

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

General Terms and Conditions Section



**PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE
AGAINST THE INSURED DURING THE POLICY PERIOD WITH DEFENSE
EXPENSES INCLUDED IN THE LIMITS OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to the Declarations and all of the terms, conditions and limitations of this Policy, the Underwriter and the **Insureds** agree as follows:

I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Section of this Policy, the terms, conditions and limitations of each Coverage Section shall apply only to that Coverage Section. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions and limitations of any Coverage Section, the terms, conditions and limitations of such Coverage Section shall control for purposes of that Coverage Section. Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under that Coverage Section, have the meaning set forth in that Coverage Section.

II. DEFINITIONS

- (A) “**Application**” means the application(s) attached to and forming part of this Policy, including any materials submitted and statements made in connection therewith, all of which are on file with the Underwriter and are a part of this Policy, as if physically attached. If any **Application** uses any terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms and conditions of this Policy.
- (B) “**Claim**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (C) “**Domestic Partner**” means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

- (D) “**Financial Impairment**” means the status of an **Organization** resulting from:
- (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
 - (2) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.
- (E) “**Foreign Jurisdiction**” means any jurisdiction, other than the United States of America or any of its territories or possessions.
- (F) “**Insured**” shall have the meaning set forth in the applicable Coverage Section.
- (G) “**Insured Person**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (H) “**Liability Coverage Section**” means the Directors, Officers and Organization Liability, Employment Practices Liability and Fiduciary Liability Coverage Sections of this Policy, if purchased as stated in ITEM 3 of the Declarations.
- (I) “**Loss**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (J) “**Management Control**” shall mean: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation or organization, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation or organization, the management committee of a joint venture or partnership or the management board of a limited liability company.
- (K) “**Named Organization**” means the entity designated as such in ITEM 1 of the Declarations.
- (L) “**Occurrence**” shall have the meaning set forth in the Crime Coverage Section.
- (M) “**Organization**” means the **Named Organization** and, subject to the provisions of Section IX of these General Terms and Conditions, any **Subsidiary. Organization** shall also mean any such entity as a debtor in possession.
- (N) “**Per Occurrence Limit of Liability**” means the applicable Per Occurrence Limit of Liability stated in ITEM 6 of the Declarations.

- (O) “**Policy Aggregate Limit of Liability**” means the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
- (P) “**Policy Period**” means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation of this Policy.
- (Q) “**Related Claims**” means all **Claims** for **Wrongful Acts** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.
- (R) “**Separate Limit of Liability**” means the applicable Separate Limit of Liability, if any, stated in ITEM 4 of the Declarations.
- (S) “**Shared Limit of Liability**” means the applicable Shared Limit of Liability, if any, stated in ITEM 4 of the Declarations, which limit of liability shall be shared between all **Liability Coverage Sections** listed below such Shared Limit of Liability in the Declarations.
- (T) “**Subsidiary**” means, subject to the provisions of Section IX of these General Terms and Conditions:
- (1) any not-for-profit entity, and any for-profit entity whose securities are not publicly traded, during any time which the **Named Organization** has **Management Control** of such entity, either directly or through one or more **Subsidiaries**; and
 - (2) any joint venture entity during any time which the **Named Organization**, either directly or through one or more **Subsidiaries**, has **Management Control** of such joint venture entity pursuant to a written joint venture agreement.
- (U) “**Wrongful Act**” shall have the meaning set forth in the applicable **Liability Coverage Section**.

III. LIMITS OF LIABILITY

- (A) With respect to the **Liability Coverage Sections**, the following shall apply:
- (1) **Policy Aggregate Limit of Liability**

The **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations is the maximum limit of the Underwriter’s liability for all **Loss** under all **Liability Coverage Sections** combined resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Sections** provide coverage.

(2) **Separate Limits of Liability**

If a **Separate Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Section**, then such **Separate Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under such **Liability Coverage Section** resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Section** provides coverage. Any such **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(3) **Shared Limits of Liability**

If a **Shared Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Sections**, then such **Shared Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under all **Liability Coverage Sections** to which such **Shared Limit of Liability** is applicable, as indicated in ITEM 4 of the Declarations, resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Sections** provide coverage. Any such **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(4) **Defense Expenses** are part of and not in addition to the applicable Limits of Liability stated in ITEM 4 of the Declarations, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, such applicable Limits of Liability.

(5) If the **Separate Limit of Liability** or **Shared Limit of Liability** applicable to any **Liability Coverage Section** is exhausted by the Underwriter's payment of **Loss**, all obligations of the Underwriter under such **Liability Coverage Section(s)** will be completely fulfilled and exhausted, and the premium for such **Liability Coverage Section(s)** will be fully earned.

(B) With respect to the Crime Coverage Section, the following shall apply:

The applicable **Per Occurrence Limit of Liability** stated in ITEM 6 of the Declarations shall be the maximum limit of the Underwriter's liability for all loss resulting from an **Occurrence**, regardless of the number of **Insureds** sustaining such loss.

IV. RETENTIONS

(A) The Retentions stated in ITEM 5 of the Declarations are separate Retentions pertaining only to the **Liability Coverage Section** for which they are stated in the

Declarations. Subject to paragraph (B)(2) below, the application of a Retention to **Loss** resulting from any **Claim** under one **Liability Coverage Section** shall not reduce the Retention applicable under any other **Liability Coverage Section**.

- (B) In the event a **Claim** is covered under more than one **Liability Coverage Section**, then the following shall apply:
- (1) with regard to **Loss** resulting from any such **Claim** payable under any **Liability Coverage Section** which is subject to a **Separate Limit of Liability**, the Retention applicable to such **Loss**, as stated in ITEM 5 of the Declarations, shall apply separately to such **Loss**, and such Retention shall not be reduced by payments of **Loss** under any other **Liability Coverage Section**; and
 - (2) with regard to **Loss** resulting from any such **Claim** payable under any **Liability Coverage Sections** which are subject to a **Shared Limit of Liability**, the highest applicable Retention, as stated in ITEM 5 of the Declarations, shall be deemed the Retention applicable to such **Loss**.

V. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES

- (A) Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of any applicable **Liability Coverage Section**, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
- (1) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
 - (2) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.
- (B) All provisions of these General Terms and Conditions and of any applicable **Liability Coverage Section**, including without limitation the Retention, that are applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage extended pursuant to this Section V shall not apply with respect to any loss resulting from an actual or alleged act, error or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

VI. NOTICE

- (A) Any notice to the Underwriter with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section(s) so designated.
- (B) Notice to the Underwriter of a **Claim** or of circumstances which could give rise to a **Claim** under any **Liability Coverage Section**, or of an **Occurrence** under the Crime Coverage Section, shall be given in writing addressed to:

Chief Claims Officer
OneBeacon Professional Insurance
199 Scott Swamp Road
Farmington, CT 06032
obpicclaims@onebeacon.com

- (C) All other notices to the Underwriter shall be given in writing addressed to:

OneBeacon Professional Insurance
199 Scott Swamp Road
Farmington, CT 06032
Attn: Underwriting

- (D) Any such notice shall be effective on the date of receipt by the Underwriter at such address.
- (E) Notice to the **Insured** shall be sent to the **Named Organization** at the address designated in ITEM 1 of the Declarations.

VII. TERRITORY

Coverage shall extend anywhere in the world.

VIII. EXTENDED REPORTING PERIOD

If any **Liability Coverage Section** is canceled for any reason other than non-payment of premium or is not renewed by the Underwriter or the **Named Organization**, then solely with respect to such **Liability Coverage Section** that was canceled or not renewed, an additional period of time during which **Claims** may be reported under this Policy (an "Extended Reporting Period") shall be made available as described in this Section VIII, but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such cancellation or non-renewal ("Termination Date") or the effective date of any event described in Section IX (B) or (C) below, whichever is earlier. No Extended Reporting Period shall in any way increase the Underwriter's Limits of Liability stated in ITEM 4 of the Declarations, and the Underwriter's Limits of Liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the applicable Limits of Liability stated

in ITEM 4 of the Declarations. The offer of renewal terms, conditions, limits of liability, retentions or premium different from those in effect prior to renewal shall not constitute cancellation or refusal to renew for purposes of this Section VIII.

The **Named Organization** may purchase an Extended Reporting Period for one of the periods of time stated in ITEM 9 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than thirty (30) days after the Termination Date. The additional premium for an Extended Reporting Period shall equal the applicable percentage, as stated in ITEM 9 of the Declarations, of the full annual premium (including any premium adjustments made during the **Policy Period**) for the applicable **Liability Coverage Section**, and must be paid no later than thirty (30) days after the Termination Date. The entire additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an Extended Reporting Period is made as described above, or if the additional premium for any such Extended Reporting Period is not paid within thirty (30) days after the Termination Date, there will be no right to purchase any Extended Reporting Period at any later time.

IX. CHANGES IN EXPOSURE

(A) Acquisition/Creation of Another Organization

- (1) If before or during the **Policy Period** any **Organization**:
 - (a) acquires **Management Control** in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
 - (b) acquires another organization by merger into or consolidation with the **Organization** such that the **Organization** is the surviving entity, then coverage shall be provided for such other organization and its **Insureds** with respect to:
 - (i) any **Liability Coverage Section**: solely for **Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation unless the Underwriter agrees, after presentation of a complete application and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** committed or allegedly committed by such **Insureds** before such acquisition or creation; or
 - (ii) the Crime Coverage Section: after the effective date of such event, pursuant to Section VII(E), Liability for Prior Losses, of such Crime Coverage Section.

- (2) If, at the time of an acquisition or creation described in paragraph (A)(1) above:
- (a) the total assets of any such acquired or created organization exceed thirty-five percent (35%) of the total assets of the **Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Organization**, respectively, as of the date of such acquisition or creation); or
 - (b) solely with respect to the Employment Practices Liability Coverage Section, if purchased as stated in ITEM 3 of the Declarations, the total number of employees of the acquired or created organization exceeds thirty-five percent (35%) of the total number of employees of the **Organization** immediately prior to the acquisition or creation,

then the **Organization** shall provide the Underwriter written notice of such acquisition or creation, containing full details thereof, as soon as practicable, but in no event later than ninety (90) days after the date of such acquisition or creation, and the Underwriter, in its sole discretion, may require additional terms, conditions and limitations of coverage and additional premium shall be paid. If the **Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Underwriter, coverage for such acquired or created organization and its **Insureds** shall terminate with respect to **Claims** first made more than ninety (90) days after such acquisition or creation.

(B) **Acquisition by Another Organization**

If:

- (1) the **Named Organization** merges into or consolidates with another organization and the **Named Organization** is not the surviving entity; or
- (2) another organization or person or group of organizations and/or persons acting in concert acquires **Management Control** of the **Named Organization**,

then coverage under this Policy with respect to:

- (a) any **Liability Coverage Section**: shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition; or
- (b) the Crime Coverage Section: shall terminate subject to Section III EXCLUSIONS (L) of such Crime Coverage Section.

Upon the occurrence of any event described in paragraph (B)(1) or (2) above, the entire premium for this Policy shall be deemed fully earned. The **Named Organization** shall give written notice of such merger, consolidation or acquisition to the Underwriter as soon as practicable, but in no event later than ninety (90) days after the date of such merger, consolidation or acquisition, together with such other information as the Underwriter may require. Upon receipt of such notice and information and at the request of the **Named Organization**, the Underwriter shall provide to the **Named Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Underwriter and the **Named Organization**) with respect to **Claims for Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium as the Underwriter, in its sole discretion, may require.

(C) **Cessation of Subsidiary**

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then with respect to:

- (1) any **Liability Coverage Section**: coverage with respect to such former **Subsidiary** and its **Insureds** shall continue until termination of such Coverage Section, but only with respect to **Claims for Wrongful Acts** committed or allegedly committed while such organization was a **Subsidiary**; or
- (2) the Crime Coverage Section: such former **Subsidiary** and its **Insureds** shall cease to be **Insureds** as of the effective date of such cessation, and coverage under such Crime Coverage Section shall thereafter apply only as provided in such Crime Coverage Section.

X. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in any Coverage Section, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

XI. ASSISTANCE AND COOPERATION

In the event of a **Claim** or **Occurrence**, the **Insured** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: investigating,

defending and settling **Claims** or **Occurrences**; enforcing any right of contribution or indemnity against another who may be liable to any **Insured**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

XII. SUBROGATION

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in its name. The **Insureds** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insureds** under this Section XII shall survive the expiration or termination of this Policy.

In no event, however, shall the Underwriter seek subrogation against any **Insured** under this Policy unless:

- (A) such **Insured** has been convicted of a criminal act;
- (B) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** committed a deliberately fraudulent or dishonest act or omission, or willfully violated any statute, rule or law; or
- (C) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** gained any profit, remuneration or advantage to which such **Insured** was not legally entitled.

