

**SWIM AND DIVE
INSTRUCTION AND SUPERVISION
PROFESSIONAL LIABILITY INSURANCE POLICY**

Issued by:

DAN Risk Retention Group, Inc.
the “Underwriter”



**SWIM AND DIVE INSTRUCTION AND SUPERVISION
PROFESSIONAL LIABILITY INSURANCE POLICY**

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DAN RISK RETENTION GROUP, INC.

NAIC No. 15928 – SC Company Code: 207640

(The “Underwriter”)

SWIM AND DIVE INSTRUCTION AND SUPERVISION PROFESSIONAL LIABILITY INSURANCE POLICY

This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group.

NOTICE: THIS IS A CLAIMS MADE AND REPORTED INSURANCE POLICY. AS SET FORTH BELOW, COVERAGE UNDER THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD PROVIDED UNDER THE POLICY. PLEASE REVIEW THE WORDING OF THIS POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon the statements in the **INSURED**'s application, which is made part of this policy and subject to the insuring agreements, Declarations Page, coverages, definitions, conditions, limitations, warranties, exclusions, and authorized endorsements to this policy, the **INSURED** and the Underwriter agree as follows:

INSURING AGREEMENTS

1. COVERAGE - CLAIMS MADE AND REPORTED

- a. Subject to the applicable Limit of Liability, the Underwriter agrees to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** for **CLAIMS** arising from any negligent act, error or omission in the rendering of or failure to render **PROFESSIONAL SERVICES** by the **INSURED**.
- b. This insurance only applies to **CLAIMS** that:
 - i. are first made against the **INSURED** during the **POLICY PERIOD**; and,
 - ii. are reported to the Underwriter in accordance with Section 1 of the Conditions during the **POLICY PERIOD** or any Extended Reporting Period provided under Section 1.e of the Insuring Agreements; and,
 - iii. arise from an **EVENT** commencing after the Retroactive Date specified on the Declarations Page and before the end of the **POLICY PERIOD**.
- c. A **CLAIM** will be considered to be first made at the earliest of the following times: (i) when notice of the **CLAIM** is received by the **INSURED** or (ii) when a **CLAIM** is made directly to the Underwriter in writing.
- d. **CLAIMS** arising from the same **EVENT** made against the **INSURED** over more than one **POLICY PERIOD** shall be deemed to have been made against the **INSURED** during the **POLICY PERIOD** in which the first **CLAIM** is made. If, during the **POLICY PERIOD** the **INSURED** first becomes aware of and gives written notice to the Underwriter of an **EVENT** which is likely to give rise to a **CLAIM**,

then any subsequent **CLAIM** made against the **INSURED** arising from such **EVENT** shall be deemed to have been first made during the **POLICY PERIOD** in which the **EVENT** was first reported.

- e. If this insurance is not renewed or is canceled, coverage will be provided for **CLAIMS** made during the **POLICY PERIOD** and reported to the Underwriter in accordance with Section 1 of the Conditions no more than ninety (90) days following the date of nonrenewal or cancellation, provided that the **EVENT** giving rise to the **CLAIM** commenced after the Retroactive Date specified on the Declarations Page and prior to the end of the **POLICY PERIOD**. After this ninety (90) day Extended Reporting Period, all coverage shall cease for any **CLAIM** which has not been previously reported as specified in this insurance. The Extended Reporting Period shall not apply if this insurance is canceled due to non-payment of premium. The Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate or increase the Limits of Liability for this insurance.

2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS

- a. The Underwriter shall have the right and duty to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** for **BODILY INJURY** and/or **PROPERTY DAMAGE** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriter shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in its sole discretion.

Notwithstanding the foregoing, the Underwriter shall not be obligated to defend any **CLAIM** if any of the following apply:

- i. The Per Event Limit of Liability for **DAMAGES** has been exhausted by payment of judgments, awards or settlements, or any combination thereof hereunder;
 - ii. The Aggregate Limit of Liability for **DAMAGES** has been exhausted by the payment of judgments, awards or settlements, or any combination thereof hereunder; or
 - iii. The Limit of Liability for **DEFENSE EXPENSES** has been exhausted by the payment of **DEFENSE EXPENSES** hereunder; provided, however, the Underwriter shall have the right and, in its sole discretion, may continue to defend a **CLAIM** against the **INSURED** notwithstanding the exhaustion of the Limit of Liability for **DEFENSE EXPENSES** but is under no obligation to do so.
- b. **DEFENSE EXPENSES** means:
 - i. All expenses incurred by the Underwriter in defending a **CLAIM**, all costs taxed against the **INSURED** in any suit arising from a **CLAIM** and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Underwriter has paid, tendered or deposited to court that part of the judgment which does not exceed the applicable Limit of Liability.
 - ii. Premiums on appeal bonds required in any defended suit, provided the counsel retained by the Underwriter has a reasonable belief in the success of an appeal and the **INSURED** can qualify for an appeal. The Underwriter shall have no obligation to apply for or furnish an appeal bond.

- iii. All reasonable expenses, other than loss of earnings, incurred by the **INSURED** at the Underwriter's request, and/or reasonable investigative fees and/or expenses directly incurred by the **INSURED** with the Underwriter's prior agreement.

3. LIMITS OF LIABILITY

- a. The Per Event Limit of Liability for **DAMAGES** specified on the Declarations Page is the most the Underwriter will pay for **DAMAGES** for any one **EVENT**.
- b. The Aggregate Limit of Liability specified on the Declarations Page is the most the Underwriter will pay for **DAMAGES** under this insurance.
- c. The Limit of Liability for **DEFENSE EXPENSES** specified on the Declarations Page is the most the Underwriter will pay for **DEFENSE EXPENSES** under this insurance.

The Limits of Liability stated in paragraphs a., b. and c. above shall apply regardless of the number of **EVENTS** resulting in **CLAIMS** made during the **POLICY PERIOD**, number of **CLAIMS** made or persons or organizations making **CLAIMS**, or the number of **INSUREDS** against whom **CLAIMS** have been made.

TERRITORY

This policy applies to **BODILY INJURY** and **PROPERTY DAMAGE** arising from any negligent act, error or omission in the rendering or failure to render **PROFESSIONAL SERVICES** by the **INSURED** anywhere in the world, but only if the **CLAIM** arising from such negligent act, error or omission is made and any suit relating to the **CLAIM** is brought in any of the 50 United States, the District of Columbia, Puerto Rico, or any of the possessions or territories of the United States.

