**. A series of such actual or alleged incidents, or a continuous or repeated exposure to substantially the same general harmful conditions, shall be considered a single **pollution occurrence**, and if the **pollution occurrence** begins in one coverage period and ends in another, it shall be deemed to have taken place during the last such coverage period, and only one "per occurrence" limit, as set forth in the LIMITED POLLUTION LIABILITY COVERAGE section shall be available for such multi-period **pollution occurrence**.

C. This LIMITED POLLUTION LIABILITY COVERAGE does not apply to:

- (1) A **pollution occurrence** from underground storage tanks or underground pipes or other component parts of underground pipe systems leading to or from underground storage tanks.
- (2) Any **pollution occurrence** at a landfill owned or operated by the **member**.

- (3) **Bodily injury** related to exposure to asbestos.
 - (4) Damage to property owned by, or in the care, custody or control of the **member**.
 - (5) A **pollution occurrence** at premises or facilities acquired by the **named member** on or after July 1, 2010, if the **member** knew, or with due diligence should have known, of the **pollution occurrence** at the time of the acquisition.
 - (6) **Claims** that are otherwise covered elsewhere in this coverage agreement.
- D. Per **Member** annual limit. The most the **Trust** shall be obligated to pay under this LIMITED POLLUTION LIABILITY COVERAGE is \$100,000 for any single **pollution occurrence**, or in the aggregate for any number of **pollution occurrences** for any single **member** in any coverage period.

12. CYBER SECURITY EXPENSE COVERAGE

- A. The **Trust** will reimburse the **named member** for **cyber security expenses** reasonably incurred by the **named member** which arise from an **occurrence** that qualifies as a **cyber liability event**. For purposes of this coverage, the term **cyber security expense** means:
- (1) Direct Member Cost Notification Costs incurred by the **named member**, with the **Trust's** prior consent, resulting from either the **named member's** legal obligation to comply with a **breach notice law** because of a **cyber liability event**, or the **named member's** voluntary election to provide such notification following a **cyber liability event**.
 - (2) Third Party Liability Damages which the **member** becomes legally obligated to pay because of:
 - a. the **member's** failure to timely disclose a **cyber liability event** in violation of any **breach notice law**; or
 - b. the **member's** failure to administer an identity theft prevention program or take necessary actions to prevent identity theft required by governmental statute or regulation that results in a **cyber liability event**.
 - (3) Penalties Regulatory **penalties** which the **named member** becomes legally obligated to pay through a **regulatory proceeding** because of a **cyber liability event** caused or contributed to by a **members'** violation of a **privacy law**.
 - (4) Extortion **Cyber extortion costs** incurred by the **named member**. For purposes of this coverage "**cyber extortion cost**" means the reasonable and necessarily costs incurred with the **Trust's** written consent, to combat a **credible threat**. **Cyber extortion costs** include funds or other property paid by the **named member**, with the written consent of the Trust, to person(s) reasonably believed to be responsible for the credible threat, in response to a specific demand in connection with that **credible threat**, and for the purpose of terminating that **credible threat** and all residual effects.
 - (5) Impersonation Fraud Coverage is subject to the cyber excess limits on the CIS Declaration Page, CIS will reimburse for loss of funds as a direct result of a Member employee who in good faith and within established Member controls transfers

money or securities by electronic transfer based on fraudulent transfer instructions received and relied upon from an imposter utilizing a fraudulent email or phone call or other communication method common to the Member to transfer money or securities to a falsely purported vendor with whom a written contract is in force, or a falsely purported director, officer, or other employee of the Member, without the vendor's or Member's knowledge or consent.

B. **LIMIT OF LIABILITY** - The most the **Trust** will pay to or on behalf of a **member** for any one or more **cyber claims** in a single coverage year is \$50,000, subject to the following provisions:

- (1) The coverage provided under this Section shall be completely extinguished and exhausted, and the **Trust** shall have no obligation to pay any **loss** or defend any **claim** under this Endorsement, when all **losses** paid by the **Trust** arising out of all **cyber liability events** reach an aggregate limit of \$5,000,000 for this coverage program year.
- (2) The limit of coverage set forth in this Section is separate from those limits of liability applicable to any other coverage provided under the **Trust** General and Auto Liability Coverage Agreement. No other limit stated in the **Trust** General and Auto Liability Coverage Agreement applies with respect to any **cyber liability event** covered under this Endorsement (or which would have been covered under but for the exhaustion of any applicable limit).

