

## PRIVATE COMPANY MANAGEMENT LIABILITY POLICY DIRECTORS AND OFFICERS 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 PERSONS NON-INDEMNIFIED LOSS COVERAGE

The Underwriter shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Organization** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

#### B. INSURED PERSONS INDEMNIFIED LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Organization** all **Loss** for which the **Organization** grants indemnification to the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against them during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

#### C. ORGANIZATION LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Organization** all **Loss** for which the **Organization** becomes legally obligated to pay on account of a **Claim** first made against the **Organization** during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

#### D. SECURITYHOLDER DERIVATIVE DEMAND INVESTIGATION COSTS AND BOOKS AND RECORDS COSTS

The Underwriter shall pay on behalf of the **Organization** all **Investigative Costs** on account of all **Securityholder Derivative Demands** and **Books and Records Requests** first received by the **Organization** during the **Policy Period** or the **Extended Reporting Period**, if exercised, provided the Underwriter's maximum liability for all **Investigative Costs** covered under this Insuring Agreement D shall be the respective Sublimit of Liability set forth in ITEM 8 of the Declarations, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

### II. COVERAGE ENHANCEMENTS

#### A. PRE-CLAIM EXPENSES

If the **Insured** gives notice to the Underwriter in accordance with Section IV.C of this Coverage Section ("Noticed Matter"), and if a **Claim** is subsequently made against an **Insured** arising out of such Noticed Matter, then any **Pre-Claim Expenses** incurred by an **Insured**, in an amount no greater than the lesser of \$25,000, or fifty percent (50%) of the applicable retention, shall qualify as **Loss** solely for purposes of exhaustion of the applicable retention subject to the following:

1. Coverage will apply only to such **Pre-Claim Expenses** incurred on or after the date the **Insured** provides written notice to the Underwriter of the Noticed Matter and prior to the time such Noticed Matter becomes a **Claim**. Once the retention has been exhausted, **Pre-Claim Expenses** shall no longer qualify as **Loss** covered under the policy;
2. This coverage shall not be deemed to waive any of the Underwriter's rights hereunder or limit or affect the **Insureds'** rights to receive coverage for **Loss** incurred following the reporting of **Claim**; and
3. Coverage as provided herein shall not include **Investigation Costs** or **Defense Expenses** incurred in connection with an **Inquiry** or any investigation of an **Insured**.

#### B. EXECUTIVE PROTECTION COVERAGE

**Loss** shall include the following provided they arise out of a **Claim** against an **Insured Person**:

1. **Asset Protection Costs**; and
2. **Public Relations Costs**;

Such **Costs** shall be provided subject to the respective Sublimits of Liability set forth in ITEM 8 of the Declarations, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

#### C. OUTSIDE CAPACITY COVERAGE

Subject to the other terms and conditions applicable to this Coverage Section, Insuring Agreement A and Insuring Agreement B include coverage for **Executives** while serving in an **Outside Position**. Such coverage shall be specifically excess of any indemnification and insurance available from or provided by the **Outside Entity** in which the **Executives** serves in an **Outside Capacity**.

- D. If an Additional Side A Limit of Liability is selected in the Declarations, and if the Limit of Liability applicable to **Loss** covered under this Coverage Section is exhausted by payments by the Underwriter, then the Underwriter's liability for any **Loss** covered under Insuring Agreement A which is incurred by any **Executive** shall be the amount set forth in the Declarations, which shall be in addition to and not part of the Aggregate Limit of Liability for this Coverage Section, and in addition to and not part of the Combined Aggregate Limit of Liability set forth in ITEM 2 of the Declarations, provided that this Additional Side A Limit of Liability shall be excess of any other valid and collectible insurance that is specifically excess of this Coverage Section and such insurance must be completely exhausted by payment of loss, damages or defense expenses thereunder before the Underwriter shall have any obligation to make any payment on account of the Additional Limit of Liability for Executives.
- E. Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the D&O Crisis Management Expenses Sublimit stated in ITEM 8 of the Declarations, for **Crisis Management Expenses** actually paid by the **Organization** in connection with a **Crisis Management Event** that first occurs during the **Policy Period** subject to the Sublimit of Liability as set forth in ITEM 8 of the Declarations, for all **Crisis Management Expenses**, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