DEFINITIONS

1. **BODILY INJURY** means physical injury, mental anguish, sickness, disease, shock or disability sustained by a person, including death resulting from any of these at any time.
2. **CLAIM(S)** means a demand for **DAMAGES** received by an **INSURED** or the Underwriter.
3. **DAMAGES** means a compensatory monetary judgment or award (including pre-judgment interest) or a settlement entered into with the Underwriter's prior written consent, but does not include:
 - a. **DEFENSE EXPENSES**;
 - b. Punitive or exemplary damages, criminal or civil fines, judicial sanctions or penalties, damages specified by statute, or any damages which are a multiple of compensatory damages, whether at common law and/or by statute;
 - c. The return or restitution of fees, compensation, profits, charges, and/or expenses paid to an **INSURED** for services rendered;
 - d. Judgments or awards deemed uninsurable by law.
4. **DEFENSE EXPENSES** has the meaning stated in Section 2 of the Insuring Agreements.

5. **EVENT** means an accident, disaster, casualty or occurrence, or series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause, whether involving one or more **INSUREDS** or **PARTICIPANTS**, that occurs while one or more **PARTICIPANTS** are:
 - a. in the water, entering the water or preparing to enter the water, or exiting the water, as part of a planned dive or swim activity; or
 - b. in a classroom or other instructional setting, while receiving **PROFESSIONAL SERVICES**.

An **EVENT** that is ongoing or involves a series of accidents, disasters, casualties or occurrences arising directly or indirectly from the same cause shall be considered to be a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commences. An **EVENT** also includes the failure or refusal of the **INSURED** to provide **PROFESSIONAL SERVICES**, provided such failure or refusal is not in violation of any law, including the Americans with Disabilities Act.

6. **INSURED** means:
 - a. The **NAMED INSURED**; and
 - b. Each person or organization identified in the Schedule of Additional Insureds, subject to the limitations contained in the endorsement containing the Schedule of Additional Insureds.
7. **NAMED INSURED** means the person or entity identified as the **NAMED INSURED** on the Declarations Page.
8. **PARTICIPANT** means any person being instructed, supervised, or guided while in water by an **INSURED** providing **PROFESSIONAL SERVICES**.
9. **POLICY PERIOD** means the period from the Effective Date of this policy stated on the Declarations Page to the Anniversary Date stated on the Declarations Page or the date this policy is canceled or otherwise terminated if the policy is canceled or otherwise terminated prior to the Anniversary Date.
10. **PROFESSIONAL SERVICES** means:
 - a. the instruction, assisting with instruction, supervision, or in-water guiding of a **PARTICIPANT** engaged in swimming, snorkeling, skin diving, free diving, RSSA (Recreational Surface Supplied Air) diving, SCUBA (Self-Contained Underwater Breathing Apparatus) diving (including recreational SCUBA, technical and rebreather SCUBA, and extended range SCUBA), breath-hold/apnea, swimming or diving emergency response, swimming or diving professional development certification programs, mermaiding, lifeguarding, or public safety diving where such instruction, assisting with instruction, supervision, or guiding is provided by a properly qualified and trained **INSURED** in his or her capacity as a certified swim or dive professional; and
 - b. the training and supervision of a **PARTICIPANT** engaged in learning oxygen administration or other swimming or diving first-responder type first aid skills when provided by a properly qualified and trained **INSURED** in his or her capacity as a certified first aid instructor; and,
 - c. for divemasters, or their equivalent, assisting an instructor with teaching an approved course or supervising and/or in-water guiding of a swimmer or certified diver in one of the swimming or diving activities described in 10a. above for which the Divemaster, or their equivalent, is properly

qualified and trained, including but not limited to, providing first aid, conducting refresher SCUBA training for previously certified divers, and supervising confined water activities for Try-A Dive and similar introductory swimming and diving activities.

11. **PROPERTY DAMAGE** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it. For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

EXCLUSIONS RELATED TO PROFESSIONAL STANDARDS AND CONDUCT

No coverage is provided for any **CLAIM**:

1. Arising out of any **EVENT** involving any swimming or diving activities in which the **INSURED** was not an active member in good standing with the applicable certification agency or agencies through which the training or supervision was offered at the time of the **EVENT**;
2. Arising out of any **EVENT** involving any training or supervisory dive or swim activity conducted by the **INSURED** that fails to meet the standards of the applicable certification training agency or agencies through which the training or supervision was offered, provided that the failure to meet the standard was a contributing cause of the **EVENT**, and specifically including but not limited to the following:
 - a. any **EVENT** involving a training dive where an **INSURED** intentionally left or permitted any uncertified student to be unsupervised, however, this exclusion does not apply to a navigation exercise on the second or subsequent training dives after the **INSURED** has evaluated the student's required skills, or a situation where the **INSURED** is responding to an emergency situation; or
 - b. any **EVENT** involving a training dive for anyone under the age of 10, except those courses that are taught in confined water only (e.g. swimming pools) and such may be offered to anyone age 7 and older; or
 - c. any **EVENT** involving an introductory/discover scuba experience (any program designed to introduce uncertified divers to SCUBA diving via a supervised, controlled open water experience) that was not within the standards of either the Recreational SCUBA Training Council (RSTC) or the certification agency under which the introductory experience was offered;
3. Arising out of any diving activity that is not planned as a **RECREATIONAL DIVE** (defined as dives planned to 130 feet or shallower, planned without mandatory stage decompression, and made using compressed air or oxygen enriched air 'nitrox' only), however this exclusion shall not apply to an **INSURED** who is engaged in the instruction or supervision of technical diving, provided the **INSURED** (i) has disclosed to the Underwriter that he or she is a technical diver, (ii) has been properly trained in technical diving and the equipment being used, (iii) has credentials to teach or supervise technical diving on the type of equipment being used at the time of the **EVENT**, and (iv) is engaged in a dive

planned to a depth less than 330' using air, nitrox, helium or trimix.