C. **ADDITIONAL DEFINITIONS** - As used in this Coverage Part:

- (1) "**Breach notice law**" means any state, or federal regulation that requires notice to persons whose **personally identifiable non-public information** was accessed or reasonably may have been accessed by an unauthorized person.
- (2) "**Computer security**" means software, computer or network hardware devices, as well as the **named member's** written information security policies and procedures, the function or purpose of which is to prevent **unauthorized access or use**, a **denial of service attack** against **computer systems**, infection of **computer systems** by **malicious code** or transmission of **malicious code** from **computer systems**. **Computer security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **computer systems** through the use of passwords, biometric or similar identification of authorized users.
- (3) "**Computer systems**" means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
 - a. operated by and either owned by or leased to the **named member**; or
 - b. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to the **named member** or for processing, maintaining, hosting or storing the **named member's** electronic data, pursuant to written contract with the **named member** for such services.
- (4) "**Credible threat**" means a criminal threat to:

- a. Damage, destroy, corrupt, alter, delete, or otherwise physically preclude or hinder the **named member's** use of its **computer systems**, or
- b. Release **personally identifiable non-public information** through the **unauthorized access or use** of the **named member's computer systems**, or
- c. Introduce **malicious code** into the **named member computer system**, or
- d. Use **named member's** data to enter into false communications with the **named member's** citizens to obtain personal or confidential information (also known as "pharming" or "phishing").

(5) **"Cyber claim"** means:

- a. a written demand including the service of a suit or institution of a regulatory or arbitration proceeding, received by the **named member** alleging a **cyber liability event** and seeking money or services;
- b. a written threat or initiation of a suit alleging a **cyber liability event** and seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction); and
- c. with respect to coverage provided under Section 12.A.(3) noted above, institution of a **regulatory proceeding** against the **member**.

(6) **"Cyber claims expenses"** means:

- a. reasonable and necessary fees charged by an attorney approved by the **Trust** and paid by the **Trust**;
- b. all other legal costs and expenses resulting from the investigation, adjustment, defense and appeal of a **cyber claim**, suit, or proceeding arising in connection therewith, or circumstance which might lead to a **cyber claim**, if incurred by the **Trust**, or by the **named member** with the prior written consent of the **Trust**; and
- c. the premium cost for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **cyber claim** against a **named member**; provided the **Trust** shall have no obligation to appeal or obtain bonds.
- d. **Cyber claims expenses** do not include any salary, overhead, or other charges by the **member** for any time spent in cooperating in the defense and investigation of any **cyber claim** or circumstance that might lead to a **cyber claim** notified under this Endorsement.

(7) **"Cyber liability event"** means:

- a. theft, loss, or **unauthorized disclosure** of **personally identifiable non-public information** that is in the care, custody or control of the **member**, or of an independent contractor that is holding, processing or transferring such

information on behalf of the **named member**; that occurs during the coverage period and/or

- b. one or more of the following acts or incidents which occur during the coverage period that directly result from a failure of **computer security** to prevent a **security breach**:
 - i. the alteration, corruption, destruction, deletion, or damage to a **data asset** stored on **computer systems**;
 - ii. the failure to prevent transmission of **malicious code** from **computer systems** to **third party computer systems**; or
 - iii. the participation by the **named member's computer systems** in a **denial of service attack** directed against a **third party computer system**.

