

**NOT-FOR-PROFIT ORGANIZATION  
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 **Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII 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 **Claim** first made against an **Insured Person** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**; provided, that such **Claim** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

**(C) Organization Liability Coverage:**

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

**(D) Stakeholder Derivative Demand Coverage:**

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Stakeholder Derivative Demand Sublimit stated in ITEM 4 of the Declarations, for **Investigative Costs** actually paid by the **Organization** in connection with any **Stakeholder Derivative Demand** first made during the **Policy Period** or applicable Extended Reporting Period; provided, that such **Stakeholder Derivative Demand** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

**(E) Crisis Management Reimbursement Coverage:**

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the D&O Crisis Management Expenses Limit stated in ITEM 4 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**; provided, that such **Crisis Management Event** is reported to the Underwriter in accordance with Section VII of this Coverage Section.

(F) **Additional Limit of Liability Dedicated for Executives (Optional):**

- (1) The Additional Limit of Liability Dedicated for Executives, if purchased as stated in ITEM 3 of the Declarations, will be an additional limit of liability in the amount stated in ITEM 4 of the Declarations, which amount is 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.
- (2) The Additional Limit for Executives is available solely for **Loss** resulting from any **Claim** made against any **Executive** covered under Insuring Agreement (A) of this Coverage Section.
- (3) The Additional Limit for Executives shall be excess of any insurance available that is specifically excess to this Policy and such excess 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.

**II. DEFINITIONS**

- (A) "**Antitrust Claim**" means any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Antitrust Violation**.
- (B) "**Antitrust Violation**" means any: 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.
- (C) "**Claim**" means:
  - (1)(a) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation); or
  - (b) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
    - (i) the service of a complaint or similar pleading;
    - (ii) the return of an indictment, information or similar document (in the case of a criminal proceeding); or
    - (iii) the filing of a notice of charges, formal investigative order or similar document,

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

- (2) a civil, criminal, administrative or regulatory investigation of an **Insured Person** for a **Wrongful Act** commenced by the service upon or other receipt by such **Insured Person** of a written notice from the investigating authority specifically identifying such **Insured Person** as a target individual against whom a civil, criminal, administrative or regulatory proceeding may be commenced;
- (3) an official request for **Extradition** against an **Insured Person** for a **Wrongful Act**; and
- (4) for the purposes of coverage under Insuring Agreement (D) of this Coverage Section, a **Stakeholder Derivative Demand**;

provided, that **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

- (D) "**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 death, incapacity or criminal indictment of any **Executive**, or any **Employee** on whom the **Organization** maintains key person life insurance;
  - (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 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;
  - (5) 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;
  - (6) the public announcement of the commencement or threat of commencement of governmental or regulatory proceedings against the **Organization**;
  - (7) the public announcement of the termination, suspension or limitation of an **Organization's** right to participate in any program of a federal, state or local governmental, regulatory or administrative agency;
  - (8) the public announcement of the loss of a major funding source of the **Organization**.
- (E) "**Crisis Management Expenses**" means reasonable costs, charges, fees and expenses incurred by the **Organization** for **Crisis Management Services**. **Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.

- (F) **"Crisis Management Firm"** means any public relations, crisis management firm or law firm retained by the **Organization** or its **Executives** with the consent of the Underwriter to perform **Crisis Management Services**.
- (G) **"Crisis Management Services"** means those services performed by a **Crisis Management Firm** in advising the **Organization** or any of its **Executives** on minimizing potential public harm to the **Organization** resulting from a **Crisis Management Event**.
- (H) **"Disqualified Person"** means a "disqualified person" as that term is defined in Section 4958 of the Internal Revenue Code of 1986, as amended.
- (I) **"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;
  - (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; and
  - (4) any intern working for, and under the supervision of, the **Organization**.
- (J) **"Excess Benefit Transaction"** means an "excess benefit transaction" as that term is defined in Section 4958(c) of the Internal Revenue Code of 1986, as amended.
- (K) **"Excess Benefit Transaction Excise Tax"** means any excise tax imposed by the Internal Revenue Service on an **Insured Person** who is an **Organization Manager** as a result of such **Insured Person's** participation in an **Excess Benefit Transaction**.
- (L) **"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, member of an Advisory Board, 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**.
- (M) **"Extradition"** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to answer to a criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where the execution of such warrant is an element of the formal process of extradition.
- (N) **"Insured"** means the **Organization** and any **Insured Person**.