XIII. NO ACTION AGAINST UNDERWRITER

- (A) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Underwriter.
- (B) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

XIV. NAMED ORGANIZATION RIGHTS AND OBLIGATIONS

The **Named Organization** will act on behalf of all **Insureds** with respect to: the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

XV. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or estop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

XVI. ASSIGNMENT

No assignment of interest under this Policy shall bind the Underwriter without its written consent issued as a written endorsement to form a part of this Policy.

XVII. CANCELLATION/NONRENEWAL

- (A) The Underwriter may not cancel this Policy except for the **Named Organization's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Named Organization** by the Underwriter.
- (B) This Policy may be cancelled by the **Named Organization** at any time by mailing written notice to the Underwriter stating when thereafter such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (C) The Underwriter will not be required to renew this Policy upon its expiration. The Underwriter will provide the **Named Organization** with sixty (60) days' notice of any non-renewal.

XVIII. TERMINATION OF PRIOR BONDS OR POLICIES

Any bonds or policies issued by the Underwriter or its affiliates and stated in ITEM 7 of the Declarations shall terminate, if not already terminated, as of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations.

XIX. INSOLVENCY OF INSURED

The Underwriter will not be relieved of any of its obligations under this Policy by the

bankruptcy or insolvency of any **Insured** or his/her/its estate.

XX. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

XXI. HEADINGS

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

SPECIMEN

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

**Directors, Officers & Organization Liability
Coverage Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) Insured Person Non-Indemnified Loss Coverage:

The Underwriter will pay, on behalf of an **Insured Person**, **Loss** for which an **Insured Person** is not indemnified by the **Organization** from any **Insured Person Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Insured Person Claim** is reported to the Underwriter in accordance with Section VIII of this Coverage Section.

(B) Insured Person Indemnified Liability Coverage:

The Underwriter will pay, on behalf of the **Organization**, **Loss** for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, from any **Insured Person Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Insured Person Claim** is reported to the Underwriter in accordance with Section VIII of this Coverage Section.

(C) Organization Liability Coverage:

The Underwriter will pay, on behalf of the **Organization**, **Loss** from any **Organization Claim** first made against the **Organization** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Organization Claim** is reported to the Underwriter in accordance with Section VIII of this Coverage Section.

(D) Securityholder Derivative Demand Coverage:

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Securityholder Derivative Demand Sublimit stated in ITEM 4 of the Declarations, for **Investigative Costs** actually paid by the **Organization** in connection with any **Securityholder Derivative Demand** first made during the **Policy Period** or applicable Extended Reporting Period.

(E) **Privacy Breach Event Reimbursement Coverage:**

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Privacy Breach Event Reimbursement Limit stated in ITEM 4 of the Declarations, for any **Privacy Breach Event Expenses** actually paid by the **Organization** in connection with a **Privacy Breach Event** that first occurs during the **Policy Period**, regardless of whether or not a **Claim** is made against an **Insured** as a result of such **Privacy Breach Event**. The Underwriter will have no liability whatsoever for fines, penalties, assessments of costs or other financial awards associated with any such **Privacy Breach Event** unless such fines, penalties, assessments of costs or other financial awards are otherwise covered under this Coverage Section.

II. **DEFINITIONS**

(A) “**Claim**” means for purposes of coverage under:

- (1) Insuring Agreements (A) and (B) of this Coverage Section: any **Insured Person Claim**;
- (2) Insuring Agreement (C) of this Coverage Section: any **Organization Claim**; and
- (3) Insuring Agreement (D) of this Coverage Section: any **Securityholder Derivative Demand**.

(B) “**Defense Expenses**” means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

(C) “**Employee**” means any employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee. **Employee** also includes:

- (1) any volunteer working for the **Organization**;
- (2) any individual who is leased to, and working for, the **Organization**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization’s** employees; and
- (3) any independent contractor working for the **Organization**, but only if the **Organization** provides indemnification to such independent contractor, pursuant to a written contract, in the same manner as that provided to the **Organization’s** employees.

- (D) “**Executive**” means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (E) “**Insured**” means the **Organization** and any **Insured Person**.
- (F) “**Insured Person**” means any natural person who was, now is or becomes:
- (1) an **Executive**; or
 - (2) an **Employee**.
- (G) “**Insured Person Claim**” means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
 - (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a notice of charges, formal investigative order or similar document,against an **Insured Person** for a **Wrongful Act**; or
 - (3) a civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by the **Insured Person** of a written notice from the investigating authority specifically identifying the **Insured Person** as a target individual against whom formal charges may be commenced;
- provided, that **Insured Person Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- (H) “**Investigative Costs**” means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses incurred by the **Organization**, including its board of directors, Board of Managers or any committee

thereof, in connection with such **Organization's** investigation or evaluation of any **Securityholder Derivative Demand. Investigative Costs** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

(I) “**Loss**” means:

- (1) for purposes of coverage under Insuring Agreements (A), (B) and (C) of this Coverage Section, **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to:
 - (a) monetary damages (including punitive or exemplary damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);
 - (b) judgments;
 - (c) settlements; and
 - (d) pre- and post-judgment interest;
- (2) for purposes of coverage under Insuring Agreement (D) of this Coverage Section, **Investigative Costs**.

Loss does not include:

- (i) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages;
- (ii) civil or criminal fines or penalties or the multiple portion of any multiplied damage award, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages;
- (iii) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority);
- (iv) any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief; or
- (v) any fees, profits, or other revenue lost, or any costs incurred, by an **Insured** in connection with the termination, suspension or limitation of such **Insured's** right to participate in any program of a federal, state or local governmental, regulatory or administrative agency.

- (J) **“Organization Claim”** means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
 - (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a notice of charges, formal investigative order or similar document,against the **Organization** for a **Wrongful Act**; provided, that **Organization Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- (K) **“Outside Capacity”** means service by an **Executive** in the position of director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the specific request or direction of the **Organization**.
- (L) **“Outside Entity”** means: (1) any not-for-profit organization that is not included in the definition of **Organization**; and (2) any for-profit entity specifically added as an **Outside Entity** by written endorsement to this Coverage Section.
- (M) **“Pollutant”** means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (N) **“Privacy Breach Event”** means any failure by an **Insured** to maintain the confidentiality of non-public, medical or financial personally identifiable information which is in the care, custody and control of the **Organization**.
- (O) **“Privacy Breach Event Expenses”** means:
- (1) reasonable fees and costs of attorneys, experts and consultants, including third-party media consultants, incurred in the management or investigation of an actual or alleged **Privacy Breach Event**;

- (2) reasonable fees and costs incurred in connection with notification of a **Privacy Breach Event** to those individuals whose information has been accessed, released or used;
- (3) reasonable fees and costs of providing credit monitoring services to those individuals whose information has been accessed, released or used in connection with a **Privacy Breach Event**; and
- (4) reasonable costs incurred in the management of public relations with respect to a **Privacy Breach Event**;

provided, that **Privacy Breach Event Expenses** does not include: (a) any remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of any **Insured**; or (b) any fees, costs, charges or expenses incurred in defending any **Claim** resulting from a **Privacy Breach Event**.