4. Involving an **INSURED** who does not have appropriate training and/or all appropriate certifications (including first aid training, when required) to teach the course or supervise the dive or swim activity which resulted in the **EVENT**, specifically including but not limited to an **EVENT** involving technical training and/or technical training dives where the **INSURED** is not a technically certified professional or where the **INSURED** is a technically certified professional but exceeds the depths for which the **INSURED** is trained and certified to teach and/or supervise.
5. Where the **INSURED**
 - a. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed medical history form prior to in-water training; or
 - b. allows a person to participate where the medical history form of that **PARTICIPANT** reveals a medical condition that is contraindicated for safe participation in any in-water activities and the **PARTICIPANT** has not provided a medical release from a physician or other licensed medical professional qualified to provide such a release (who is not the **PARTICIPANT** or the parent and/or legal guardian of a **PARTICIPANT**) approving the proposed in-water activity prior to any in-water training or supervision; or
 - c. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed and signed written release of liability and assumption of risk in a form approved by the certification agency through which the training or supervision was offered and naming the **INSURED** as a released party; or
 - d. fails to obtain from the **PARTICIPANT** (or the parent(s) and/or legal guardian(s) of the **PARTICIPANT** if a minor) a completed and signed written release of liability and assumption of risk which acknowledges that some dive sites are remote, that a recompression chamber may not be readily available, and that the **PARTICIPANT** still wants to continue their training or diving and assume the risk in the absence of a recompression chamber; or
 - e. fails to retain teaching records for each **PARTICIPANT** for a minimum of five (5) years, including records reporting the **PARTICIPANT**'s progress and results of knowledge tests for the purpose of evaluating the **PARTICIPANT**'s understanding of the instructional material.

**EXCLUSIONS FOR ASBESTOS, LEAD,
SILICA, POLLUTION, HAZARDOUS SUBSTANCES,
RADIATION, AND NUCLEAR MATERIAL**

1. **Asbestos.** No coverage is provided for any **CLAIM** arising out of:
 - a. **BODILY INJURY** in any way arising out of the use by any person or organization of or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust;
 - b. **PROPERTY DAMAGE** to real or personal property arising out of the use by any person or organization of asbestos, asbestos products, asbestos fibers or asbestos dust, including, without limitation, the costs incurred with respect to the removal or abatement of asbestos, asbestos products, asbestos fibers or asbestos dust from or in such real or personal property;

- c. Any obligation of the **INSURED** to indemnify any party because of damage arising out of such **PROPERTY DAMAGE, BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, arising out of the manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
 - d. Any obligation to defend any suit or **CLAIM** against the **INSURED** alleging **BODILY INJURY**, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury or **PROPERTY DAMAGE** resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.
2. **Lead.** No coverage is provided for any **CLAIM** arising out of:
- a. **BODILY INJURY** or **PROPERTY DAMAGE**, arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever;
 - b. The costs of clean up or removal of lead or products and materials containing lead;
 - c. The costs of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, or lead or products and material containing lead;
 - d. The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
 - e. The cost of compliance with any law or regulation regarding lead.
3. **Silica.** No coverage is provided for any **CLAIM** arising out of:
- a. **BODILY INJURY** or **PROPERTY DAMAGE** or any other loss, cost or expense arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form; or
 - b. Any obligation of the **INSURED** to defend and/or indemnify any party because of damages arising out of such **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the presence, ingestion, inhalation, or absorption, of or exposure to silica products, silica fibers, silica dust or silica in any form.
4. **Pollution and Hazardous Substances.** No coverage is provided for any **CLAIM** arising out of:
- a. **BODILY INJURY, PROPERTY DAMAGE**, or any other loss, damage, cost or expense, or
 - b. any increase in insured loss, damage, cost or expense, or
 - c. any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order,

direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority; or threat thereof, (and whether or not as a result of public or private litigation),

which arises from:

- i. any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof; or
- ii. relates to the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**, however caused or whenever or wherever happening; or
- iii. any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize **POLLUTANTS**, whether or not any of the foregoing are or should be performed by the **INSURED** or by another.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used herein includes, but is not limited to:

- i. seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and,
- ii. the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

The term "Pollutants" as used herein includes but is not limited to, any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

5. **Pathogens or Harmful Biological or Chemical Materials.** No coverage is provided for any **CLAIM** arising out of **BODILY INJURY, PROPERTY DAMAGE**, or any other loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or arising in connection with the actual or suspected presence of pathogenic or harmful biological or chemical materials, including bacteria, fungi, viruses and proteins, regardless of any other cause or event contributing concurrently or in any other sequence thereto.
6. **Radiation and Nuclear Material.** This policy does not apply:
 - a. Under any Liability Coverage, to **BODILY INJURY, PROPERTY DAMAGE** or any other injury, sickness, disease, death or destruction:

- i. with respect to which an **INSURED** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - ii. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **INSURED** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- b. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- c. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
- i. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an **INSURED** or (2) has been discharged or dispersed therefrom;
 - ii. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **INSURED**; or
 - iii. the injury, sickness, disease, death or destruction arises out of the furnishing by an **INSURED** 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, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- d. To (i) any loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or, (ii) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising out of:
- i. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - ii. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- e. In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this policy does not cover liability of whatsoever nature directly or indirectly caused by or contributed to by or arising out of ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

As used in this section:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (i) or (ii) thereof; "nuclear facility" means:

- i. any nuclear reactor,
- ii. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- iii. 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 **INSURED** 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,
- iv. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of 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; "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. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

7. **Communicable Disease.** No coverage is provided for any **CLAIM** arising out of **BODILY INJURY, PROPERTY DAMAGE** or any other actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defense cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a **COMMUNICABLE DISEASE** or the fear or threat (whether actual or perceived) of a **COMMUNICABLE DISEASE**.

A **COMMUNICABLE DISEASE** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a. the substance or agent includes, but is not limited to, a virus, bacterium, fungus, parasite or other organism or any variation thereof, whether deemed living or not; and
- b. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or any other means of transmission between organisms; and
- c. the disease, substance or agent can cause or threaten **BODILY INJURY**, including but not limited to illness, emotional distress, or damage to human health or welfare, or **PROPERTY DAMAGE**.

