



**National Union Fire Insurance Company of Pittsburgh, Pa.<sup>®</sup>  
Illinois National Insurance Company**

A capital stock company

**PUBLIC OFFICIALS AND EMPLOYMENT PRACTICES LIABILITY POLICY**

*MuniPro<sup>®</sup>*

In consideration of the premium charged, and in reliance upon the statements in the Application attached hereto and made a part hereof, and subject to the Limit of Liability stated in Item 3 of the Declarations and the terms and conditions contained herein, the Company and the Insured agree as follows:

**1. INSURING AGREEMENTS**

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages resulting from any Claim first made against the Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Company pursuant to the terms of this policy for any Wrongful Act of the Insured in the performance of duties for the Public Entity.

**2. DEFENSE PROVISIONS**

a) The Company shall, in addition to the Limit of Liability, appoint an attorney and defend any Claim against the Insured alleging a Wrongful Act, even if such Claim is groundless, false or fraudulent; and pay on behalf of the Insured Defense Costs.

b) The Insured shall not admit liability or settle any Claim or incur any cost or expense without the written consent of the Company. The Company shall have the right to make such investigation and negotiations and, with the written consent of the Public Entity, such settlement of any Claim as the Company deems expedient. If the Public Entity refuses to consent to any settlement recommended by the Company, the Insured shall thereafter negotiate or defend such Claim independently of the Company and the liability of the Company shall not exceed the amount for which the Claim could have been settled plus Defense Costs incurred with the Company's consent up to the date of such refusal.

c) The Company shall not be obligated to pay any Damages or Defense Costs or to undertake or continue defense of any Claim after the Limit of Liability has been exhausted by payment of Damages or after deposit of the applicable limit of the Company's liability in a court of competent jurisdiction, and in such case the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the Insured.

**3. DEFINITIONS**

(a) "Arising Out Of" means originating from, having its origin in, growing out of, flowing from, incident to or having connection with, whether directly or indirectly;

- (b) "Claim" means a judicial proceeding alleging a Wrongful Act that is filed against an Insured in a court of law or equity and which seeks Damages or other relief. Claim shall also mean an administrative proceeding alleging a Wrongful Act, provided an enforceable award of Damages can be made against an Insured at the administrative proceeding.
- (c) "Damages" means a monetary judgment or settlement agreed to with the consent of the Company.
- (d) "Defense Costs" means reasonable and necessary fees, costs, and expenses incurred by the Company, or incurred by the Insured with the written consent of the Company, (including premiums for any appeal bond, attachment bond, or similar bond but without any obligation to apply for or furnish any such bond) resulting from the investigation, adjustment, defense, and appeal of a Claim against any Insured; provided, however, that Defense Costs do not include salaries of employees or officers of the Company.
- (e) "Employment Practice Violation(s)" means any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
  - (2) harassment (including sexual harassment whether "quid pro quo", hostile work environment or otherwise);
  - (3) discrimination, (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
  - (4) Retaliation (including lockouts);
  - (5) employment-related misrepresentation(s) to an employee or applicant for employment with the Public Entity;
  - (6) wrongful failure to employ or promote;
  - (7) wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
  - (8) wrongful discipline;
  - (9) failure to grant tenure;
  - (10) failure to provide or enforce adequate or consistent policies and procedure relating to any Employment Practices Violation;
  - (11) violation of an individual's civil rights relating to any of the above
- but only if the Employment Practices Violation relates to an employee or applicant for employment with the Public Entity whether direct, indirect, intentional or unintentional.
- (f) "Insured" means the Public Entity and:
- (1) all persons who were, now are or shall be lawfully elected or appointed officials or employees while acting for or on behalf of the Public Entity;

- (2) commissions, boards, or other units, and members and employees thereof, operated by and under the jurisdiction of such Public Entity and within an apportionment of the total operating budget indicated in the application for this policy;
  - (3) volunteers acting for or on behalf of, and at the request and under the direction of, the Public Entity;
  - (4) officials and employees of the Public Entity appointed at the request of the Public Entity to serve with an outside tax exempt entity.
- (g) "Policy Period" means the period from the inception date of this policy shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (h) "Public Entity" means the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.
- (i) "Retaliation" means a wrongful act of an Insured relating to or alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an Employee of the Public Entity to a superior or to any governmental agency of any act by an Insured which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an Employee of the Public Entity of any right that such employee has under law, including rights under workers' compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to Employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; (4) Strikes by Employees of the Public Entity or (5) political affiliation:
- (j) "Wrongful Act" means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or Employment Practices Violation by an Insured solely in the performance of duties for the Public Entity.