- (P) “**Roadshow Wrongful Act**” means any **Wrongful Act** committed or allegedly committed prior to the effective date of any initial public offering of the **Organization’s** securities in connection with presentations and representations made to lenders, investors, prospective investors and analysts in conjunction with such initial public offering.
- (Q) “**Securityholder Derivative Demand**” means any written demand, by one or more securityholders of the **Organization** without the solicitation, assistance, active participation or intervention of any **Executive**, upon the board of directors or Board of Managers of such **Organization** to bring a civil proceeding in a court of law against any **Executive** for a **Wrongful Act** by such **Executive**.
- (R) “**Wrongful Act**” means:
 - (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured Person** in his or her capacity as such, or any matter asserted against any **Insured Person** solely by reason of his or her status as such;
 - (2) for the purposes of Insuring Agreement (C) of this Coverage Section, any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Organization**; or
 - (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Executive** in his or her **Outside Capacity**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:

- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given under any directors and officers liability or other similar management liability policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (3) brought by or on behalf of the **Organization** or any **Insured Person**; provided, that this EXCLUSION (A)(3) shall not apply to:
 - (a) any **Securityholder Derivative Demand**;
 - (b) any **Claim** brought or maintained derivatively on behalf of the **Organization** by one or more securityholders of the **Organization** in their capacity as such, provided such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, any **Executive** or the **Organization**;
 - (c) any **Claim** in the form of a cross-claim, third party claim or other claim for contribution or indemnity by any **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Section;
 - (d) in any bankruptcy proceeding by or against the **Organization**, any **Claim** brought by the examiner, creditors' committee, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Organization**;
 - (e) any **Claim** brought or maintained by an **Executive** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) of, or consultant for, the **Organization** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently of, and without the solicitation, assistance, active participation or intervention of, the **Organization** or any other **Executive** who is serving or has served in any of the listed capacities within such three (3) year period;

- (f) any **Claim** brought or maintained by an **Employee** who is not a past or present **Executive** if such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, any **Executive**;
 - (g) any **Claim** brought or maintained by any **Executive** of an **Organization** formed and operating in a **Foreign Jurisdiction** against such **Organization** or any other **Executive** thereof, provided such **Claim** is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof); or
 - (h) any **Claim** brought or maintained as a result of the solicitation, assistance, active participation or intervention of an **Insured Person** where such solicitation, assistance, active participation or intervention is protected under 18 U.S.C. 1514A (“whistleblower” protection provided under the Sarbanes-Oxley Act of 2002) or any similar “whistleblower” protection provision of any federal, state or local statute, ordinance, regulation or common law;
- (4) for any **Wrongful Act** of an **Executive** in his or her **Outside Capacity**, if such **Claim** is brought by or on behalf of (a) the **Outside Entity** with which such **Executive** is serving or has served in an **Outside Capacity** or (b) any director, officer, trustee, governor or equivalent executive of such **Outside Entity**; provided, that this EXCLUSION (A)(4) shall not apply to:
- (i) any **Claim** brought or maintained derivatively on behalf of the **Outside Entity** by one or more security holders or members of the **Outside Entity** who are not **Insured Persons** and are not directors, officers, trustees, governors or equivalent executives of the **Outside Entity** and who bring and maintain such **Claim** independently of, and without the solicitation, assistance or active participation of any **Insured Person** or of any director, officer, trustee, governor or equivalent executive of the **Outside Entity**;
 - (ii) any **Claim** in the form of a cross-claim, third party claim or other claim for contribution or indemnity by a director, officer, trustee, governor or equivalent executive of the **Outside Entity** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Section;
 - (iii) in any bankruptcy proceeding by or against the **Outside Entity**, any **Claim** brought by the examiner, creditors’ committee, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Outside Entity**; or

- (iv) any **Claim** brought or maintained by a director, officer, trustee, governor or equivalent executive of the **Outside Entity** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) of, or consultant for, the **Outside Entity** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently of, and without the solicitation, assistance or active participation of, any **Insured Person**, the **Outside Entity** or any other director, officer, trustee, governor or equivalent executive of the **Outside Entity** who is serving or has served in any of the listed capacities within such three (3) year period;
 - (v) any **Claim** brought or maintained by any director, officer, trustee, governor or equivalent executive of an **Outside Entity** formed and operating in a **Foreign Jurisdiction**, provided such **Claim** is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof); or
 - (vi) any **Claim** brought or maintained as a result of the solicitation, assistance, active participation or intervention of any director, officer, trustee, governor or equivalent executive of the **Outside Entity** where such solicitation, assistance, active participation or intervention is protected under 18 U.S.C. 1514A (“whistleblower” protection provided under the Sarbanes-Oxley Act of 2002) or any similar “whistleblower” protection provision of any federal, state or local statute, ordinance, regulation or common law;
- (5) for: (a) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(5) shall not apply to any **Claim** to which Insuring Agreement (A) of this Coverage Section solely applies;
- (6) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination or radioactive substance;
- (7) for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person, libel, slander, defamation of character, invasion of privacy or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;

- (8) for any actual or alleged violation of the responsibilities, duties or obligations imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** of any **Insured Person** serving in any capacity, other than as an **Executive** or **Employee** or in an **Outside Capacity**;
- (10) made against a **Subsidiary** or any **Insured Person** of such **Subsidiary** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;
- (11) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or
 - (b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(11) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;

- (12) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, any state "blue sky" securities law, or any other federal, state or local securities law, or any amendments thereto or regulations promulgated under any such laws; provided, that this EXCLUSION (A)(12) shall not apply to any **Claim**:
 - (a) based upon or arising out of the offering, sale or purchase of securities in a transaction or a series of transactions that are in fact exempt from registration under the Securities Act of 1933 and any amendments thereto or regulations promulgated thereunder;

- (b) made by any securityholder of the **Organization** for the failure of the **Organization** to undertake or complete the initial public offering or sale of securities of the **Organization**; or
 - (c) for a **Roadshow Wrongful Act**;
- (13) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
 - (14) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the National Labor Relations Act (NLRA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
 - (15) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any federal, state or local wage and hour law, including, without limitation, the Fair Labor Standards Act (FLSA);
 - (16) for any employment-related **Wrongful Act**; or
 - (17) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged discrimination against, or harassment (whether sexual or non-sexual in nature) of, any person or entity that is not an **Insured**.
- (B) Insuring Agreement (C) of this Coverage Section does not apply to, and no coverage will be available under Insuring Agreement (C) of this Coverage Section for, **Loss** from any **Organization Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the actual or proposed payment by the **Organization** of allegedly inadequate consideration in connection with an **Organization's** purchase of securities issued by any **Organization**; provided, that this EXCLUSION (B)(1) shall not apply to **Defense Expenses**;
 - (2) for any actual or alleged liability of any **Organization** under any express contract or agreement; provided, that this EXCLUSION (B)(2) shall not apply to liability which would have attached in the absence of such express contract or agreement;
 - (3) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement of patent,

copyright or trademark or misappropriation of intellectual property, ideas or trade secrets; or

- (4) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment); restraint of trade; monopolization; or violation of the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, ordinance, regulation or common law.