**EXCLUSIONS FOR VIOLATION OF CIVIL AND CRIMINAL
LAWS, RULES AND REGULATIONS**

No coverage is provided for any **CLAIM**:

1. Arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **CLAIM**.
2. Directly or indirectly attributed to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **INSURED**.
3. Arising out of discrimination by the **INSURED**, including but not limited to discrimination on the basis of age, color, race, sex, sexual orientation, creed, national origin, marital status or mental or physical disability, however, this exclusion does not apply if services are denied for valid safety reasons, including but not limited to, concern over medical history, disability, or belief by the **INSURED** that a potential **PARTICIPANT** lacks the physical ability or mental aptitude to engage in swim or dive activities.
4. Arising out of infringement of trademark, trade dress, trade name, patent, copyright or other intellectual property rights.
5. Arising out of a criminal act.
6. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE** caused by an **INSURED** while under the influence of alcohol, intoxicants, narcotics or any mind-altering substance.
7. Arising out of abuse or molestation, where "abuse or molestation" means:
 - a. Actual or threatened abuse or molestation or licentious, immoral or sexual behavior whether or not intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, the **INSURED**, an **INSURED**'s employee, or any other person, or
 - b. Charges or allegations of negligent hiring, employment, investigation, supervision, reporting to the proper authorities, or failure to so report; or retention of a person for whom the **INSURED** is or ever was legally responsible and whose conduct could be described by a. above.

Abuse or Molestation includes, but is not limited to, negligent or intentional infliction or physical, emotional or psychological injury/harm; harassment of any type; lewd, immoral or sexual behavior, whether or not any such act is intended to lead to, or culminate in, any sexual act, whether caused by, at the instigation of, at the direction of, or as a result of any act or omission by the **INSURED**, his/her employees, patrons, **PARTICIPANTS**, or from any cause whatsoever.
8. involving any liability as respects access or disclosure of confidential or personal information or data-related liability, which shall mean damages, or loss, defense costs, other costs or expenses because of **BODILY INJURY** or **PROPERTY DAMAGE** arising directly or indirectly out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, costs or expenses incurred by the **INSURED** or others arising out of that which is described in paragraph a. or b. above. Further, as used in this exclusion, "electronic data" means information, facts or programs stored as or on, created or used on, transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

9. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE** arising out of any action or omission that violates or is alleged to violate:
 - a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
 - c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
 - d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

EXCLUSIONS FOR WAR AND TERRORISM

No coverage is provided for any:

1. Liability directly or indirectly occasioned by, happening through, in consequence of or arising out of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
2. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with, or arising out of any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
3. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

“Terrorism” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. If the Underwriter alleges that due to Terrorism any loss, damage, cost or expense is not covered, the burden of proving the contrary shall be upon the **INSURED**. In the event any portion of this section on Terrorism is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

EXCLUSION FOR EXPOSURE TO SANCTIONS

No coverage is provided and no liability shall exist to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Underwriter or the reinsurers to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

ADDITIONAL EXCLUSIONS

No coverage is provided for any **CLAIM**:

1. by an **INSURED** against another **INSURED**, however this exclusion does not apply to a **CLAIM** brought by an **INSURED** who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**;
2. arising out of **BODILY INJURY** to any employee of the **INSURED** arising out of and in the course of his/her employment by the **INSURED**, including any obligation to indemnify another in whole or in part for such **BODILY INJURY**, however this exclusion does not apply to any **CLAIM** brought by an employee who was a **PARTICIPANT** during the **EVENT** that gave rise to the **CLAIM**;
3. by an employer against an **INSURED** who is employed by or representing such employer;
4. arising out of liability assumed by an **INSURED** under any contract or agreement;
5. arising out of an **EVENT** occurring prior to the **POLICY PERIOD**, if prior to the effective date of the policy, the **INSURED** had a reasonable basis to foresee that a **CLAIM** would be made against them;
6. arising out of an **EVENT** for which notice of the **EVENT** or a **CLAIM** was provided to another insurer prior to the start of the **POLICY PERIOD**;
7. arising out of an **EVENT** commencing prior to the **POLICY PERIOD** for which coverage is available under an occurrence based liability policy issued by the Underwriter or any other insurer;
8. arising out of any obligation for which the **INSURED** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law (including occupational disease and cumulative trauma) including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act, the Americans with Disabilities Act, and any civil rights laws or legislation;
9. arising out of **BODILY INJURY** or **PROPERTY DAMAGE** expected or intended from the standpoint of

the **INSURED**, however this exclusion does not apply to **BODILY INJURY** or **PROPERTY DAMAGE** resulting from the use of reasonable force to protect persons or property;

10. for any obligation to pay fines, judicial sanctions, penalties, punitive and/or exemplary damages, or multiples of compensatory damages, whether at common law or by statute;
11. based on the insolvency or bankruptcy of any person, firm or organization;
12. arising out of the function or failure of any product, including but not limited to **RSSA**, **SCUBA**, **SNUBA** and snorkeling equipment, regardless if owned, borrowed, rented or lent by an **INSURED**;
13. in any way involving potential or actual transmission of or exposure to Human Immunodeficiency Virus (HIV), hepatitis, or any other infectious disease or any complex or syndrome related thereto, or to any **CLAIM** in any way relating to the use or misuse or confidentiality of any information relating to HIV disease, hepatitis, or any other infectious disease, including the failure to disclose the health status of the **INSURED**;
14. arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, and inspection or fishing activities; however, this exclusion does not apply to public safety diving or scientific research activities;
15. arising out of navigation, towing, repair, storage, conversion, cleaning, demolition, wrecking, up righting, or salvage of any commercial vessel or oil rig, ship building and boat manufacturing, stevedoring, ship repair yards and dry docks;
16. arising out of off-shore and subaqueous work (other than **PROFESSIONAL SERVICES** provided by the **INSURED**);
17. arising out of the ownership, maintenance or use of the following premises or any property located on such premises: camps, campgrounds, recreational vehicle parks, or paintball fields;
18. arising out of premises or operations involving: (a) amusement parks or devices, carnivals or circuses, sports or other entertainment events, professional sports organizations, zoos, casinos, race tracks, or any theater, hall, arena, grandstand or stadium; (b) oil or gas pipelines, wells, or drilling operations; (c) all mining and quarrying operations; (d) bridges, tunnels, dams or reservoirs; (e) waste treatment, storage or disposal facilities, dumps or dumpsites, landfills; surface impoundments; waste lagoons; or waste sites;
19. arising out of the ownership, maintenance, operation, use, loading or unloading or entrustment to others of any automobile, aircraft or watercraft, including alleged negligence or other wrongdoing in the supervision, employment, training or monitoring of others by the **INSURED**; however, this exclusion does not apply to the ingress and/or egress from any watercraft while any **PARTICIPANT** is under the **INSURED**'s supervision or instruction, or involving the operation of a kayak or paddleboard;
20. for **PROPERTY DAMAGE** to:
 - a. property owned or occupied by or rented to the **INSURED**;
 - b. Property used by the **INSURED**; or

c. Property in the care, custody or control of the **INSURED** or property over which the **INSURED** is for any purpose exercising physical control (this exclusion does not apply to swimming pools rented by, used by, or occupied by the **INSURED**); or,