### III. DEFINITIONS

When used in the Directors and Officers Liability Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

- A. **Asset Protection Costs** means reasonable fees, costs and expenses consented to by the Underwriter, such consent not to be unreasonably withheld or delayed, and incurred by an **Executive** to oppose an **Asset Protection Order** and to obtain the discharge or revocation of any such **Asset Protection Order** imposed upon such **Executive** during the **Policy Period**.
- B. **Asset Protection Order** means any order issued by an **Enforcement Unit** to seize or enjoin the sale or transfer of an **Executive's** personal assets or real property first received by such **Executive** during the **Policy Period**.
- C. **Books and Records Costs** means any reasonable fees and expenses incurred by the **Organization** in response to a **Books and Records Request**, other than wages, salaries, fees, benefits or overhead associated with any **Insured**.
- D. **Books and Records Request** means any written request by or on behalf of a shareholder of the **Organization** upon the Board of Directors of the **Organization** to inspect the books and records of such **Organization** pursuant to Section 220 of the Delaware General Corporation Law or other similar statute.
- E. **Claim** means:
  - 1. a written demand for monetary damages, non-monetary or injunctive relief, including a demand that the **Insured** toll or waive a statute of limitations or a demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand or request;
  - 2. a civil proceeding for monetary, non-monetary or injunctive relief commenced by the service upon the **Insured** of a complaint or similar pleading;
  - 3. a criminal proceeding commenced by and which shall be deemed first made upon the **Insured's** arrest, the return of an indictment or information, or receipt of a notice of charges or similar document;
  - 4. a formal administrative or regulatory proceeding commenced by and which shall be deemed first made upon the **Insured's** receipt of a notice of charges or similar document;against an **Insured** for a **Wrongful Act**; provided that a **Claim** under paragraphs 1-4 above, shall not provide coverage for any investigation of an **Insured**;
- 5. solely with respect to Insuring Agreements A and B, **Claim** means any **Inquiry**, provided that the **Inquiry** shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Inquiry** to the Underwriter pursuant to Section VI.C of this Coverage Section of the Policy and shall be deemed first made when it is noticed to the Underwriter;
- 6. solely with respect to Insuring Agreement D, **Claim** means a **Securityholder Derivative Demand** or **Books and Records Request**, which shall be deemed first made upon the **Insured's** receipt of such **Securityholder Derivative Demand** or **Books and Records Request**;

7. the arrest or confinement of any **Insured Person** to: (i) a specified residence; or (ii) a secure custodial premises operated by or on behalf of any **Enforcement Unit**, if such arrest or confinement is in connection with the business of any **Organization**, which shall be deemed first made upon the **Insured Person's** receipt of the warrant for arrest or notice of confinement; or
  8. an official request for the **Extradition** of any **Insured Person** for a **Wrongful Act** or the execution of a warrant for the arrest of any **Insured Person** for a **Wrongful Act** where such execution is an element of **Extradition**, which shall be deemed first made upon the **Insured Person's** receipt of the official request or warrant.
- F. **Compensation Clawback Costs** means the reasonable fees and expenses (including the premium or origination fee for a loan or bond, without any obligation of the Underwriter to apply for or furnish such loan or bond) incurred by an **Insured Person** to investigate or defend any **Claim** pursuant to, or to facilitate the return of amounts required to be paid by such **Insured Person** pursuant to, Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Act of 2010, or any rules, regulations or policies pursuant to such Sections; provided that **Compensation Clawback Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any amounts requested or required to be paid by such **Insured Person** pursuant to such Sections, rules, regulations or policies.
- G. **Controlling Person** means an **Insured Person** who allegedly controls the **Organization** through stock ownership or pursuant to an agreement, including any such **Insured Person** described in Section 15 of the Securities Act of 1933, Section 20 of the Securities Exchange Act of 1934, or any similar federal, state or local rule or regulations.
- H. **Crisis Management Event** means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:
1. the public announcement that the **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Organization** or the imminence of bankruptcy proceedings, whether voluntary or involuntary;
  2. the public announcement of layoffs of Employees;
  3. the public announcement that the **Organization** has defaulted or intends to default on its debt;
  4. the public announcement or accusation that the **Organization** has caused bodily injury, sickness, disease, or death to a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof; or
  5. the public announcement of the commencement or threat of commencement of governmental or regulatory proceedings against the **Organization**;
- I. **Crisis Management Expenses** means reasonable fees, costs, and other expenses of a public relations or crisis management firm engaged by the **Organization** and approved by the Underwriter, such approval not to be unreasonably withheld, to mitigate reputational harm to such **Organization** as a result of a **Crisis Management Event**.