IV. SEVERABILITY OF EXCLUSIONS

- (A) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of EXCLUSION (A)(11) of this Coverage Section.
- (B) Only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer of the **Organization** (or equivalent positions thereof) shall be imputed to such **Organization** to determine the application of EXCLUSION (A)(11) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

- (A) Securityholder Derivative Demand Sublimit:

The Underwriter's maximum limit of liability for all **Investigative Costs** resulting from all **Securityholder Derivative Demands** shall be the amount stated in ITEM 4 of the Declarations as the Securityholder Derivative Demand Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

- (B) Privacy Breach Event Reimbursement Limit:

The Underwriter's maximum limit of liability for all **Privacy Breach Event Expenses** resulting from all **Privacy Breach Events** occurring during the **Policy Period** shall be the amount stated in ITEM 4 of the Declarations as the Privacy Breach Event Reimbursement Limit, which amount shall be in addition to, and not part of, the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid. No Retention shall apply under Insuring Agreement (D) or (E) of this Coverage Section.
- (2) If the **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify any **Insured Person** for **Loss**, or to advance **Defense Expenses** on behalf of any **Insured Person**, to the fullest extent permitted by statutory or common law, then, notwithstanding any other terms, conditions or limitations of this Coverage Section to the contrary, any payment by the Underwriter of such **Defense Expenses** or other **Loss** shall be subject to the applicable Insuring Agreement (B) Retention stated in ITEM 5 of the Declarations.

VI. DEFENSE AND SETTLEMENT

- (A) The Underwriter will have the right and duty to defend any **Claim** covered under this Coverage Section through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Underwriter's obligation to defend any **Claim** covered under this Coverage Section is subject to the applicable Retention and the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations.
- (B) No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate.
- (C) The Underwriter will have no obligation to pay **Loss**, or to defend or continue to defend any **Claim**, after the Underwriter's applicable Limits of Liability have been exhausted by the payment of **Loss**.

VII. ALLOCATION

If both **Loss** covered by this Coverage Section and loss not covered by this Coverage Section are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of “**Insured**” set forth in DEFINITION (E) above, then such covered **Loss** and uncovered loss shall be allocated as follows:

- (A) one hundred percent (100%) of **Defense Expenses** incurred by the **Insureds** in connection with such **Claim** shall be allocated to covered **Loss**; and
- (B) all loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VIII. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization’s** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:
 - (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**;

information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:
- (1) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (D) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(2) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) As a condition precedent to any right to reimbursement under Insuring Agreement (E) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **Privacy Breach Event** no later than thirty (30) days after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Privacy Breach Event**. Within sixty (60) days of making any payment of **Privacy Breach Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Privacy Breach Event Expenses** for which the **Organization** seeks reimbursement under Insuring Agreement (E) of this Coverage Section, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- (D) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

IX. OTHER INSURANCE

This Coverage Section is specifically excess of and will not contribute with:

- (A) any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy; or
- (B) any indemnification to which any **Insured Person** is entitled from any entity other than the **Organization**.

This Coverage Section will not be subject to the terms of any other insurance.

X. PAYMENT OF LOSS

In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section, the Underwriter shall:

- (A) first pay such **Loss** for which coverage is provided under Insuring Agreement (A) of this Coverage Section; then
- (B) to the extent of any remaining amount of such **Separate Limit of Liability** or **Shared Limit of Liability** after payment under paragraph (A) above, pay such **Loss** for which coverage is provided under any other Insuring Agreement of this Coverage Section.

Except as otherwise provided in this Section X, the Underwriter may pay covered **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

XI. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
 - (1) this Coverage Section is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
 - (2) those particulars and statements are the basis of the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
 - (1) no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and

- (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

Notwithstanding the foregoing, the Underwriter shall not be entitled under any circumstances to void, whether by rescission or otherwise, Insuring Agreement (A) of this Coverage Section.

XII. SECURITIES TRANSACTIONS

If, during the **Policy Period**, the **Organization** intends to sell or offer to sell securities of any kind or nature whatsoever, issued at any time by the **Organization** in a transaction that is not exempt from registration under the Securities Act of 1933, as amended (a "Transaction"), the **Organization** will, no later than thirty (30) days prior to the effective date of the registration statement for such sale or offering, give the Underwriter written notice of the proposed sale or offering and all information requested by the Underwriter relating thereto. Upon the request of the **Named Organization**, the Underwriter shall provide the **Named Organization** a quotation for coverage with respect to such sale or offering; provided any such coverage shall be subject to such terms, conditions and limitations of coverage and such additional premium as the Underwriter, in its sole discretion, may require. Unless and until the Underwriter determines to issue coverage there shall be no coverage under this Policy for such Transaction.

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

**Employment Practices Liability Coverage
Section**



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) **Employment Practices Liability Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Employment Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for an **Employment Practices Wrongful Act**; provided, that such **Employment Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(B) **Third Party Liability Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Third Party Wrongful Act**; provided, that such **Third Party Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

II. DEFINITIONS

(A) “**Benefits**” means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, **Stock Benefits**, commissions, or non-deferred cash incentive compensation.

(B) “**Breach of Employment Contract**” means any breach of any oral, written or implied employment contract or employment contractual obligation, including but not limited to any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

(C) “**Claim**” means any **Employment Claim** and any **Third Party Claim**.