#### **4. EXTENSIONS**

Subject otherwise to the terms hereof, the policy shall cover Claims made against the estates, heirs, or legal representatives of deceased Insureds, and the legal representatives of Insureds in the event of an Insured's incompetency, insolvency or bankruptcy, who were Insureds at the time the Wrongful Acts upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Insured for all Claims arising solely out of his or her status as the spouse of an Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Insured and the spouse, or property transferred from the Insured to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any Wrongful Act of the spouse, but shall apply only to Claims Arising Out Of the Wrongful Acts of an Insured, subject to the policy's terms, conditions and exclusions.

#### **5. EXCLUSIONS**

This policy does not apply to any Damages or Claim:

- (a) alleging fraud, dishonesty or criminal acts or omissions; however, the Insured shall be reimbursed for the reasonable amount which would have been collectible under this policy if such allegations are not subsequently proven;
- (b) seeking relief or redress in any form other than Damages, or attorney's fees, costs or expenses which the Insured shall become obligated to pay as a result of an adverse judgment or settlement for a Claim seeking such relief; however, the Company shall defend such a Claim in accordance with Clause 2, subject to a Policy Period aggregate limit of \$100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations
- (c) Arising Out Of (1) false arrest, detention or imprisonment, (2) libel, slander or defamation of character, (3) assault or battery, (4) malicious prosecution or abuse of process, (5) wrongful entry or eviction, or invasion of any right of privacy, (6) any allegation relating to the foregoing exclusions 5(c)(1) through 5(c)(5) that an Insured negligently employed, investigated, supervised or retained any person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such Damages or Claim;
- (d) Arising Out Of (1) bodily injury to, or sickness, disease, emotional distress or death of any person, (2) damage to or destruction of any property, including the loss of use thereof, (3) any allegation relating to the foregoing exclusions 5(d)(1) through 5(d)(2) that an Insured negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such Damages or Claim;
- (e) Arising Out Of inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use;
- (f) Arising Out Of strikes, riots or civil commotions;
- (g) Arising Out Of the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption; however, the Company will defend such a Claim but without obligation to pay Damages;
- (h) Arising Out Of the gaining in fact of any profit or advantage to which the Insured is not legally entitled; the return of taxes, assessments, penalties, fines or fees; any award of salary, wages or earnings;
- (i) alleging, Arising Out Of, based upon, attributable to, or in any way involving, directly or indirectly:
  - (1) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, or
  - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.

"Pollutants" include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, lead and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed;

- (j) Arising Out Of the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility, or the transportation of nuclear material;
- (k) Arising Out Of a breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan, or to any amount due under any fringe benefit or retirement program; however, the Company will defend such a Claim but will have no obligation to furnish any benefits due or pay Damages;
- (l) brought by or on behalf of one Insured against another Insured, however, as respects any Claim alleging an Employment Practices Violation, this exclusion shall only apply to cross-claims or counter-claims brought by one Insured against another Insured;
- (m) Arising Out Of breach of contract, except this exclusion shall not apply to any Claim alleging an Employment Practices Violations;
- (n) Arising Out Of the operation of or activities of any schools, airports, transit authorities, hospitals, clinics, nursing homes or other health care operations, utilities, housing authorities, jails or detention facilities, law enforcement agencies or fire fighting authorities unless specifically included in Item 7 of the Declarations or by endorsement attached
- (o) for fines, penalties, or punitive, exemplary or the multiplied portion of multiplied Damages; however, only where permitted by law, this policy shall cover, subject to all the terms, conditions and exclusions contained herein, up to \$50,000 punitive, exemplary or the multiplied portion of multiplied Damages, as part of and not in addition to the Limit of Liability of the Company otherwise afforded by this policy;
- (p) arising from all pending or prior litigation or hearing as well as future Claims Arising Out Of said pending or prior litigation or hearing. If this policy is a renewal of a policy issued by the Company, this exclusion shall only apply with respect to a pending or prior litigation or hearing prior to the effective date of the first policy issued and continuously renewed by the Company;
- (q) Arising Out Of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained, in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (r) Arising Out Of any Wrongful Act prior to the inception date of the first policy issued by the Company and continuously renewed and maintained, if on or before such date any Insured knew or could have reasonably foreseen that such Wrongful Act could lead to a Claim.