- J. **Derivative Suit** means any lawsuit by a securityholder of an **Organization** brought derivatively on behalf of such **Organization** against an **Insured Person** or the **Organization**, including against the **Organization** as a nominal defendant.
- K. **Freedom Costs** means reasonable fees, costs, and expenses consented to by the Underwriter, such consent not to be unreasonably withheld or delayed, and incurred by an **Executive** to seek their lawful release in connection with a **Freedom Event**. **Freedom Costs** shall include the premium for a bond or similar instrument (provided the Underwriter shall have no obligation to apply for or furnish such bond) to guarantee any contingent obligation ordered by a court that are incurred or required outside the United States of America during the **Policy Period**, if such premiums arise out of an actual or alleged **Wrongful Act** of the **Executive**.
- L. **Freedom Event** means the arrest or confinement of an **Executive** in their capacity, by or on behalf of a governmental law Enforcement Unit to a specific residence or secure custodial premises.
- M. **Inquiry** means:
1. a civil, criminal, administrative, or regulatory investigation or inquiry of an **Insured Person** by an **Enforcement Unit**, commenced by the **Insured Person's** receipt of a subpoena, Wells Notice, target letter (within the meaning of Title 9, §11.151 of the U.S. Attorney's Manual), formal order of investigation, civil investigative demand, notice of charges, order to show cause, search warrant, S.E.C. Form 1661 or 1662, or other similar document, or the functional or foreign equivalent thereof;
  2. a written request or demand of an **Insured Person** by an **Enforcement Unit** for an interview, meeting, sworn testimony or documents in connection with the business of the **Organization**, or in connection with such **Insured Person** in his or her capacity as such;
  3. a written request or demand of an **Insured Person** by an **Organization** (including its board of directors or any committee of its board of directors) for an interview, meeting, sworn testimony or documents in connection with: (i) a **Securityholder Derivative Demand**, or (ii) an investigation of an **Organization** by an **Enforcement Unit**;

**Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, industry sweep, including any request for mandatory information from an **Enforcement Unit**, conducted in an **Organization's** and/or **Enforcement Unit's** normal review or compliance process or any subpoena received by an **Insured** as a non-party witness.

- N. **Insured** means the **Organization** and any **Insured Persons**
- O. **Insured Persons** means:
1. an **Executive**; and
  2. an **Employee**;
- P. **Investigative Costs** means **Securityholder Derivative Demand Fees** and all **Books and Records Costs**.
- Q. **JOBS Act Claim** means any **Claim**:

1. based upon or arising from the general solicitation or advertising of private placements by or on behalf of the **Named Insured** as set forth in Title II, Access to Capital for Job Creators, of the Jumpstart Our Business Startups Act (“JOBS Act”), or any rules or regulations promulgated thereunder;
  2. based upon or arising from any offering, sale or purchase of securities that qualify for a Securities Act registration exemption as set forth in Title III, Crowdfunding, or Title IV, Small **Organization** Capital Formation, of the JOBS Act, or any rules, or regulations promulgated thereunder.
- R. **Loss** means the total amount the **Insured** becomes legally obligated to pay on account of a **Claim** made against them, including, but not limited to, monetary damages (including punitive, exemplary or multiple 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), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, and **Defense Expenses**.