- (O) **"Insured Person"** means any natural person who was, now is or becomes:
- (1) an **Executive**; or
  - (2) an **Employee**.
- (P) **"Internal Revenue Code Violation"** means any actual or alleged violation by an **Insured** of any of the following sections of the Internal Revenue Code of 1986, as amended, involving any **Organization** that is exempt from taxation under the Internal Revenue Code of 1986, as amended:
- Section 4911 (Taxes on Excess Expenditures to Influence Legislation);  
Section 4941 (a) and (b) (Taxes on Self-Dealing);  
Section 4942 (Taxes on Failure to Distribute Income);  
Section 4943 (Taxes on Excess Business Holdings);  
Section 4944 (Taxes on Investments which Jeopardize Charitable Purpose);  
Section 4945 (Taxes on Taxable Expenditures);  
Section 6652 (c) (1) (A)(B) (Penalties for Failure to File Certain Information Returns or Registration Statements);  
Section 6655 (a)(1) (Penalties for Failure to Pay Estimated Income Taxes); or  
Section 6656(a) and (b) (Penalties for Failure to Make Deposit of Taxes).
- (Q) **"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 **Stakeholder Derivative Demand**. **Investigative Costs** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (R) **"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 or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);
    - (b) judgments;
    - (c) settlements;
    - (d) pre- and post-judgment interest;
    - (e) **Excess Benefit Transaction Excise Taxes** that an **Insured Person** is obligated to pay as a result of a **Claim**; provided that **Loss** shall not include the twenty-five percent (25%) excise tax assessed against any

**Disqualified Person** or the 200% tax assessed for failure to correct an **Excess Benefit Transaction**;

- (f) civil fines and penalties levied against an **Insured** for an **Internal Revenue Code Violation**; and
  - (g) civil penalties levied against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act;
- (2) for purposes of coverage under Insuring Agreement (D) of this Coverage Section, **Investigative Costs**.

**Loss** does not include:

- (aa) 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 or the multiple portion of any multiplied damage award;
  - (bb) civil or criminal fines or penalties, except as provided in paragraph (1)(a) above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award and as provided in paragraphs (1)(f) and (1)(g) above with respect to the specified civil fines and penalties;
  - (cc) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority), except as provided in paragraph (1)(e) above with respect to any **Excess Benefit Transaction Excise Tax**;
  - (dd) 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
  - (ee) 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.
- (S) "**Organization Manager**" means an "organization manager" as that term is defined in Section 4958(f) of the Internal Revenue Code, 26 U.S.C. § 4958(f).
- (T) "**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**.
- (U) "**Outside Entity**" means: (1) any not-for-profit entity 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.
- (V) "**Personal Injury Wrongful Act**" means false arrest, wrongful detention or imprisonment, malicious prosecution, libel, slander, defamation of character, publication of material in violation of a person's right of privacy, wrongful entry or eviction or other invasion of the right of occupancy.

- (W) **"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.
- (X) **"Publisher Liability Wrongful Act"** means infringement of copyright or trademark, unauthorized use of title, plagiarism or misappropriation of ideas.
- (Y) **"Stakeholder"** means any natural person member of a not-for-profit **Organization** who has an active interest that such **Organization** fulfill its mission.
- (Z) **"Stakeholder Derivative Demand"** means any written demand, by one or more **Stakeholders** 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**.
- (AA) **"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**;
  - (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Executive** in his or her **Outside Capacity**; or
  - (4) with respect to both **Insured Persons** and the **Organization**, and subject to paragraphs (1), (2) and (3) above, any actual or alleged:
    - (a) **Antitrust Violation**;
    - (b) **Personal Injury Wrongful Act**; and
    - (c) **Publisher Liability Wrongful Act**.

### III. EXCLUSIONS

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

- (A) 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 and accepted 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;

- (B) 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;
- (C) brought by or on behalf of the **Organization** or any **Insured Person**; provided, that this EXCLUSION (C) shall not apply to:
  - (1) any **Stakeholder Derivative Demand**;
  - (2) any **Claim** brought or maintained derivatively on behalf of the **Organization** by a member, an attorney general, a securityholder or any other such representative party, provided such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, any **Executive**, the **Organization** or any **Affiliate**;
  - (3) 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;
  - (4) 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**;
  - (5) 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 two (2) 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 two (2) year period;
  - (6) 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**;
  - (7) 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
  - (8) 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;

- (D) for any **Wrongful Act** of an **Executive** in his or her **Outside Capacity**, if such **Claim** is brought by or on behalf of (1) the **Outside Entity** with which such **Executive** is serving or has served in an **Outside Capacity** or (2) any director, officer, trustee, governor or equivalent executive of such **Outside Entity**; provided, that this EXCLUSION (D) shall not apply to:
- (a) any **Claim** brought or maintained derivatively on behalf of the **Outside Entity** by one or more securityholders 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**;
  - (b) 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;
  - (c) 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**;
  - (d) 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 two (2) 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 two (2) year period;
  - (e) 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
  - (f) 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;