- (8) "**Data asset**" means any software or electronic data that exists in **computer systems** and that is subject to regular back up procedures, including computer programs, applications, account information, customer information, private or personal information, marketing information, financial information and any other information maintained by the **named member** in its ordinary course of business.
- (9) "**Denial of service attack**" means an attack intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of electronic data to such **computer system** in order to prevent authorized access to such **computer system**.
- (10) "**Limit of Liability**" means the most the **Trust** will pay for a **cyber claim** or loss to which this Endorsement applies, as further set forth in Section 12.B., "**LIMIT OF LIABILITY**."
- (11) "**Loss**" means **damages, cyber claims expenses, privacy notification costs, and penalties**.
- (12) "**Malicious code**" means any virus, Trojan horse, worm or any other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and/or spread itself from one computer to another.
- (13) "**Penalties**" means:
 - a. any civil fine or money penalty payable by the **member** to a governmental entity that is imposed in a regulatory proceeding by any other federal, state, or local governmental entity, in such entity's regulatory or official capacity; amounts which the **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**; but shall not include payments to charitable organizations or disposition of funds other than for payment of consumer **claims** for losses caused by a covered **cyber liability event**.
- (14) "**Personally identifiable non-public information**" means:

- a. information protected by **privacy law**.
- b. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and **regulations issued** pursuant to the Act;
- c. the individual’s drivers license or state identification number; social security number; unpublished telephone numbers; 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;

but does not include publicly available information that is lawfully made available to the general public from government records.

(15) “**Privacy law**” means a federal or state statute or regulation requiring the **member** to protect the confidentiality and/or security of **personally identifiable non-public information**.

(16) “**Privacy notification costs**” means the following reasonable and necessary costs incurred by the **named member** within one year of the discovery of the **cyber liability event**:

- a. for services of a computer security expert to determine the existence and cause of any **security breach** resulting in an actual or reasonably suspected theft, loss or **unauthorized disclosure** of **personally identifiable non-public information** and the extent to which such information was accessed by an unauthorized person or persons;
- b. to provide notification in compliance with a **breach notice law**;
- c. for services of a public relations consultant hired for the purpose of averting or mitigating material damage to the **named member’s** reputation as a result of the **cyber liability event**; however, this coverage applies only after the **named member’s** costs for a public relations consultant have reached or exceeded \$5,000. The amount so incurred by the **named member** does not work to reduce any deductible which might otherwise apply to the **loss**; and
- d. in connection with a credit file monitoring program, to be approved in advance by the **Trust**, consisting of:
 - i. the offering of one year of credit monitoring services to those individuals whose **personally identifiable non-public information** was compromised or reasonably believed to be compromised as a result of the theft or **unauthorized disclosure** of information giving rise to a notification requirement pursuant to a **breach notice law**, or, with the **Trust’s** prior written agreement, at the **named member’s** voluntary election; and

- ii. mailing and other reasonable third party administrative costs associated with such a program;
- iii. provided, all such costs payable under this subsection (d) must be for the purpose of mitigating potential **damages** resulting from such **cyber liability event**.

Privacy notification costs shall not include any internal salary or overhead, or other related expenses of the **member**.

(17) **“Regulatory proceeding”** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of a federal or state agency with regulatory capacity in connection with a **cyber liability event**.

(18) **“Security breach”** means:

- a. **Unauthorized access or use of computer systems**, including **unauthorized access or use** resulting from the theft of a password from a **computer system** or from any **member**;
- b. **denial of service attack** against **computer systems** or **third party computer systems**; or
- c. infection of **computer systems** by **malicious code** or transmission of **malicious code** from **computer systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

(19) **“Third party computer systems”** means any computer systems that: 1) are not owned, operated or controlled by a **member**; and 2) does not include computer systems of a third party on which a **member** performs services. Computer systems include associated input and output devices, data storage devices, networking equipment, and back up facilities.

(20) **“Unauthorized access or use”** means the gaining of access to or use of **computer systems** by an unauthorized person or persons or the use of **computer systems** in an unauthorized manner.

(21) **“Unauthorized disclosure”** means the disclosure of or access to information in a manner that is not authorized by the **named member**.

