

**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.