**Loss** shall also include:

1. **Compensation Clawback, UK Corporate Manslaughter Act Costs and Freedom Costs;**
2. solely with respect to Section II.B, **Asset Protection Costs** and **Public Relations Costs;**
3. taxes imposed on an **Organization** for which an **Insured Person** is legally obligated to pay solely by reason of the **Organization’s Financial Impairment;**
4. civil fines or civil penalties assessed against an **Insured Person** for any unintentional and non-willful violation of law pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 and Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B), where insurable;
5. Solely with respect to Insuring Agreement D, **Investigative Costs;** and
6. civil penalties levied against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act;

**Loss** except with respect to **Defense Expenses**, does not include:

7. any amount not indemnified by the **Organization** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
8. taxes, fines or penalties imposed by law, other than the taxes or civil fines or civil penalties expressly referenced above;
9. solely with respect to Insuring Agreements B and C, any amount that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by an **Organization** in connection with its purchase of any securities or assets;

10. any amount incurred by the **Insureds** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
  11. any amount not uninsurable under the law pursuant to which this Policy is construed; or
  12. **Clean-Up Costs.**
- S. **Outside Capacity** means services by an **Executive** in the position of a director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the request or direction of the **Organization**.
- T. **Outside Entity** means any of the following Organizations, provided such Organization is not included in the definition of **Organization**:
1. any Organization chartered and operated as a not-for-profit Organization;
  2. any other for-profit Organization specifically included as an **Outside Entity** by endorsement to this Policy.
- U. **Pre-Claim Expenses** means any reasonable fees (including attorneys' fees, experts' fees, document production costs and e-discovery costs) and expenses (other than wages, salaries, fees or benefits of any **Insured Person**) incurred by an **Insured** in the investigation, defense, or appeal of a Noticed Matter.
- V. **Public Relations Costs** means the reasonable fees, costs, and other expenses of a public relations consultant engaged by the **Organization** and approved by the Underwriter, such approval not to be unreasonably withheld, to mitigate reputational harm to such **Organization** as a result of a **Publication Event**.
- W. **Publication Event** means any negative statement about an **Executive** made during the **Policy Period** in any publication by an individual authorized to speak on behalf of any **Enforcement Unit**.
- X. **Securityholder Derivative Demand** means:
1. any written demand by a securityholder of the **Organization** upon the Board of Directors of such **Organization** to bring a civil proceeding in a court of law against an **Executive** for a **Wrongful Act** by such **Executive**; or
  2. any lawsuit brought by a securityholder of the **Organization** derivatively on behalf of such **Organization** against an **Executive** for a **Wrongful Act** without first making a demand as described in subparagraph 1 above.
- Y. **Securityholder Derivative Demand Fees** means all reasonable fees (including attorney's fees and expert's fees) and expenses (other than wages, salaries, fees or benefits of the directors, officers or employees of the **Organization**) incurred by the **Organization** (including its Board of Directors or any committee of its Board of Directors) to (i) investigate or evaluate on behalf of the **Organization** whether it is in the best interest of the **Organization** to prosecute the claims alleged in a **Securityholder Derivative Demand**, or (ii) seek the dismissal of a derivative lawsuit on behalf of the **Organization** against **Executives**.

