

**PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
MISCELLANEOUS PROFESSIONAL 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. MISCELLANEOUS PROFESSIONAL LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insured** become legally obligated to pay on account of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**, actually or allegedly committed on or after the Retroactive Date set forth in ITEM 9 of the Declarations, by the **Insureds** or by any entity or natural person for whose **Wrongful Acts** the **Insured** is legally liable.

B. DISCIPLINARY PROCEEDING EXPENSE COVERAGE

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization** for **Disciplinary Proceeding Expenses** incurred in responding to **Disciplinary Proceedings** commenced during the **Policy Period**, or the **Extended Reporting Period**, if exercised. The maximum amount available for the **Disciplinary Proceeding Expenses** will be \$25,000 for each **Policy Period**, regardless of the number of **Disciplinary Proceedings**, and any payment made hereunder will not be subject to a retention and will not reduce any applicable limit of liability.

II. DEFINITIONS

When used in the Miscellaneous Professional Liability Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

A. Claim means:

1. a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, and including a written demand that the **Insured** toll or waive a statute of limitations, or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of such demand;
2. a civil proceeding against any **Insured** commenced by and which shall be deemed first made upon the service upon the **Insured** of a complaint or similar pleading; or
3. a formal administrative or regulatory proceeding, other than a **Disciplinary Proceeding**, commenced by and which shall be deemed first made upon the **Insured's** receipt of a notice of charges or similar document;

including any appeal therefrom.

- B. **Continuity Date** means the inception date of the first Miscellaneous Professional Liability Policy or Coverage Section issued by the Underwriter to the **Organization** and continually renewed by the Underwriter until the inception date of this Policy.
- C. **Disciplinary Proceedings** means proceedings by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct in the performance of **Professional Services**.
- D. **Disciplinary Proceedings Expenses** means reasonable fees, costs, and other expenses incurred by any Insured to investigate, defend, or appeal any **Disciplinary Proceedings**, provided that the **Disciplinary Proceedings Expenses** do not include:
1. fines, penalties or sanctions assessed against any **Insured**; or
 2. any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- E. **Insured Persons** means:
1. any one or more natural persons who were, now are or shall become a duly elected or appointed director (including a de facto director and shadow director), officer, trustee (other than a bankruptcy or litigation trustee), governor, **Manager**, officer, in-house general counsel, risk manager, controller, advisory director, or member of a duly constituted committee or board of the **Organization** or their functional equivalent; and
 2. any one or more natural persons not described in paragraph E.1 above, who were, now are or shall become **Employees** of the **Organization**.
- F. **Insureds** means the **Insured Persons** and the **Organization**.
- G. **Loss** means the total amount the **Insureds** become 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** and plaintiff attorney fees and costs.

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

1. Any amount for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
2. taxes, fines or penalties imposed by law;
3. any amount that represents or is substantially equivalent to fees, other compensation or expenses actually or allegedly owing to or returned by the **Insured**;
4. any amount that represents or is substantially equivalent to the damages stipulated in a contract as owing for a breach of the contract;
5. any amount incurred by the **Insureds** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;

6. the cost of correcting, re-performing or completing any **Professional Services**; or

7. **Clean-Up Costs.**

H. **Personal Injury** means libel, slander, disparagement, defamation, invasion of privacy, invasion of right of publicity, wrongful entry, wrongful detention, wrongful eviction, false imprisonment, false arrest, malicious prosecution, or malicious use or abuse of process.

I. **Professional Services** means services which are performed for others for a fee or other consideration and described in ITEM 9 of the Declarations, including any such services that are performed electronically utilizing the Internet or a network of two or more computers.

J. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or **Personal Injury** committed, attempted or allegedly committed or attempted, in the performance of or failure to perform **Professional Services** by an **Insured** or by an entity or natural person for whose acts the **Insured** is legally liable.

III. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Section to pay any **Loss** on account of that portion of any **Claim** made against any **Insured**:

A. **PRIOR NOTICE**

based upon, arising out of, or attributable to any fact, circumstance or **Wrongful Act** which have been the subject of any written notice given prior to inception of this Policy and accepted under any prior professional 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 Part 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 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 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 with respect to subsection III.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 an **Organization**.

D. BODILY INJURY/PROPERTY DAMAGE

for bodily injury, mental anguish, humiliation, 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; provided this exclusion shall not apply to **Loss** for any mental anguish, humiliation or emotional distress resulting from **Personal Injury**.

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, 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**.

F INSURED VS. INSURED

by or on behalf of, or based upon, arising out of, or attributable to the performance of or failure to perform **Professional Services** for, any **Insured** or any entity of which any **Insured** is a director, officer, partner, principal shareholder or holds a functionally equivalent position.

G. 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.

H. SECURITIES

based upon, arising out of or attributable to (i) the actual, alleged or attempted purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities, or (ii) the actual or alleged violation of any federal, state, local or common or foreign law relating to securities.

I. PRIOR KNOWLEDGE

based upon, arising out of or attributable to any **Wrongful Act** first committed before the **Continuity Date**, if on or before such date any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** did or could result in a **Claim** against any **Insured**.

J. 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.

K. INTELLECTUAL PROPERTY/CONFIDENTIAL INFORMATION

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.

L. CONTRACT

for liability of an **Insured** under any written contract or agreement; provided that this exclusion shall not apply to **Loss** to the extent that the **Insured** would have been liable in the absence of such contract or agreement.

M. GOVERNMENTAL REGULATORY OR ADMINISTRATIVE CLAIMS

by or on behalf of any governmental or quasi-governmental or other regulatory or administrative agency or authority; provided this exclusion shall not apply to **Loss** if such entity, agency or authority brings the **Claim** solely in its capacity as the client or customer of any **Insured** for **Professional Services**.

N. FEES, CHARGES, OR COST OVER-RUNS

based upon, arising out of or attributable to any **Insured's** fees, other compensation, charges or cost over-runs.

O. GUARANTY OR WARRANTY

based upon, arising out of or attributable to any guaranty, promise or warranty, either express or implied, whether oral or written, with respect to (i) costs or cost savings, or (ii) the future value of any real, personal or intellectual property.

P. INVESTMENT PERFORMANCE AND COMMINGLING

based upon, arising out of or attributable to (i) any **Insured's** advice about, promise or guarantee relating to the future performance or value of, the rate of return for, or interest of, investments, (ii) the fluctuation in the value of any investment, (iii) any failure of investments to perform as expected or desired; or any improper use or commingling of any funds or monies.

Q. DISCRIMINATION

based upon, arising out of or attributable to any willful violation of any federal, state or local law or statute pertaining to discrimination, if a final and non-appealable adjudication in an underlying proceeding or action establishes such a willful violation.

R. UNSOLICITED COMMUNICATIONS

based upon, arising out of or attributable to any violation of:

1. the United States of America CAN-SPAM Act of 2003 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
2. the United States of America Telephone Consumer Protection Act (TCPA) of 1991 or any amendments there to or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world; or
3. any other law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices.

S. UNAUTHORIZED NETWORK ACCESS

based upon, arising out of or attributable to any unauthorized or exceeded authorized access to, use of or alteration of, any computer program, software, computer, computer system or any input, output, processing, storage and communication devices that can be connected thereto.

IV. SEVERABILITY OF EXCLUSIONS

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

V. 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 V.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 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**. 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)**.

VI. 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.

VII. CLAIM DEFENSE

The Underwriter shall have the right and duty to defend any **Claim** covered in 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.