21. for **BODILY INJURY** or **PROPERTY DAMAGE** arising out of the ownership, maintenance, packing, handling, transportation, storage, igniting, operation, sponsorship, set-up or take-down or other use of:

a. Firearms, including handguns, revolvers, pistols, rifles, shotguns, air guns, semi-automatic weapons and similar devices;

b. Fireworks, including firecrackers, Roman Candles, flash powder, explosive compositions or combustible substances, pinwheels, skyrockets, ground displays, flares, smoke bombs, and similar devices that produce, when ignited or activated, sound, smoke, motion or a combination of these;

c. Explosives, caps, primers, detonators, ammunitions, fuses, arms, magnesium, ammonium nitrate, nitroglycerin, celluloid, pyroxylin or other substances intended for use as an explosive;

by the **INSURED** or by any person for which the **INSURED** may be held liable in any capacity, and no coverage is provided for any obligation of the **INSURED** to indemnify, defend or contribute jointly or severally with another because of **BODILY INJURY** or **PROPERTY DAMAGE** arising out of any of the activities specified paragraphs a., b. or c. above; or,

22. arising out of a **CYBER LOSS**.

CYBER LOSS means any actual or alleged loss, damage, liability, injury, compensation, sickness, disease, death, medical payment, claim, cost, defense cost, expense or any other amount incurred by or accruing to the **INSURED**, including but not limited to any mitigation cost or statutory fine or penalty, directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any **CYBER INCIDENT**.

CYBER INCIDENT means:

a. an unauthorized or malicious act or series of related unauthorized or malicious acts, regardless of time and place, or the threat or hoax thereof; or

b. a failure to act, any error or omission or accident or series of related failures to act, errors or omissions or accidents; or

c. a breach of duty, statutory duty or regulatory duty or trust or series of related breaches of duty, statutory duty or regulatory duty or trust;

involving access to, processing of, use of or operation of any **COMPUTER SYSTEM** or any data by any person or group(s) of persons.

COMPUTER SYSTEM means any computer, hardware, software, information technology or communications system or electronic device, including any similar system or any configuration of the aforementioned and including any associated input, output or data storage device, networking equipment or backup facility.

CONDITIONS

1. INSURED's duties arising out of a CLAIM or EVENT:

- a. As a condition precedent to the protection afforded by this insurance, the **INSURED** shall immediately give to the Underwriter through the designated persons or entity shown below, written notice of any **CLAIM** first made against the **INSURED** during the **POLICY PERIOD**, including, but not limited to, any verbal demand or written demand, notice, summons or other process received by the **INSURED** or his or her representative.
- b. The **INSURED** must also notify the Underwriter through the designated person or entity shown below as soon as practicable of any **EVENT** likely to give rise to a **CLAIM** hereunder or of the receipt from any person of a verbal or written statement of an intention to hold the **INSURED** responsible for any **EVENT**. If an **EVENT** involves a fatality or serious bodily injury, immediate notice (within 24 hours) should be given to the Underwriter.

Entity to notify for a. and b. above:

DAN Services, Inc.
Phone: 919-682-9111 (Available 24/7)
Fax: 919.490.2935
E-Mail: LiabilityClaims@DAN.org

In any such case, the **INSURED** shall, upon request, give the Underwriter such information as the Underwriter, at its sole discretion, may reasonably require, including the information required to complete any Incident Report Form acceptable to the Underwriter.

- c. Failure to provide written notice as set forth above will be considered a failure of a condition to coverage and may at the option of the Underwriter render this policy null and void in relation to any **CLAIM** or **EVENT** not properly and promptly reported through written notice given in accordance with this provision.
2. Assistance and Cooperation: The **INSURED** shall cooperate with the Underwriter and, upon the Underwriter's request, in any investigation process, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution indemnity against any person or organization who may be liable to the **INSURED** because of **BODILY INJURY** or **PROPERTY DAMAGE** with respect to which insurance is afforded hereunder and the **INSURED** shall attend hearing and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.
3. Voluntary Payments: Without the prior written consent of the Underwriter, the **INSURED** shall not voluntarily make any payment or settlement, make any admission of responsibility, assume any obligation, or incur any expense other than for first aid to others at the time of the **EVENT**.
4. Subrogation Clause: Upon payment under this insurance, the Underwriter shall be subrogated to all the **INSURED's** rights of recovery against any person or organization, and the **INSURED** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **INSURED** shall do nothing to prejudice such rights.

5. Other Insurance: If other valid and collectible insurance is available to the **INSURED** covering a **CLAIM** also covered by this policy, the insurance afforded by this policy shall be limited as follows:

- a. Primary Insurance – This insurance is primary except when paragraph b. below applies. If this insurance is primary, the Underwriter’s obligations are not affected unless any of the other insurance also is primary. Then, the Underwriter will share with all that other insurance by the method described in paragraph c. below.
- b. Excess Insurance – This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the **POLICY PERIOD** for this policy and applies to injury on other than a claims-made basis, if—
 - i. no Retroactive Date is shown on the Declarations Page of this policy; or
 - ii. the other insurance has a policy period which continues after the Retroactive Date shown on the Declarations Page of this policy.

When this insurance is excess, the Underwriter will have no duty to defend the **INSURED** against any **CLAIM** if any other insurer has a duty to defend the **INSURED** against that **CLAIM**. If no other insurer defends, the Underwriter will undertake to do so, but the Underwriter will be entitled to the **INSURED**’s rights against all those other insurers.

When this insurance is excess, the Underwriter will pay, up to the applicable Limit of Liability, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance. If other insurance also is excess, the Underwriter will share the remaining loss with that other insurance.

- c. Method Of Sharing – If all of the other insurance permits contribution by equal shares, the Underwriter will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Underwriter will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Liability to the total applicable Limits of Liability of all insurers.