- Z. **Selling Shareholder** means an **Insured Person** in his or her capacity as an attempted or actual seller of securities issued by the **Organization**.
- AA. **UK Corporate Manslaughter Act Costs** means reasonable fees, costs and expenses consented to by the Underwriter, such consent not to be unreasonably withheld or delayed, and incurred by an **Executive** in an investigation, defense and/or appeal of a **Claim** first made against an **Organization** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar criminal statute.
- BB. **Wrongful Act** means:
  - 1. with respect to the **Insured Persons**:
    - a. any actual or alleged error, misstatement, misleading statement, neglect, breach of duty, omission or act by the **Insured Persons**:
      - i. in their capacity as such;
      - ii. in their capacity as a **Controlling Person** or as a **Selling Shareholder** or
      - iii. in an **Outside Capacity**;
    - b. any matter claimed against them by reason of their serving in such capacity; provided, however, that an **Inquiry** of an **Insured Person** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged;
  - 2. solely with respect to Insuring Agreement C, any actual or alleged act, error, misstatement, misleading statement, neglect, breach of duty, omission or act by the **Organization**.

#### IV. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Section to pay any **Loss** from any **Claim** made against any **Insured**:

##### EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

###### A. PRIOR NOTICE

based upon, arising out of, or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which have been the subject of any written notice given prior to inception of this Policy and accepted under any prior directors and officers liability or comparable insurance policy or coverage section.

###### B. PENDING OR PRIOR LITIGATION

based upon, arising out of, or attributable to any **Claim** against any **Insured** which was pending on or existed prior to the respective Pending or Prior Date for this Coverage Section, set forth in the Coverage Schedule in ITEM 8 of the Declarations, or the same or substantially the same fact, circumstance or **Wrongful Acts** alleged in or underlying such prior **Claim**.

### C. CONDUCT

based upon, arising out of or attributable to:

1. any deliberately fraudulent act or omission, or any willful violation of any law, statute or regulation, committed by such **Insured**; or
2. such **Insured** gaining any personal financial profit, remuneration or financial advantage to which such **Insured** was not legally entitled,

if evidenced by a final, non-appealable adjudication adverse to such **Insured** in the underlying proceeding provided that:

3. with respect to section IV.C.2 above, any acts or omissions which are treated as criminal violations in a foreign jurisdiction that are not treated as criminal violations in the United States of America, the imposition of a criminal fine or other criminal sanction in such foreign jurisdiction will not, by itself, be conclusive proof that deliberately criminal or fraudulent acts occurred;

For purposes of determining the applicability of this exclusion, the **Wrongful Act**, knowledge of, or facts pertaining to any **Insured Person** shall not be imputed to any other **Insured Person** and only the **Wrongful Acts**, knowledge of or facts pertaining to the chief executive officer or chief financial officer of the **Named Insured** shall be imputed to the **Organization**.

### D. BODILY INJURY/PROPERTY DAMAGE

for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death, or damage to or destruction of any tangible property including loss of use of such damaged or destroyed property; provided this exclusion shall not apply to: (i) **Defense Expenses** incurred by an **Executive** in connection with a **Claim** against such **Protected Executive** for a violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any other jurisdiction or (ii) a **Claim** covered under Insuring Agreement A

### E. POLLUTION

for:

1. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or
2. any request, demand, or order, or statutory or regulatory requirement, that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **Pollutants**;

Provided this exclusion shall not apply to Insuring Agreement A, or a **Claim** by one or more shareholders of the **Organization** in their capacity as such.

## F. NUCLEAR

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.

## G. INSURED VS. INSURED

brought or maintained by or on behalf of an **Insured Person** in any capacity or the **Organization** or an **Outside Entity**; provided this Exclusion shall not apply to:

1. any **Securityholder Derivative Demand**;
2. a **Claim** by an **Insured Person** who has not served as an **Insured Person** for at least two (2) years prior to the date such **Claim** is first made and who maintains such **Claim** without the active assistance or active participation of the **Organization** or **Outside Entity**, or any other **Insured Person** who is serving or has served as an **Insured Person** within such two (2) year period;
3. a **Claim** by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, conservator, liquidator, similar official or creditors committee for such **Organization** or **Outside Entity**, or any assignee of such trustee, examiner, receiver, conservator, liquidator, similar official or creditors committee;
4. a **Claim** maintained in any non-common law jurisdiction outside the United States;
5. a **Claim** against **Insured Persons** for an employment-related **Wrongful Act**;
6. a **Claim** by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Coverage Section;
7. a **Claim** brought against an **Insured Person** by a whistleblower pursuant to any federal, state, foreign or local whistleblower law; or
8. **Compensation Clawback Costs**.