- (E) for: (1) 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 (2) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (E) shall not apply to any **Claim** to which Insuring Agreement (A) of this Coverage Section solely applies;
- (F) 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) for any actual or alleged bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (H) 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;
- (I) 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**;
- (J) made against a **Subsidiary** or listed **Affiliate** or any **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary** or **Affiliate**;
- (K) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or
  - (2) 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 (K) 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 and non-appealable adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;
- (L) 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 (L) shall not apply to matters involving tax exempt bonds and tax exempt bond holders;

- (M) 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;
- (N) 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;
- (O) 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);
- (P) for any actual or alleged liability of any **Insured** under any express contract or agreement; provided, that this EXCLUSION (P) shall not apply to:
  - (1) liability which would have attached in the absence of such express contract or agreement; or
  - (2) **Defense Expenses** incurred by the **Insureds** in connection with such **Claim**;
- (Q) for any employment-related **Wrongful Act**;
- (R) 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**; or
- (S) with respect to Insuring Agreement (C) of this Coverage Section only, for any actual or alleged infringement, misappropriation or violation of any patent, trade secret or any other intellectual property right; provided, that this EXCLUSION (S) shall not apply to any **Claim** for a **Publisher Liability Wrongful Act**.

#### **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 (K) 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 (K) of this Coverage Section.

**V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY, RETENTIONS AND COINSURANCE**

(A) Antitrust Claim Sublimit:

The Underwriter's maximum limit of liability for all **Loss** resulting from all **Antitrust Claims** shall be the amount stated in ITEM 4 of the Declarations as the Antitrust Claim Sublimit, which amount shall be part of, and not in addition to, the Additional Aggregate Limit for Defense Expenses (if purchased), the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(B) Excess Benefit Transaction Excise Tax Sublimit:

The Underwriter's maximum limit of liability for all **Excess Benefit Transaction Excise Taxes** resulting from all **Claims** shall be the amount stated in ITEM 4 of the Declarations as the Excess Benefit Transaction Excise Tax Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Internal Revenue Code Violation Sublimit:

The Underwriter's maximum limit of liability for all civil fines and penalties resulting from all **Claims** for **Internal Revenue Code Violations** shall be the amount stated in ITEM 4 of the Declarations as the Internal Revenue Code Violation 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.

(D) Stakeholder Derivative Demand Sublimit:

The Underwriter's maximum limit of liability for all **Investigative Costs** resulting from all **Stakeholder Derivative Demands** shall be the amount stated in ITEM 4 of the Declarations as the Stakeholder 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.

(E) D&O Crisis Management Expenses Limit:

The Underwriter's maximum limit of liability for all **Crisis Management Expenses** resulting from all **Crisis Management Events** shall be the amount stated in ITEM 4 of the Declarations as the D&O Crisis Management Expenses 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.

(F) 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. If the Underwriter and the **Insured** agree to use voluntary mediation as a dispute resolution approach with respect to a **Claim** and the Underwriter and the **Insured** consent to a full and final settlement of such **Claim** during such voluntary mediation (as evidenced by a full and final settlement agreement with respect to such **Claim**), the **Insured's** obligation to pay the applicable Retention stated in ITEM 5 of the Declarations for such **Claim** will be reduced by ten percent (10%), subject to a maximum reduction of \$25,000 of the Retention for such **Claim**.
- (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.
- (3) No Retention shall apply under Insuring Agreement (D) of this Coverage Section.
- (G) Coinsurance:

To the extent that **Loss** resulting from any **Claim** covered under this Coverage Section is subject to a Coinsurance Percentage as stated in ITEM 6 of the Declarations and is in excess of the applicable Retention, the **Insureds** shall bear uninsured and at their own risk that percentage of such **Loss** specified as the applicable Coinsurance Percentage in ITEM 6 of the Declarations, and the Underwriter's liability shall apply only to the remaining percentage of such **Loss**.

## VI. CLAIM SETTLEMENT

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, which consent shall not be unreasonably withheld. 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.

## VII. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **Claim** as soon as practicable after the **Organization's** risk manager or general

counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:

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

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

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

then any **Claim** subsequently made against 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)(1) 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 **Crisis Management 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 **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 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.

## VIII. 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.

## IX. 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 IX, 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.

## X. 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** will 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.