(D) “**Defense Expenses**” means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses incurred in defending any

Claim and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

- (E) “**Employee**” means any employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee. **Employee** also includes:
- (1) any volunteer working for the **Organization**;
 - (2) any individual who is leased to, and working for, the **Organization**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization’s** employees; and
 - (3) any **Independent Contractor**, but only if the **Organization** provides indemnification to such **Independent Contractor**, pursuant to a written contract, in the same manner as that provided to the **Organization’s** employees.
- (F) “**Employment Claim**” means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 - (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a formal notice of charges; or
 - (3) an administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of a complaint or similar document, including any such proceeding brought by or in association with the Equal Employment Opportunity Commission (“EEOC”) or any similar governmental agency,

brought by or on behalf of any past, present or prospective **Employee** against an **Insured**, or by or on behalf of any past, present or prospective **Outside Entity Employee** against an **Executive** in his or her **Outside Capacity**, for an **Employment Practices Wrongful Act**; provided, that **Employment Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

- (G) “**Employment Discrimination**” means any violation of employment discrimination laws, including any failure or refusal to hire or promote an **Employee, Outside Entity Employee** or applicant for employment, any modification of any term or condition of employment, or any limitation, segregation or classification of any **Employee, Outside Entity Employee** or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an **Employee** or **Outside Entity Employee** because of such person’s race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law.
- (H) “**Employment Harassment**” means:
- (1) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, is used as a basis for employment decisions by, interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**;
 - (2) workplace harassment (i.e., harassment of a non-sexual nature) that interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**.
- (I) “**Employment Practices Wrongful Act**” means any actual or alleged:
- (1) **Breach of Employment Contract**;
 - (2) **Employment Discrimination**;
 - (3) **Employment Harassment**;
 - (4) **Retaliation**;
 - (5) **Workplace Tort**;
 - (6) **Wrongful Employment Decision**; or
 - (7) **Wrongful Termination**.
- (J) “**Executive**” means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or

- (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (K) “**Independent Contractor**” means any natural person working for the **Organization** in the capacity of an independent contractor pursuant to an **Independent Contractor Services Agreement**.
- (L) “**Independent Contractor Services Agreement**” means any express contract or agreement between an **Independent Contractor** and the **Organization**.
- (M) “**Insured**” means the **Organization** and any **Insured Person**.
- (N) “**Insured Person**” means any natural person who was, now is or becomes:
- (1) an **Executive**; or
 - (2) an **Employee**.
- (O) “**Loss**” means **Defense Expenses** and any monetary amount which an **Insured** is legally obligated to pay as a result of a covered **Claim**, including but not limited to, damages (including punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, or the multiple portion of any multiplied damage award, to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages), back pay, front pay, claimant’s attorney’s fees awarded by a court against an **Insured** or agreed to in writing by the Underwriter in connection with a settlement, judgments, settlements, pre-judgment interest and post-judgment interest.

Loss does not include:

- (1) the future salary, wages, commissions or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;
- (2) taxes, fines, or penalties, except as provided above with respect to punitive, exemplary or liquidated damages or the multiple portion of any multiplied damage award;
- (3) **Stock Benefits**;
- (4) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive, exemplary or liquidated damages or the multiple portion of any multiplied damage award; or

- (5) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period.
- (P) “**Outside Capacity**” means service by an **Executive** in the position of director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the specific request or direction of the **Organization**.
- (Q) “**Outside Entity**” means: (1) any not-for-profit organization that is not included in the definition of **Organization**; and (2) any for-profit entity specifically added as an **Outside Entity** by written endorsement to this Coverage Section.
- (R) “**Outside Entity Employee**” means any employee of the **Outside Entity**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee.
- (S) “**Pollutant**” means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (T) “**Retaliation**” means retaliatory treatment against any **Employee** or **Outside Entity Employee** on account of such individual:
- (1) exercising his or her rights under law;
 - (2) refusing to violate any law;
 - (3) opposing any unlawful practice;
 - (4) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
 - (5) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by any **Insured**.
- (U) “**Stock Benefits**” means any offering, plan or agreement between the **Organization** and any **Executive** or **Employee** which grants stock or stock options or stock appreciation rights as to the **Organization** to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.
- (V) “**Third Party**” means any natural person who is a customer, patient, vendor, service provider or other business invitee of the **Organization**.

(W) “**Third Party Claim**” means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) the filing of a formal notice of charges, formal investigative order or similar document,

brought by or on behalf of any **Third Party** against an **Insured** for a **Third Party Wrongful Act**.

(X) “**Third Party Services Agreement**” means any express contract between a **Third Party** and the **Organization**.

(Y) “**Third Party Wrongful Act**” means:

- (1) discrimination against a **Third Party** based on such **Third Party's** race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law;
- (2) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, against a **Third Party**; or
- (3) unlawful harassment of a non-sexual nature against a **Third Party**.

(Z) “**Workplace Tort**” means:

- (1) any employment-related: defamation, libel, slander, humiliation, invasion of privacy, negligent evaluation or wrongful discipline; or
- (2) any of the following:
 - (a) employment-related negligent retention;
 - (b) employment-related negligent supervision;
 - (c) employment-related negligent hiring;

- (d) employment-related negligent training;
- (e) employment-related negligent or intentional misrepresentation;
- (f) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or
- (g) failure to provide or consistently enforce employment-related corporate policies and procedures;

but only when alleged as part of an **Employment Claim** for any actual or alleged **Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination, Wrongful Employment Decision** or act set forth in paragraph (1) above.

(AA) “**Wrongful Act**” means:

- (1) with respect to any past, present or prospective **Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such;
- (2) with respect to any past, present or prospective **Outside Entity Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by any **Executive** in his or her **Outside Capacity**; or
- (3) with respect to any **Third Party**, a **Third Party Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such.

(BB) “**Wrongful Employment Decision**” means any wrongful demotion, denial of tenure or failure or refusal to promote.

(CC) “**Wrongful Termination**” means any wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

III. EXCLUSIONS

(A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:

- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given under any employment practices liability or other similar management

liability policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;

- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding, including any audit by the Office of Federal Contract Compliance Programs, against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (3) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974 (ERISA) (except section 510 thereof), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Worker Adjustment and Retraining Notification Act (WARN), the Occupational Safety and Health Act (OHSA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(3) shall not apply to any **Employment Claim** for **Retaliation**;
- (4) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any federal, state or local wage and hour law, including, without limitation, the Fair Labor Standards Act (FLSA); provided, that this EXCLUSION (A)(4) shall not apply to any **Employment Claim** for **Retaliation**;
- (5) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the National Labor Relations Act (NLRA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law;
- (6) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations;
- (7) for bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (8) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, Social Security or disability benefits law, or any similar provisions of any federal, state, or local statute, ordinance, regulation or common law;

provided, that this EXCLUSION (A)(8) shall not apply to any **Employment Claim for Retaliation**;

- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(9) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
 - (10) made against a **Subsidiary** or any **Insured Person** of such **Subsidiary** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;
 - (11) for any actual or alleged breach of any **Independent Contractor Services Agreement** or **Third Party Services Agreement**; or
 - (12) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving: (a) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(12) shall not apply to any **Employment Claim for Retaliation**.
- (B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, that part of **Loss**, other than **Defense Expenses**:
- (1) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided, that this EXCLUSION (B)(1) shall not apply to any **Employment Claim for Wrongful Termination**;
 - (2) which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state or local statute, ordinance, regulation or common law, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or any amendments thereto or regulations promulgated under any such law; or
 - (3) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
- (C) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss**, other than **Defense Expenses**, from any **Claim** for any actual or alleged breach of any written employment contract; provided, that this EXCLUSION (C) shall not apply to the extent that an **Insured** would have been liable in the absence of such written employment contract.