## H. ERISA

for an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA** or similar provisions of any federal, state or local statutory law or common law with respect to any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Organization** or an **Outside Entity**.

## I. SECURITIES

based upon, arising out of or attributable to (i) the actual purchase or sale, or offer or solicitation of an offer to purchase or sell, any public equity securities by the **Organization** or an **Outside Entity**, or (ii) the actual or alleged violation of any federal, state, local or foreign law relating to public equity securities; provided this exclusion shall not apply to any:

- a. **Claim** based upon, arising out of or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities not required to be registered under the Securities Act of 1933, as amended
- b. **Claim** based upon, arising out of or attributable to the failure of the **Organization** or an **Outside Entity** to undertake or complete a public offering of securities, including any “roadshow” disclosures or other activities in connection with such failure; or
- c. **Jobs Act Claim.**

**J. WAGE AND HOUR**

based upon, arising out of, attributable to, in whole or in part, or directly or indirectly resulting from or in consequence of, any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any **Wage and Hour Law**; provided that notwithstanding anything in this Policy to the contrary it shall be the duty of the **Insureds** and not the duty of the Underwriter to defend any **Claim** which is in part excluded from coverage pursuant to this Exclusion J, provided this exclusion shall not apply to a **Claim** by one or more shareholders of the **Organization** in their capacity as such.

**K. EMPLOYMENT**

for any employment related **Wrongful Acts.**

**L. THIRD PARTY VIOLATIONS**

based upon, arising out of or attributable to 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.**

**M. OTHER VIOLATIONS OF LAW**

for any actual or alleged violation of the any of the responsibilities, obligations or duties imposed by:

- a. the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the Occupational Safety and Health Act of 1970, and as amended, and the National Labor Relations Act, as amended, or any similar provisions of any federal, state, local or foreign statutory or common law;
- b. any law governing workers’ compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits, or any similar provisions of any federal, state, local or foreign statutory or common law.

**ORGANIZATION EXCLUSIONS**

Solely with respect to Insuring Agreement C only:

**N. CONTRACT**

for any actual or alleged liability of the **Organization** under any written contract or agreement, except to the extent that the **Organization** would have been liable in the absence of such contract or agreement.

**O. PERSONAL INJURY**

**P. PROFESSIONAL SERVICES**

for any **Insured's** failure to perform professional services for others for a fee; provided this exclusion shall not apply to any **Claim** by one or more shareholders of the **Organization** in their capacity as such.

**Q. FALSE ADVERTISING**

based upon, arising out of, or attributable to, any violation of the Federal Trade Commission Act or Consumer Protection Act or any similar federal, state or local law; or any malfunction or performance failure; related to any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised (including but not limited to falsely advertised, or misrepresented in advertising) or developed by or on behalf of any **Organization**; provided however this exclusion shall not apply to any **Claim** brought by one or more shareholders of the **Organization** in their capacity as such.

**R. ANTITRUST**

based upon, arising out of, or attributable to any violation of the Sherman Anti-Trust Act, the Federal Trade Commission Act, the Consumer Protection Act, the Clayton Act (or any amendments thereto), or any other federal, state, or local law, or any similar provision of any federal, state, or local law anywhere in the world, relating to any anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade, or monopolization activity; provided this exclusion shall not apply to any **Claim** by one or more shareholders of the **Organization** in their capacity as such.

**S. INTELLECTUAL PROPERTY**

based upon, arising out of or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress or service mark, or the actual or alleged misappropriation of ideas or trade secrets or the unauthorized disclosure of or access to confidential information; provided this exclusion shall not apply to any **Claim** by one or more shareholders of the **Organization** in their capacity as such.