D. **DEDUCTIBLE** - A \$5,000 per **occurrence** deductible shall apply to any **cyber claim** or **loss** to which this Endorsement applies unless the **named member** has a per **occurrence** deductible amount of more than \$5,000 per **occurrence** shown on the General and Auto Liability Coverage Agreement Declarations page, in which case the deductible shown on that Declarations page shall apply to any coverage afforded by this Endorsement for a **cyber liability event**. Any coverage provided or payments made under this Endorsement are not to be considered as part of any Aggregate / Retrospective Deductible program and are not to be considered in the calculation of program balances.

- E. **ADDITIONAL CONDITIONS** - The following additional provisions apply to Defense and Settlement of **cyber claims**:
- (1) With respect to any **cyber claim** against the **member** seeking **damages** or **penalties** because of a **cyber liability event** covered under Coverage I.(2) or I.(3), and not otherwise excluded,
 - a. The **Trust** shall have the right and duty to defend the **member** through counsel selected by the **Trust**.
 - b. The **Trust's** duty to defend shall be satisfied by the **Trust** paying **cyber claims expenses** only.
 - (2) **Cyber claims expenses** incurred by the **Trust** in the investigation and defense of any **cyber claim** with respect to a **cyber liability event** which occurs during the coverage period are within the **limit of coverage** and shall reduce such limit.
 - (3) The **limit of coverage** available to pay the **loss** shall be reduced and may be completely exhausted by payment of **cyber claims expenses** paid or reimbursed by the **Trust**.
 - (4) Once the **Trust** has exhausted the **limit of coverage**, the **Trust** may, at its option, withdraw from the defense of any **cyber claim**, and all costs of defense shall thereafter be the responsibility of the **named member**.
- F. **ADDITIONAL EXCLUSIONS** - This Cyber Security Expense Coverage, Coverage I, does not apply to any **cyber claim** or **loss**:
- (1) For, arising out of, or resulting from **bodily injury** or **property damage**;
 - (2) For, arising out of, or resulting from any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or the **member's** misconduct with respect to employees, whether such **claim** is brought by an employee, former employee, applicant for employment, or relative or domestic partner of such person.
 - (3) 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 will not apply to the extent the **member** would have been liable in the absence of such contract or agreement; and further, this exclusion shall not apply to a contractual agreement to indemnify another party to the extent such agreement would be covered but for this exclusion.
 - (4) 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;
 - (5) 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 under this endorsement that results from a theft, loss or **unauthorized disclosure of personally identifiable non-public information**;

- (6) For, arising out of or resulting from:
- a. the actual or alleged unlawful collection or acquisition of **personally identifiable non-public 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 (e.g. opt-in or opt-out) from the collection, disclosure or use of **personally identifiable non-public information**; or
 - b. the distribution of unsolicited email, direct mail, or facsimiles, wiretapping, audio or video recording, or telemarketing, if such distribution, wiretapping or recording is done by or on behalf of the **member**.
- (7) For, arising out of or resulting from any of the following:
- 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 there under or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the foregoing, 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 or provincial blue sky or securities law, any other federal securities law or legislation, or any other similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above 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, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation; 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;
- (8) For, arising out of, or resulting from any criminal, dishonest, fraudulent, or malicious act, error or omission, any intentional **security breach**, or intentional or knowing violation of the law committed by any **member**.
- (9) 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**.
- (10) In connection with or resulting from a **cyber claim** brought by or on behalf of any other state, federal, or local governmental entity, in such entity's regulatory or official capacity; provided, this exclusion shall not apply to a **cyber claim** otherwise covered under Coverage 12.A.(3).;
- (11) Arising out of or resulting from any of the following:
- a. trading losses, trading liabilities or change in value of accounts; any loss of monies, securities or tangible property of others in the care, custody or control of the **member**;
 - b. the monetary value of any electronic fund transfers or transactions by or on behalf of the **member** which is lost, diminished, or damaged during transfer from, into or between accounts; or
 - c. the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- (12) For damage to, destruction of, corruption of, or any loss of use by any **member** of any **computer systems** or **data asset**, including without limitation any costs or expenses to the **member** to repair or replace any **computer systems** or **data asset**.



Patrick Priest
Executive Director, CIS