6. Non Accumulation of Limits of Coverage: If this policy and any other policy issued by the Underwriter to the **INSURED** apply to the same **EVENT**, Section 5 (Other Insurance) above shall not apply and the maximum Limit of Liability shall not exceed the highest applicable limit of liability under any one policy. In no event shall the limits of liability under two or more policies issued by the Underwriter to the **INSURED** be stacked so as to obtain a limit of liability that exceeds the highest applicable limit of liability available under any one policy.

7. Legal Action Against the Underwriter: No person or organization has a right under this insurance:

- a. to join the Underwriter as a party or otherwise bring the Underwriter into a suit for **DAMAGES** from **the INSURED**; or
- b. to sue the Underwriter on this insurance unless they have fully complied with all of its terms.

8. Service of Suit:

- a. It is agreed that in the event of the failure of the Underwriter hereon to pay any amount claimed to be due hereunder, the Underwriter hereon, at the request of the **INSURED**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriter's rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon DAN Risk Retention Group, Inc., c/o Artex Risk Group, 115 Central Island Street, Suite 100, Charleston, SC 29492 U.S.A. and that in any suit instituted against any one of them upon this contract, the Underwriter will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.
- b. The above named are authorized and directed to accept service of process on behalf of the Underwriter in any such suit and/or upon the request of the **INSURED** to give a written undertaking to the **INSURED** that they will enter a general appearance upon the Underwriter's behalf in the event such a suit shall be instituted.
- c. Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Underwriter hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **INSURED** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

9. False or Fraudulent CLAIM: If the **INSURED** shall give notice of any **CLAIM** or reports an **EVENT** likely to give rise to a **CLAIM** knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the **INSURED**.

10. Inspection and Audit:

- a. The Underwriter shall be permitted, but not obligated to, inspect the **INSURED's** property, operations or records at any time. Neither the Underwriter's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **INSURED** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.
- b. The Underwriter may examine and audit the **INSURED's** books and records at any time during the **POLICY PERIOD** and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

11. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Underwriter from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Underwriter.

12. Assignment: No assignment of interest under this insurance shall be valid unless the written consent of the Underwriter is endorsed thereon.

13. Cancellation and Nonrenewal:

- a. It is understood and agreed that this policy may be canceled by the Underwriter by mailing to the **NAMED INSURED** at the address shown on the Declarations Page written notice stating when, not less than forty-five (45) days thereafter, such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. Proof of mailing notice of cancellation shall be sufficient proof of notice.
- b. Notwithstanding anything contained in this insurance to the contrary this insurance may be cancelled by the **NAMED INSURED** at any time by written notice or by surrender of this policy.
- c. If this insurance is cancelled by or on behalf of the Underwriter, the Underwriter shall retain the pro rata proportion of the premium hereon, except that (a) if this insurance is on an adjustable basis the Underwriter shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater and (b) if this insurance is cancelled for nonpayment of premium, the premium shall be considered fully earned on the effective date of the policy and collectible by the Underwriter in full. If this insurance is cancelled by the **NAMED INSURED**, the premium shall be considered fully earned on the effective date of the policy and will not be subject to pro rata refund.
- d. Payment or tender of any unearned premium by the Underwriter shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- e. This insurance may be non-renewed by the Underwriter in accordance with applicable law. Proof of mailing notice of nonrenewal shall be sufficient proof of notice.

END OF POLICY FORM

FORMS AND ENDORSEMENTS WHICH ARE PART OF THIS POLICY ARE ATTACHED

ENDORSEMENT

**ADDITIONAL INSURED
DESIGNATED PERSON OR ORGANIZATION**

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**PROFESSIONAL LIABILITY
DEFINITIONS - PARAGRAPH 6 – INSURED**

The following persons or organizations shall be additional **INSUREDS**:

SCHEDULE OF ADDITIONAL INSUREDS

List Name of Person or Organization

NAME	ADDRESS	CITY	ST	ZIP

(If no entry appears above, information required to complete this endorsement will be shown on the Declarations Page as applicable to this endorsement.)

The definition of **INSURED** in **DEFINITIONS** paragraph 6 (page 6) is amended to include as an **INSURED** each person or organization identified in the Schedule above, subject to the following:

The coverage afforded to these additional **INSUREDS** is limited solely to “vicarious liability” of the additional **INSURED** that is a specific and direct result of a negligent act, error or omission by the **NAMED INSURED** in rendering or failing to render **PROFESSIONAL SERVICES**. “Vicarious liability” as used in this endorsement means liability that is imposed on the additional **INSURED** solely by virtue of its relationship with the **NAMED INSURED**, and not due to any act, error or omission of the additional **INSURED**.

This policy does not apply to any **BODILY INJURY** or **PROPERTY DAMAGE** arising from the act, error or omission of any additional **INSURED**, when such act, error or omission is the sole or a contributing cause of the loss.

The additional **INSURED** is entitled to a defense under this policy only if the **CLAIM** against the additional **INSURED** relates exclusively to the additional **INSURED**’s vicarious liability for the negligent act, error or omission of the **NAMED INSURED** in rendering or failing to render **PROFESSIONAL SERVICES**. If the **CLAIM** also includes allegations of negligent acts, errors, or omissions on the part of the additional **INSURED** or other third parties, this policy will cover only that portion of the total defense costs that can be directly attributable to matters that might lead to an award of damages under this policy.

In no event is the coverage provided to an additional **INSURED** broader than the underlying coverage provided to the **NAMED INSURED**. Coverage is provided for an additional **INSURED**'s vicarious liability only if the negligent act, error or omission resulting in vicarious liability is covered under this policy.

In accordance with the terms and conditions of the policy and as more fully explained in the policy, as soon as practicable, each **INSURED** must give us prompt notice of any occurrence which may result in a **CLAIM**, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with all of the policy's terms and conditions. Failure to comply with this provision may, at our option, result in the claim or "suit" being denied.

All **INSUREDs** share the Limits of Liability established by this policy. The provision of coverage to an additional **INSURED** does not change or increase the Limits of Liability.

All other terms and conditions remain unchanged.

ENDORSEMENT

EQUIPMENT LIABILITY ENDORSEMENT

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.**

This endorsement modifies the Exclusions section of the insurance as follows:

In consideration of the payment of the additional premium shown on the Declarations Page, it is understood and agreed that Additional Exclusion 12 of this policy DOES NOT apply and coverage is extended to include any **CLAIM** against an **INSURED** arising out of the function or failure of equipment used by a **PARTICIPANT** while in the **INSURED**'s own classes or under the **INSURED**'s supervision. This equipment liability endorsement only applies to those **INSUREDs** who have purchased the equipment liability option and paid the associated additional premium.