**V. SEVERABILITY OF EXCLUSIONS**

For the purpose of determining the applicability of any Exclusion set forth in Section IV, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and under Insuring Agreement C only the **Wrongful Act** or knowledge of the chief executive officer or chief financial officer of the **Organization** shall be imputed to such **Organization**.

## VI. NOTICE OF CLAIM AND CIRCUMSTANCES

- A. *Notice of Claim:* The **Insureds** shall give to the Underwriter written notice of any **Claim** made against an **Insured** as soon as practicable after a risk manager or general counsel of an **Organization** (or the functional equivalent), first learns of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period** or the end of the **Extended Reporting Period**, if exercised. The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required by this Section VI.A shall not constitute a coverage defense with respect to such **Claim** unless the Underwriter establishes it was materially prejudiced by such failure.
- B. *Notice of a Crisis Management Event:* If an **Insured** elects to seek coverage for a **Crisis Management Event**, the **Insured** shall give notice of such of any **Crisis Management Event** to the Underwriter no later than thirty (30) days after the **Organization's** risk manager or general counsel (or functional equivalent) first learns of such **Crisis Management Event**. Within sixty (60) days of making any payment of **Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Crisis Management Event Expenses** for which the **Organization** seeks reimbursement, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- C. *Notice of Circumstances:* If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insured** first becomes aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or the **Extended Reporting Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. Except as otherwise provided this Coverage Section, no coverage is afforded under this Coverage Section for fees, expenses or other loss incurred in connection with such circumstances prior to the time a **Claim** is actually made and reported to the Underwriter.

The **Insureds** shall include with any such notice of circumstance a description of the circumstances, the nature of any potential **Wrongful Act(s)**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act(s)**.

## VII. CLAIM SETTLEMENT

The **Insureds** agree not to admit any liability for any **Claim**, offer to settle or settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation, without the Underwriter's prior written consent, such consent shall not be unreasonably withheld. The Underwriter shall not be liable for or as a result of any offer to settle, settlement, **Defense Expenses**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent; provided, however, if the **Insured** is able to fully and finally settle all **Claims** in their entirety, which are subject to a single retention, for an aggregate amount including **Defense Expenses** not exceeding fifty percent (50%) of such retention, the Underwriter's consent will not be required for the settlement of such **Claims**.

The Underwriter shall 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.

## VIII. CLAIM DEFENSE

The Underwriter shall have the right and duty to defend any **Claim** covered by this Coverage Section, even if any of the allegations are groundless, false or fraudulent. The Underwriter's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability applicable to such **Claim**.

The Underwriter shall have the right to select and appoint counsel to defend against any **Claim**. The Underwriter may appoint different defense counsel to represent different **Insureds**, but only if required due to an actual conflict of interest.

## IX. SECURITIES TRANSACTIONS

If during the **Policy Period**, the **Organization** intends to sell or offer to sell equity securities that are required to be registered under the Securities Act of 1933, as amended ("Public Transaction"), the **Named Insured** will, no later than thirty (30) days prior to the effective date of the registration statement, give the Underwriter written notice of the Public Transaction and all information requested by the Underwriter relating thereto. Upon request of the Named Insured, the Underwriter shall provide to the **Organization** during the **Policy Period** a quotation for coverage with respect to such sale or offering, provided such coverage shall be subject to such terms, conditions, limits, retentions and premium as the Underwriter may require in its sole discretion. No coverage is afforded by the Underwriter pursuant to any such quotation unless and until the **Named Insured** agrees in writing to the terms, conditions, limits, retentions and premium described in such quotation, and the Underwriter agrees in writing to bind such coverage. This Section IX shall not impact the Underwriter's ability to cancel or non-renew this Policy as provided in Section XIX (Cancellation and Nonrenewal) of the General Terms and Conditions.