IV. RETENTIONS

The following provision shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.

V. DEFENSE AND SETTLEMENT

- (A) The Underwriter will have the right and duty to defend any **Claim** covered under this Coverage Section through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Underwriter's obligation to defend any **Claim** covered under this Coverage Section is subject to the applicable Retention and the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations.
- (B) No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:
- (1) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
 - (2) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.
- (C) The Underwriter will have no obligation to pay **Loss**, or to defend or continue to defend any **Claim**, after the Underwriter's applicable Limits of Liability have been exhausted by the payment of **Loss**.

VI. ALLOCATION

If both **Loss** covered by this Coverage Section and loss not covered by this Coverage Section are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of “**Insured**” set forth in DEFINITION (M) above, then such covered **Loss** and uncovered loss shall be allocated as follows:

- (A) one hundred percent (100%) of **Defense Expenses** incurred by the **Insureds** in connection with such **Claim** shall be allocated to covered **Loss**; and
- (B) all loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VII. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization’s** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:
 - (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
 - (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**;

information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

- (B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:
- (1) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
 - (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (C) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(2) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VIII. OTHER INSURANCE

The coverage afforded under this Coverage Section:

- (A) for **Employment Claims**, shall be primary; provided, that with respect to that portion of any **Employment Claim** made against any temporary or leased **Employee, Independent Contractor, or Executive** in his or her **Outside Capacity, Loss** payable on behalf of such temporary or leased **Employee, Independent Contractor or Executive** shall be specifically excess of, and will not contribute with: (1) any other valid and collectible insurance available to such temporary or leased **Employee, Independent Contractor or Executive**, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically in excess of this Coverage Section; or (2) any indemnification available to such **Executive** from the **Outside Entity**.
- (B) for **Third Party Claims**, shall be specifically excess of and will not contribute with other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically in excess of this Coverage Section.

IX. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
- (1) this Coverage Section is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
 - (2) those particulars and statements are the basis of the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

Fiduciary Liability Coverage Section



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) **Fiduciary Liability Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Wrongful Act** committed or allegedly committed by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible; provided, that such **Fiduciary Claim** is reported to the Underwriter in accordance with Section VIII of this Coverage Section.

(B) **Voluntary Settlement Program Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defense Expenses** with respect to a **Settlement Program Notice** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period; provided, that such **Settlement Fees** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the Underwriter.

II. DEFINITIONS

(A) **“Administration”** means:

- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
- (2) providing interpretations with respect to any **Plan**; or
- (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under any **Plan**.

(B) **“Claim”** means for the purposes of coverage under:

- (1) Insuring Agreement (A) of this Coverage Section: any **Fiduciary Claim**; or

- (2) Insuring Agreement (B) of this Coverage Section: any **Settlement Program Notice**.
- (C) “**Defense Expenses**” means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (D) “**Employee**” means any employee of the **Organization** or any **Plan**, including any part-time, seasonal and temporary employee, and any volunteer working for the **Organization** or any **Plan**. **Employee** does not include any independent contractor.
- (E) “**ERISA**” means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar statute or common law, and any regulations promulgated under any such Acts or law.
- (F) “**Executive**” means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member or in-house general counsel of any **Plan** or any **Organization** chartered in the United States of America; or
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (G) “**Fiduciary Claim**” means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 - (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) service of a complaint or similar pleading;
 - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) filing of a notice of charges or similar document;
 - (3) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or

- (4) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Pensions Regulatory Authority,

against an **Insured** for a **Wrongful Act**.

- (H) “**HIPAA Penalties**” means any civil fines and penalties levied against an **Insured** for violation of Title II of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- (I) “**Insured**” means the **Organization**, any **Plan** and any **Insured Person**.
- (J) “**Insured Person**” means any natural person who was, now is or becomes:
- (1) an **Executive** or **Employee**, but only in his or her capacity as a fiduciary, administrator or trustee of any **Plan**; or
 - (2) a fiduciary, administrator or trustee of a multi-employer plan, if such person in such capacity is specifically added as an **Insured Person** by written endorsement to this Coverage Section.
- (K) “**Loss**” means **Defense Expenses**, any monetary amount that an **Insured** is legally obligated to pay as a result of a covered **Fiduciary Claim**, including but not limited to damages (including punitive or exemplary damages or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Fiduciary Claim** giving rise to such damages and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment, post-judgment interest and, solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**.

Loss does not include:

- (1) any costs incurred by an **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (2) civil or criminal fines or penalties; provided, that **Loss** shall include:
 - (a) punitive or exemplary damages or the multiple portion of any multiplied damage award as provided above;
 - (b) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section

502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;

- (c) civil penalties imposed upon an **Insured** by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or any regulations promulgated thereunder; provided any coverage for such civil money penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section;
 - (d) solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**; and
 - (e) **HIPAA Penalties**;
- (3) taxes or tax penalties; or
 - (4) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award.
- (L) “**Plan**” means:
- (1) any **Sponsored Plan**; and
 - (2) any government-mandated insurance program for workers’ compensation, unemployment, Social Security or disability benefits for **Employees**.
- (M) “**Pollutant**” means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (N) “**Settlement Fees**” means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. **Settlement Fees** does not include: (1) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (2) any fees, fines, penalties or sanctions relating to a **Plan**, which, as of the earlier of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or the inception of the first policy in an uninterrupted series of policies issued by the Underwriter of which this Coverage