All other terms and conditions remain unchanged.

ENDORSEMENT

AAUS ENDORSEMENT

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.**

This endorsement modifies the insurance as follows:

PROFESSIONAL LIABILITY

POLICY AND CERTIFICATE

In consideration of the payment of the additional premium shown on the Declarations Page, it is agreed that the policy and certificate are amended to include the following:

To be eligible for this endorsement, the **INSURED** must be at all times during the **POLICY PERIOD**:

- a. an "Organizational Member" or AAUS Dive Safety Officer ("DSO") in good standing with both The American Academy of Underwater Science ("AAUS") and their underlying certification agency, and
- b. an Instructor, Divemaster, or the equivalent, with an internationally recognized certification agency, and
- c. not a Temporary or Visiting Diver as defined under the 2016 AAUS Standards.

DEFINITIONS PARAGRAPH 10 – PROFESSIONAL SERVICES

For purposes of the coverage provided by this endorsement **PROFESSIONAL SERVICES** shall include the instruction or supervision of a **PARTICIPANT** engaged in any activity sanctioned by the American Academy of Underwater Sciences (AAUS); provided the **INSURED** follows the standards and safety manuals of both the AAUS and the **INSURED's** underlying certification agency in providing services to a **PARTICIPANT**. Sanctioned activities shall specifically include:

- a. use of the following tools: underwater power tools, full face mask, hazmat equipment, lift bags and reels; and
- b. the following types of diving: decompression diving, zero visibility diving, blue water diving, ice diving, saturation diving, cave or cavern diving.

All other terms and conditions remain unchanged.

ENDORSEMENT

LIMITED TOUR AND TRAVEL AGENT LIABILITY ENDORSEMENT CLAIMS MADE AND REPORTED COVERAGE

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.**

In consideration of the payment of the additional premium shown on the Declarations Page, and subject to the Limit of Liability shown herein, it is hereby understood and agreed that this insurance is extended to provide Limited, Claims Made And Reported Tour And Travel Agent Liability Coverage as described in this endorsement.

SUBLIMIT: \$250,000

1. **INSURING AGREEMENTS, 1. COVERAGE – CLAIMS MADE AND REPORTED** is amended to include the following new subsection after subsection a.:

- a1. Subject to the applicable Limit of Liability, the Underwriter agrees to pay on behalf of the **INSURED** all sums which the **INSURED** shall become legally obligated to pay as **DAMAGES** for **CLAIMS** arising from any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**.

2. **INSURING AGREEMENTS, 2. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS** is amended to include the following new subsection after subsection a.:

- a.1 The Underwriter shall have the right and duty to defend any **CLAIM** against the **INSURED** alleging **DAMAGES** arising from any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES** which is covered and payable under the terms of this insurance, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent. The Underwriter shall have the right to make such investigation and settlement of a **CLAIM** as deemed expedient and in its sole discretion.

3. **SUBLIMIT**. The following sublimit applies to the coverage provided under this endorsement:

Subject to the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability, the Underwriter will pay no more than **\$250,000** for the sum of **DAMAGES** and **DEFENSE EXPENSES** attributable to all **CLAIMS** arising out of any negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**. This sublimit is within the Per Event, Aggregate and **DEFENSE EXPENSES** Limits of Liability for the policy and does not add to those limits.

4. DEFINITIONS

- a. For purposes of the coverage provided by this endorsement, an **EVENT** means a negligent act, error or omission by the **INSURED** in the rendering of or failure to render **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**. An **EVENT** that is ongoing or involves a series of negligent acts, errors or omissions that are related shall be considered a single **EVENT** and shall be considered to occur on the first date on which the **EVENT** commenced.

- b. For purposes of the coverage provided by this endorsement, a **PARTICIPANT** includes a person for whom the **INSURED** provides **PROFESSIONAL SERVICES** that constitute **TOUR OR TRAVEL AGENCY SERVICES**.
 - c. For purposes of the coverage provided by this endorsement, **PROFESSIONAL SERVICES** includes **TOUR OR TRAVEL AGENCY SERVICES**, which means the services provided by an **INSURED** who acts as a tour or travel agent in arranging travel-related activities for **PARTICIPANTS** with airlines, hotels, resorts, dive operators and other vendors of travel or recreational services.
5. **ADDITIONAL EXCLUSIONS.** The coverage provided by this endorsement is subject to all of the exclusions found in the policy. If an exclusion found in the policy is limited to excluding coverage for **CLAIMS** alleging **BODILY INJURY** or **PROPERTY DAMAGE** arising from a specified cause of loss, for purposes of the coverage provided by this endorsement the exclusion shall be deemed to exclude coverage for any **CLAIM** made in connection with any loss, injury, damage, cost or expense of any sort arising from the specified cause of loss.

The coverage provided by this endorsement also is subject to the following exclusions:

No coverage is provided for any **CLAIM**:

- a. Arising out of **BODILY INJURY** or **PROPERTY DAMAGE**;
- b. Arising out of the cancellation or any change in travel arrangements by an airline, cruise line, transportation service, agency, dive operator, tour operator or other vendor, service provider or carrier;
- c. Arising out of a change in travel or other plans by a **PARTICIPANT** or other person;
- d. Arising out of any order or other action of any governmental authority or any change in law or regulation or change in any policy of any governmental authority;
- e. Arising out of the failure of an airline, cruise line, transportation service, dive operator, tour operator or other vendor, service provider or carrier to provide the bargained-for travel or recreational services or refund money due to any person, unless the **INSURED** had actual knowledge prior to booking that such vendor, service or carrier had previously failed to provide bargained-for travel or recreational services or to refund money for such services when a refund was due;
- f. Arising out of the **INSURED**'s violation of any consumer fraud, consumer protection, consumer privacy, unfair trade or deceptive business practice or statutory or common law unfair competition;
- g. Arising out of any dishonest, fraudulent, malicious or criminal act or omission of the **INSURED**;
- h. Arising out of bankruptcy, insolvency, receivership, liquidation and/or cessation of operations of any **INSURED** or other entity that any **INSURED** owns, controls or manages, or in which any **INSURED** has a financial interest. This exclusion does not apply to any unrelated third party travel supplier.

