

**PRIVATE COMPANY  
MANAGEMENT LIABILITY POLICY**

**Employment Practices Liability Coverage  
Section**



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

**I. INSURING AGREEMENTS**

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

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

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

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

**(C) Employment Crisis Management Reimbursement Coverage:**

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the Employment Crisis Management Expenses Limit stated in ITEM 4 of the Declarations, for **Employment Crisis Management Expenses** actually paid by the **Organization** in connection with an **Employment Crisis Management Event** that first occurs during the **Policy Period**; provided, that such **Employment Crisis Management Event** is reported to the Underwriter in accordance with Section VI of this Coverage Section.

**II. DEFINITIONS**

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

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

- (C) **“Claim”** means any **Employment Claim** and any **Third Party Claim**.
- (D) **“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**, 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**.
- (E) **“Employment 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);
  - (b) a civil, criminal 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 formal notice of charges;
  - (c) an administrative or regulatory proceeding commenced by the receipt by an **Insured** of a notice of charges, formal investigative order, service of a complaint or similar document, including any such proceeding brought by or in association with the Equal Employment Opportunity Commission (“EEOC”) or any similar governmental agency; or
  - (d) in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause commenced by the receipt by an **Insured** of such Notice or Order,
 

brought by or on behalf of any past, present or prospective **Employee** against an **Insured**, or by or on behalf of any past, present or prospective **Outside Entity Employee** against an **Executive** in his or her **Outside Capacity**, for an **Employment Practices Wrongful Act**; or
- (2)(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);

- (b) a civil, criminal 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 formal notice of charges; or
- (c) an administrative or regulatory proceeding commenced by the receipt by an **Insured** of a notice of charges, formal investigative order, service of a complaint or similar document,

brought by or on behalf of a governmental agency or entity against an **Insured** for an **Illegal Hiring or Harboring Wrongful Act**;

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

- (F) **"Employment 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) a past, present or prospective **Employee** alleging **Employment Discrimination** by an **Insured**;
  - (2) a past or present **Employee** alleging **Breach of Employment Contract, Employment Harassment, Retaliation, Wrongful Employment Decision, Wrongful Termination** or a **Workplace Tort** by an **Insured**; or
  - (3) a **Third Party** alleging a **Third Party Wrongful Act** by an **Insured**.

For the purposes of this definition, "alleging" means lodging a written complaint or written charge with a manager within the **Organization** or the **Organization's** legal or human resources department.

- (G) **"Employment Crisis Management Expenses"** means reasonable costs, charges, fees and expenses incurred by the **Organization** for **Employment Crisis Management Services**. **Employment Crisis Management Expenses** do not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- (H) **"Employment Crisis Management Firm"** means any public relations, crisis management firm or law firm hired by the **Organization** or its **Executives** with the consent of the Underwriter to perform **Employment Crisis Management Services**.
- (I) **"Employment Crisis Management Services"** means those services performed by an **Employment Crisis Management Firm** in advising the **Organization** or any of its **Executives** on minimizing potential public harm to the **Organization** resulting from an **Employment Crisis Management Event**.
- (J) **"Employment Discrimination"** means any violation of employment discrimination laws, including any failure or refusal to hire or promote an **Employee, Outside Entity**

**Employee** or applicant for employment, any modification of any term or condition of employment, or any limitation, segregation or classification of any **Employee, Outside Entity Employee** or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an **Employee** or **Outside Entity Employee** because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, gender identity, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law.

(K) **"Employment Harassment"** means:

- (1) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, is used as a basis for employment decisions by, interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**; or
- (2) workplace harassment (i.e., harassment of a non-sexual nature) that interferes with performance at, or creates an intimidating, hostile or offensive working environment within, the **Organization** or **Outside Entity**.

(L) **"Employment Practices Wrongful Act"** means any actual or alleged:

- (1) **Breach of Employment Contract**;
- (2) **Employment Discrimination**;
- (3) **Employment Harassment**;
- (4) **Retaliation**;
- (5) **Workplace Tort**;
- (6) **Wrongful Employment Decision**; or
- (7) **Wrongful Termination**.

(M) **"Executive"** means any natural person who was, now is or becomes:

- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or
- (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.

(N) **"Illegal Hiring or Harboring Wrongful Act"** means any actual or alleged:

- (1) hiring of any illegal alien as an **Employee**; or
- (2) harboring of any illegal alien who is an **Employee**,

in violation of any state or federal law of the United States of America by the **Organization** or any **Insured Person** acting within the scope of his or her duties for the **Organization**.

For the purposes of this definition, the term "**Employee**" shall not include any volunteer or leased employee working for the **Organization** or any **Independent Contractor**.