Section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

- (O) “**Settlement Program**” means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.
- (P) “**Settlement Program Notice**” means prior written notice to the Underwriter by an **Insured** of the **Insured’s** intent to enter into a **Settlement Program**.
- (Q) “**Sponsored Plan**” means:
- (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** and which existed on or before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or which is created or acquired after such Inception Date; provided (a) any coverage with respect to any such **Plan** created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed or allegedly committed after the effective date of such creation or acquisition and shall be subject to Section IX of the General Terms and Conditions Section, and (b) any coverage with respect to an employee stock ownership plan created or acquired during the **Policy Period** shall be further subject to Section XI of this Coverage Section;
 - (2) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of its **Employees** or **Executives**, including any fringe benefit, deferred compensation, supplemental executive retirement plan, top-hat plan or excess benefit plan;
 - (3) any other plan or program otherwise described in paragraphs (1) or (2) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, that no coverage is afforded under this Coverage Section for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
 - (4) any other plan, fund or program specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

Sponsored Plan does not include: any employee stock ownership plan created or acquired by the **Organization** during the **Policy Period**, except as otherwise provided in Section XI of this Coverage Section; or any multi-employer plan created before or during the **Policy Period** unless specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

- (R) “**Wrongful Act**” means with respect to any **Plan**:
- (1) any breach of the responsibilities, duties or obligations imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed or allegedly committed by an **Insured** in the **Insured’s** capacity as such;
 - (2) any negligent act, error or omission in the **Administration** of any **Plan** committed or allegedly committed by an **Insured** in the **Insured’s** capacity as such; or
 - (3) any other matter claimed against an **Insured** solely by reason of the **Insured’s** service as a fiduciary of any **Sponsored Plan**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - (3) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving : (a) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(3) shall not apply to:

- (i) any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the diminution in value of any securities owned by the **Sponsored Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this EXCLUSION (A)(3); or
 - (ii) **Loss** (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**) incurred by an **Insured Person** for which the **Organization** is not permitted by statutory or common law to indemnify or for which the **Organization** is not able to indemnify by reason of **Financial Impairment**;
- (4) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
 - (5) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(5) shall not apply to the extent that:
 - (a) an **Insured** would have been liable in the absence of the contract or agreement; or
 - (b) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
 - (6) for the failure of any **Insured** to comply with any workers' compensation, unemployment insurance, Social Security or disability benefits law or any amendments thereto or any regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law, except (a) the Consolidated Omnibus Budget Reconciliation Act of 1985, (b) the Health Insurance Portability and Accountability Act of 1996, or (c) any amendments to or any regulations promulgated under such Acts;
 - (7) made against a **Subsidiary** or any **Insured Person** of such **Subsidiary** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;
 - (8) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or

- (b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(8) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;

- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment-related act, error, omission, misstatement, misleading statement, breach of duty, policy or practice by or on behalf of any **Insured**; provided, that this EXCLUSION (A)(9) shall not apply to any **Fiduciary Claim** for any actual or alleged discrimination in violation of **ERISA**.

- (B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, that part of **Loss**, other than **Defense Expenses**:

- (1) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;
- (2) which constitutes (a) benefits due or to become due under any **Plan**, or (b) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:
 - (i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
 - (ii) recovery for the benefits is based upon a covered **Wrongful Act**; or
- (3) which is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the failure to collect an employer's contributions owed to any **Plan** unless the failure is because of the negligence of any **Insured**.

IV. SEVERABILITY OF EXCLUSIONS

- (A) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of EXCLUSION (A)(8) of this Coverage Section.
- (B) Only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer of the **Organization** (or equivalent

positions thereof) shall be imputed to such **Organization** to determine the application of EXCLUSION (A)(8) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

(A) HIPAA Penalties Sublimit:

The Underwriter's maximum limit of liability for all **HIPAA Penalties** resulting from all **Claims** shall be \$50,000, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(B) Voluntary Settlement Program Coverage Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses** and all **Settlement Fees** resulting from all **Settlement Program Notices** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period and covered under Insuring Agreement (B) of this Coverage Section shall be the amount stated in ITEM 4 of the Declarations as the Voluntary Settlement Program Coverage Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.
- (2) No Retention shall apply to any **Loss** resulting from any **Fiduciary Claim** incurred by an **Insured Person** if such **Loss** cannot be indemnified by the **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify, such **Insured Person** by reason of **Financial Impairment**.
- (3) No Retention shall apply under Insuring Agreement (B) of this Coverage Section.

VI. DEFENSE AND SETTLEMENT

- (A) The Underwriter will have the right and duty to defend any **Claim** covered under this Coverage Section through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Underwriter's obligation to defend any **Claim** covered under this Coverage Section is subject to the applicable Retention and the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations.
- (B) No **Insured** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:
- (1) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
 - (2) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.
- (C) The Underwriter will have no obligation to pay **Loss**, or to defend or continue to defend any **Claim**, after the Underwriter's applicable Limits of Liability have been exhausted by the payment of **Loss**.

VII. ALLOCATION

If both **Loss** covered by this Coverage Section and loss not covered by this Coverage Section are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**" set forth in DEFINITION (I) above, then such covered **Loss** and uncovered loss shall be allocated as follows:

- (A) one hundred percent (100%) of **Defense Expenses** incurred by the **Insureds** in connection with such **Claim** shall be allocated to covered **Loss**; and
- (B) all loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and

uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VIII. REPORTING OF CLAIMS AND CIRCUMSTANCES

(A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:

- (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
- (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insureds** first became aware of such **Wrongful Act**.

(B) If, during the **Policy Period**, an **Insured** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:

- (1) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
- (2) requests coverage under this Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (C) below, be treated as if it had been first made during

the **Policy Period**. The full particulars required in any notice given under paragraph (B)(2) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** believe the **Wrongful Act** is likely to result in a **Claim** being made.

- (C) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

IX. OTHER INSURANCE

This Coverage Section is specifically excess of, and will not contribute with, any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy. This Coverage Section will not be subject to the terms of any other insurance.

X. TERMINATION OF A PLAN

If the **Organization** terminates a **Plan** before or after the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, coverage under this Coverage Section with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this Coverage Section for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this Coverage Section had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed or allegedly committed prior to or after the date the **Plan** was terminated.

XI. CREATION OR ACQUISITION OF AN ESOP

Notwithstanding anything in this Coverage Section to the contrary, if during the **Policy Period** the **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Underwriter written notice thereof together with such other information requested by the Underwriter. The Underwriter shall, at the request of the **Organization**, provide to the **Organization** a quotation for coverage for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP, subject to such terms, conditions and limitations of coverage and such additional premium as the Underwriter in its sole discretion may require. Unless the **Insureds** accept such quotation and pay such additional premium within thirty (30) days after receipt of the quotation, no coverage will be available under this Coverage Section for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP.

XII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
- (1) this Coverage Section is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
 - (2) those particulars and statements are the basis of the coverage granted by this Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization** and its **Plans**.