- i. Arising out of any misquotation or misstatement of prices or applicable taxes or costs, cancellation provisions, payment terms, pricing changes, failure to secure promotional offers, or any dispute with respect to fees or charges;
- j. Arising out of any act, error or omission relating to the recommendation, sale, maintenance, or procurement of any insurance policy or bond or investigation, adjustment or outcome of any insurance claim;
- k. Arising out of the gaining of profit or advantage to which the **INSURED** was not legally entitled;
- l. Arising out of any violation of the Fair Labor Standards Act or any similar federal, state, or local law pertaining to working conditions, hours, employee benefits, or wages;
- m. By:
 - 1. An employee of the **INSURED** arising out of and in the course of:
 - i. employment by the **INSURED**; or
 - ii. performing duties related to the conduct of the **Insured's** business; or
 - 2. The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph 1 above. This exclusion applies:
 - i. whether the **INSURED** may be liable as an employer or in any other capacity; and
 - ii. to any obligation to share **DAMAGES** with or repay someone else who must pay **DAMAGES**;
- n. Arising out of an **INSURED's** acts or omissions in the administration of any employee benefit program or as a fiduciary in connection with any employee insurance, retirement or pension plan, including but not limited to any alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments, or any similar state or local laws, or any regulations or orders issued in connection therewith;
- o. Arising out of any actual or alleged:
 - 1. Failure to employ;
 - 2. Termination of employment, including actual or alleged constructive dismissal;
 - 3. Breach of employment contract;
 - 4. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, employment related misrepresentation, employment related emotional distress, retaliation, or other employment related practices, policies, acts or omissions; or
 - 5. Any consequential liability, damage, loss, cost, or expense as a result of 1, 2, 3, or 4 above;

- p. Against an **INSURED** by or on behalf of:
1. Any other **INSURED**;
 2. Any entity:
 - i. which is owned, operated, or controlled by the **INSURED**;
 - ii. which owns, operates, or controls the **INSURED**; or
 - iii. which is affiliated with the **INSURED** through any common ownership, operation or control; or
 - iv. in which the **INSURED** is a director, officer, partner, trustee, shareholder, member, manager, or employee; or
 3. Any business enterprise, charitable organization or pension, welfare, profit sharing, mutual or investment fund, or trust owned or sponsored by the **INSURED**;
- q. Arising out of the rendering or failure to render any medical, dental, surgical, nursing, or therapeutic service of treatment, or from the furnishing or failure to furnish any drugs, medications, medical, or dental supplies or appliances, or out of the **INSURED**'s negligence in screening, selection, hiring, retention, training, instruction, or supervision of any employee, officer or partner of the **INSURED** or any other person or organization engaged in providing or failing to provide such services. However, this exclusion shall not apply to any medical services which are rendered as emergency first aid treatment at the time of an accident;
- r. Arising out of the breach of any employment agreement, non-competition agreement, non-solicitation agreement, confidentiality agreement, fiduciary duty, or duty of loyalty on the part of the **INSURED** or any past, present or prospective employee, independent contractor, director, officer, partner, or shareholder of the **INSURED**;
- s. Arising out of the booking, leasing, sale, rental or management of any **TIME-SHARE** properties. This exclusion does not apply with respect to incidental travel arrangements made by the **INSURED** on behalf of travelers to or from such **TIME-SHARE** properties. Incidental travel includes airline ticketing, automobile rental and ground transportation. **TIME-SHARE** means a system for sharing ownership of any apartment, condominium, villa or the like as defined in the time-sharing agreement.
- t. Arising out of the sale, rental, or distribution of any sports or recreational equipment by the **INSURED**, including but not limited to ski equipment, bicycles, rafts, snowmobiles, and SCUBA diving and snorkeling equipment;
- u. Arising out of any commingling of money, or the inability or failure to pay or collect money or the value of mileage points, vouchers, travel credits, or other negotiable instrument, for any reason, whether on the part of the Insured, or any other party, including but not limited to unauthorized or illegal credit card transactions, debit memos, commissions, profits, or refunds and bankruptcy, insolvency, receivership, liquidation or cessation of operations;

- v. Arising out of Internet technology services provided by the **INSURED**, including but not limited to the transmission of computer viruses, corruption of databases, misappropriation, alteration, or deletion of data or harm to the integrity of a computer system. However, this exclusion does not apply to any act or omission Involving researching travel related information, placing reservations, or communication by electronic mail by the **INSURED** as part of the **INSURED's TOUR OR TRAVEL AGENCY SERVICES** .
6. **ADDITIONAL CONDITIONS.** The coverage provided by this endorsement is subject to all of the terms and conditions found in the Policy, except as expressly modified herein, and the following additional conditions:
- 4. A. This coverage is excess to any other insurance maintained by any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person who provides services to the **INSURED** or a **PARTICIPANT**. Any **CLAIM** under this endorsement will only be paid if the **CLAIM** has been wholly or partially denied by such airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person , or its insurer; and if partially denied, payment will be limited to the unpaid amount to the extent such amount is covered under this endorsement.

 - C. Should a lawsuit arise based on the interpretation or enforcement of this endorsement, any airline, hotel, resort, dive operator, concessionaire, vendor or sub-contractor or other person who may have primary liability for the **CLAIM** shall be a necessary and indispensable party.

All other terms and conditions remain unchanged.

ENDORSEMENT

INDIVIDUAL POLICY EXTENDED REPORTING PERIOD ENDORSEMENT

**THIS ENDORSEMENT CHANGES THE POLICY.
PLEASE READ IT CAREFULLY.**

Insured:

In consideration of an additional premium of \$ _____, it is agreed as follows:

The **INSURED** identified above, upon payment of an additional premium shown above, shall have an Extended Reporting Period of <<insert applicable time period>> from the end of the **POLICY PERIOD** in which to report in writing to the Underwriter accordance with Section 1 of the Conditions any **CLAIM** that is made during the Extended Reporting Period, provided the **CLAIM** arises out of an **EVENT** that commenced after the Retroactive Date specified on the Declarations Page and before the end of the **POLICY PERIOD**.

This Extended Reporting Period does not extend the **POLICY PERIOD** or reinstate or increase the Limits of Liability for this insurance.

All other terms and conditions remain unchanged.