The following exclusions shall also apply to any Claim alleging an Employment Practices Violation(s)

This policy does not apply to any Damages or Claim:

- (s) Arising Out Of any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to a Claim for Retaliation;
- (t) Arising Out Of any violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder and amendments thereto or any similar provisions of any federal, state, local or foreign statutory law or common law; provided however, this exclusion shall not apply to a Claim for Retaliation;
- (u) Arising Out Of any costs or liability incurred by any Insured to modify any building, property or facility to make said building, property or facility more accessible or accommodating to any disabled person as mandated by the Americans With Disabilities Act of 1992, and as amended, or any similar federal, state or local law, regulation or ordinance.

## **6. LIMIT OF LIABILITY**

- (a) The total liability of the Company for all Damages arising from all Claims made against the Insured during the Policy Period and during the Discovery Period, if applicable, shall not exceed the Limit of Liability stated in Item 3 of the Declarations. The inclusion herein of more than one Insured shall not increase the Limit of Liability of the Company. The Limit of Liability stated in Item 3 of the Declarations shall apply to all Claims Arising Out Of the same Wrongful Act or related Wrongful Acts.
- (b) If additional Claims are subsequently made which Arise Out Of the same Wrongful Act or series of continuous, repeated or interrelated Wrongful Acts as Claims already made and reported to the Company, then all such Claims, whenever made, shall be considered first made within the Policy Period or the Discovery Period in which the earliest Claim Arising Out Of such Wrongful Act or series of continuous, repeated or interrelated Wrongful Acts was first made and reported to the Company, and all such Claims shall be subject to one such Limit of Liability.
- (c) If two or more policies of Public Officials and Employment Practices Liability Insurance issued by the Company or any other member company of Chartis Inc. ("Chartis") apply to the same Claim for which the Insured is liable, then the Company shall not be liable under this policy for a greater proportion of Defense Costs and Damages than the liability of the Company under this policy bears to the total liability of the Chartis member companies under all such applicable valid and collectible insurance issued by the Chartis member companies; however, the maximum amount payable under all such policies shall not exceed the Limit of Liability of that policy referred to above that has the highest applicable Limit of Liability. In determining the applicable Limit of Liability of any policy for purposes of this paragraph, it shall not be a factor that Defense Costs may be payable as part of the Limit of Liability, in addition to the Limit of Liability or subject to a sublimit of liability. Nothing contained herein shall be construed to increase the Limit of Liability of this policy.

## **7. DEDUCTIBLE**

Subject to the Limit of Liability, exclusions and other terms of this policy, the Company shall only be liable for those Damages and Defense Costs which are in excess of the Deductible stated in Items 4(a) or 4(b) of the Declarations. This Deductible shall apply to each Wrongful Act or

Employment Practice Violation or series of continuous, repeated or interrelated Wrongful Acts or Employment Practice Violations and shall be borne by the Public Entity and remain uninsured. The Public Entity shall also be responsible for payment of the Deductible. The Company may direct the Public Entity to make partial or full payment of the Deductible to others.

## **8. NOTICE / CLAIM REPORTING PROVISIONS**

**Notice hereunder shall be given in writing to Chartis, Financial Lines Claims, P.O. Box 25947, Shawnee Mission, KS 66225.**

**If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. A Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured, by the Public Entity on the behalf of any Insured or by the Company, whichever comes first.**

- (a) The Public Entity or the Insureds shall, as a condition precedent to the obligations of the Company under this policy, give written notice to the Company of any Claim made against an Insured as soon as practicable and either:
  - (1) anytime during the Policy Period or during the Discovery Period (if applicable)
  - (2) within 30 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim is reported no later than 30 days after the date such Claim was first made against an Insured.
- (b) If written notice of a Claim has been given to the Company pursuant to Clause 8(a) above, then any Claim which is subsequently made against the Insureds and reported to the Company Arising Out Of the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the claim of which such notice has been given, shall be considered made at the time such notice was given.
- (c) If during the Policy Period or during the Discovery Period (if applicable) the Public Entity or the Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall give written notice to the Company of the circumstances and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then any Claim which is subsequently made against the Insureds and reported to the Company Arising Out Of such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

## **9. DISCOVERY CLAUSE**

- (a) **Automatic Discovery Period**

If the Company or the Public Entity shall cancel or refuse to renew this policy and the Public Entity does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the Public Entity shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal in which to give written notice to the Company of any Claim made against the Insured during said 60 day period for any Wrongful Act before the end of the Policy Period. This Automatic

Discovery Period shall immediately expire upon the purchase of replacement coverage by the Public Entity.