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

**Loss** does not include:

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

- (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) **"Outside Entity Employee"** means any employee of the **Outside Entity**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee.
- (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) **"Retaliation"** means retaliatory treatment against any **Employee** or **Outside Entity Employee** on account of such individual:
- (1) exercising his or her rights under law;
  - (2) refusing to violate any law;
  - (3) opposing any unlawful practice;
  - (4) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
  - (5) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by any **Insured**.
- (Y) **"Third Party"** means any natural person who is not an **Insured Person** or an applicant for employment with the **Organization** or an **Outside Entity**, including but not limited to customers, vendors and suppliers.
- (Z) **"Third Party Claim"** means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations or request for mediation); or
  - (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
    - (a) the service of a complaint or similar pleading;
    - (b) the return of an indictment, information or similar document (in the case of a criminal proceeding); or

- (c) the filing of a formal notice of charges, formal investigative order or similar document,

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

- (AA) "**Third Party Services Agreement**" means any express contract between a **Third Party** and the **Organization**.
- (BB) "**Third Party Wrongful Act**" means:
  - (1) discrimination against a **Third Party** based on such **Third Party's** race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status, or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law;
  - (2) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, against a **Third Party**; or
  - (3) unlawful harassment of a non-sexual nature against a **Third Party**.
- (CC) "**Workplace Tort**" means:
  - (1) any employment-related: defamation, libel, slander, humiliation, invasion of privacy, negligent evaluation, wrongful discipline or workplace bullying; or
  - (2) any of the following:
    - (a) employment-related negligent retention;
    - (b) employment-related negligent supervision;
    - (c) employment-related negligent hiring;
    - (d) employment-related negligent training;
    - (e) employment-related negligent or intentional misrepresentation;
    - (f) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or
    - (g) failure to provide or consistently enforce employment-related corporate policies and procedures;

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

- (DD) **"Wrongful Act"** means:
- (1) with respect to any past, present or prospective **Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such;
  - (2) with respect to any past, present or prospective **Outside Entity Employee**, an **Employment Practices Wrongful Act** committed or allegedly committed by any **Executive** in his or her **Outside Capacity**;
  - (3) with respect to any **Third Party**, a **Third Party Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such;
  - (4) an **Illegal Hiring or Harboring Wrongful Act** committed or allegedly committed by the **Organization** or by any **Insured Person** in his or her capacity as such; or
  - (5) a **Wrongful Internet Act**.
- (EE) **"Wrongful Employment Decision"** means any wrongful demotion, denial of tenure or failure or refusal to promote.
- (FF) **"Wrongful Internet Act"** means an **Employment Practices Wrongful Act**: (1) alleged by an **Employee**; and (2) committed by an **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises.
- (GG) **"Wrongful Termination"** means any wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

### III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given and accepted under any employment practices liability or other similar management liability policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
  - (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding, including any audit by the Office of Federal Contract Compliance Programs, against any **Insured** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;



- (3) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974 (ERISA) (except section 510 thereof), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Worker Adjustment and Retraining Notification Act (WARN), the Occupational Safety and Health Act (OHSA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(3) shall not apply to any **Employment Claim** for **Retaliation**;
- (4) for any actual or alleged violation of the responsibilities, duties or obligations imposed under any federal, state or local wage and hour law, including, without limitation, the Fair Labor Standards Act (FLSA) (except the Equal Pay Act); provided, that this EXCLUSION (A)(4) shall not apply to any **Employment Claim** for **Retaliation**;
- (5) for any actual or alleged violation of the responsibilities, duties or obligations imposed under the National Labor Relations Act (NLRA), or any amendments thereto or regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(5) shall not apply to any **Employment Claim** for **Retaliation** if such **Employment Claim** is brought and maintained by or on behalf of one to four natural persons, whether such natural persons are represented by one or more legal counsel, who are not seeking relief on behalf of a class or group of complainants in order to resolve such **Employment Claim**;
- (6) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations;
- (7) for 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;
- (8) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, Social Security or disability benefits law, or any similar provisions of any federal, state, or local statute, ordinance, regulation or common law; provided, that this EXCLUSION (A)(8) shall not apply to any **Employment Claim** for **Retaliation**;
- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(9) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (10) made against a **Subsidiary** or any **Insured Person** of such **Subsidiary** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;

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

#### IV. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

(A) Illegal Hiring or Harboring Sublimit:

The Underwriter's maximum limit of liability for all **Loss** resulting from all **Employment Claims** for **Illegal Hiring or Harboring Wrongful Acts** shall be the amount stated in ITEM 4 of the Declarations as the Illegal Hiring or Harboring 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 the Coverage Section identified above.

(B) Employment Crisis Management Expenses Limit:

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

(C) Retentions:

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

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

**V. 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. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- (A) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
- (B) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.

**VI. REPORTING OF CLAIMS AND CIRCUMSTANCES**

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

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

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

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

then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall, subject to paragraph (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 (C) of this Coverage Section, the **Insureds** must give the Underwriter written notice of any **Employment 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 **Employment Crisis Management Event**. Within sixty (60) days of making any payment of **Employment Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **Employment Crisis Management Event Expenses** for which the **Organization** seeks reimbursement under Insuring Agreement (C) 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.

## VII. OTHER INSURANCE

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

## VIII. 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**.