(b) **Optional Discovery Period**

If the Company or the Public Entity shall cancel or refuse to renew this policy, the Public Entity shall have the right, upon payment of an additional premium of 50% of the total policy premium, to a period of twelve (12) months following the effective date of such cancellation or non-renewal in which to give written notice to the Company of any Claim made against the Insured during said twelve (12) month period for any Wrongful Act before the end of the Policy Period. This right shall terminate, however, unless written notice of such election together with the additional premium due is received by the Company within thirty (30) days after the effective date of cancellation or non-renewal. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

## **10. CANCELLATION CLAUSE**

This policy may be canceled by the Public Entity by surrender of this policy or by giving written notice to the Company stating when thereafter such cancellation shall be effective. This policy may also be canceled by the Company by delivering to the Public Entity or by mailing to the Public Entity by registered, certified, or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. However, if the Company cancels this policy because the Public Entity has failed to pay a premium when due, or has failed to reimburse the Company such amounts as the Company has paid as Damages or Defense Costs within the amount of the applicable Deductible, or excess of the Limit of Liability, this policy may be canceled by the Company by mailing to the Public Entity by registered, certified, or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this policy shall terminate at the date and hour specified in such notice.

If this policy shall be canceled by the Public Entity, the Company shall retain the customary short rate proportion of the premium hereon. If this policy shall be canceled by the Company, the Company shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

## **11. REIMBURSEMENT OF THE COMPANY**

If the Company has paid any Damages in excess of the Limit of Liability or Damages or Defense Costs within the applicable Deductible, the Insureds, jointly and severally, shall be liable to the Company for any and all such amounts and, upon demand, shall pay such amounts to the Company.

## **12. SUBROGATION**

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for the Company. The Insured shall do nothing to prejudice such rights. Any amount recovered in excess of the total payment by the Company shall be restored to the Insured, less the cost to the Company of recovery.

### **13. OTHER INSURANCE**

Subject to Clause 6(c), such Insurance as is provided under this policy shall apply only as excess over any other valid and collectible insurance, self insurance, or indemnification or any similar agreement, whether such other insurance or agreement is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

### **14. COOPERATION CLAUSE**

The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements and in the conduct of Claims. The Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at the Insured's own cost, voluntarily make any payment, assume any obligation or incur any expense.

### **15. NOTICE AND AUTHORITY**

By the acceptance of this policy, the Public Entity agrees to act on behalf of all Insureds with respect to the giving of notice of Claim, the giving or receiving of notice of cancellation or non renewal, the payment of premiums, the receiving of any premiums that may become due under this policy, consenting to any settlement and exercising the right to the Discovery Period. All Insureds agree that the Public Entity shall act on their behalf.

### **16. ASSIGNMENT**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; however, subject otherwise to the terms hereof, this policy shall cover the estate heirs, legal representatives or assigns of the Insured in the event of the death, bankruptcy or insolvency of the Insured or the Insured being adjudged incompetent.

### **17. ACTION AGAINST THE COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the obligation of the Insured to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any Insured or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Insured shall have any right under this policy to join the Company as a party to any action against other Insureds or the Public Entity to determine the Insureds' liability, nor shall the Company be impleaded by the Insureds or the Public Entity or their legal representatives. Bankruptcy or insolvency of the Insured or the estate of the Insured shall not relieve the Company of any obligation hereunder.

### **18. REPRESENTATIONS AND SEVERABILITY**

In granting coverage under this policy, it is agreed that the Company has relied upon the statements and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements and

representations shall be deemed to be material to the risk assumed by the Company, are the basis of this policy and are to be considered as incorporated into this policy.

With respect to such statements and representations, no knowledge or information possessed by any Insured shall be imputed to any other Insured. If any person who executed the application knew that such statement or representation was inaccurate or incomplete, such statement shall not be imputed to any Insured other than such signator and any other Insureds who knew such statement or representation was inaccurate or incomplete.

**19. POLICY TERRITORY**

This policy applies to Wrongful Acts committed anywhere in the world provided Claim is made in the United States of America, its territories or possessions, or Canada.

**20. HEADINGS**

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

SPECIMEN