

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

General Terms and Conditions Section



**PORTIONS OF THIS POLICY APPLY ONLY TO CLAIMS FIRST MADE
AGAINST THE INSURED DURING THE POLICY PERIOD WITH DEFENSE
EXPENSES INCLUDED IN THE LIMITS OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to the Declarations and all of the terms, conditions and limitations of this Policy, the Underwriter and the **Insureds** agree as follows:

I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Section of this Policy, the terms, conditions and limitations of each Coverage Section shall apply only to that Coverage Section. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions and limitations of any Coverage Section, the terms, conditions and limitations of such Coverage Section shall control for purposes of that Coverage Section. Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under that Coverage Section, have the meaning set forth in that Coverage Section.

II. DEFINITIONS

- (A) “**Application**” means the application(s) attached to and forming part of this Policy, including any materials submitted and statements made in connection therewith, all of which are on file with the Underwriter and are a part of this Policy, as if physically attached. If any **Application** uses any terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms and conditions of this Policy.
- (B) “**Claim**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (C) “**Domestic Partner**” means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

- (D) “**Financial Impairment**” means the status of an **Organization** resulting from:
- (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
 - (2) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.
- (E) “**Foreign Jurisdiction**” means any jurisdiction, other than the United States of America or any of its territories or possessions.
- (F) “**Insured**” shall have the meaning set forth in the applicable Coverage Section.
- (G) “**Insured Person**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (H) “**Liability Coverage Section**” means the Directors, Officers and Organization Liability, Employment Practices Liability and Fiduciary Liability Coverage Sections of this Policy, if purchased as stated in ITEM 3 of the Declarations.
- (I) “**Loss**” shall have the meaning set forth in the applicable **Liability Coverage Section**.
- (J) “**Management Control**” shall mean: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation or organization, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation or organization, the management committee of a joint venture or partnership or the management board of a limited liability company.
- (K) “**Named Organization**” means the entity designated as such in ITEM 1 of the Declarations.
- (L) “**Occurrence**” shall have the meaning set forth in the Crime Coverage Section.
- (M) “**Organization**” means the **Named Organization** and, subject to the provisions of Section IX of these General Terms and Conditions, any **Subsidiary**. **Organization** shall also mean any such entity as a debtor in possession.
- (N) “**Per Occurrence Limit of Liability**” means the applicable Per Occurrence Limit of Liability stated in ITEM 6 of the Declarations.

- (O) “**Policy Aggregate Limit of Liability**” means the Policy Aggregate Limit of Liability stated in ITEM 4 of the Declarations.
- (P) “**Policy Period**” means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation of this Policy.
- (Q) “**Related Claims**” means all **Claims** for **Wrongful Acts** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.
- (R) “**Separate Limit of Liability**” means the applicable Separate Limit of Liability, if any, stated in ITEM 4 of the Declarations.
- (S) “**Shared Limit of Liability**” means the applicable Shared Limit of Liability, if any, stated in ITEM 4 of the Declarations, which limit of liability shall be shared between all **Liability Coverage Sections** listed below such Shared Limit of Liability in the Declarations.
- (T) “**Subsidiary**” means, subject to the provisions of Section IX of these General Terms and Conditions:
- (1) any not-for-profit entity, and any for-profit entity whose securities are not publicly traded, during any time which the **Named Organization** has **Management Control** of such entity, either directly or through one or more **Subsidiaries**; and
 - (2) any joint venture entity during any time which the **Named Organization**, either directly or through one or more **Subsidiaries**, has **Management Control** of such joint venture entity pursuant to a written joint venture agreement.
- (U) “**Wrongful Act**” shall have the meaning set forth in the applicable **Liability Coverage Section**.

III. LIMITS OF LIABILITY

- (A) With respect to the **Liability Coverage Sections**, the following shall apply:

(1) **Policy Aggregate Limit of Liability**

The **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations is the maximum limit of the Underwriter’s liability for all **Loss** under all **Liability Coverage Sections** combined resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Sections** provide coverage.

(2) **Separate Limits of Liability**

If a **Separate Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Section**, then such **Separate Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under such **Liability Coverage Section** resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Section** provides coverage. Any such **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(3) **Shared Limits of Liability**

If a **Shared Limit of Liability** is stated in ITEM 4 of the Declarations for any **Liability Coverage Sections**, then such **Shared Limit of Liability** shall be the maximum limit of the Underwriter's liability for all **Loss** under all **Liability Coverage Sections** to which such **Shared Limit of Liability** is applicable, as indicated in ITEM 4 of the Declarations, resulting from all **Claims** or **Related Claims** for which such **Liability Coverage Sections** provide coverage. Any such **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in ITEM 4 of the Declarations and shall in no way serve to increase such **Policy Aggregate Limit of Liability**.

(4) **Defense Expenses** are part of and not in addition to the applicable Limits of Liability stated in ITEM 4 of the Declarations, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, such applicable Limits of Liability.

(5) If the **Separate Limit of Liability** or **Shared Limit of Liability** applicable to any **Liability Coverage Section** is exhausted by the Underwriter's payment of **Loss**, all obligations of the Underwriter under such **Liability Coverage Section(s)** will be completely fulfilled and exhausted, and the premium for such **Liability Coverage Section(s)** will be fully earned.

(B) With respect to the Crime Coverage Section, the following shall apply:

The applicable **Per Occurrence Limit of Liability** stated in ITEM 6 of the Declarations shall be the maximum limit of the Underwriter's liability for all loss resulting from an **Occurrence**, regardless of the number of **Insureds** sustaining such loss.

IV. RETENTIONS

(A) The Retentions stated in ITEM 5 of the Declarations are separate Retentions pertaining only to the **Liability Coverage Section** for which they are stated in the

Declarations. Subject to paragraph (B)(2) below, the application of a Retention to **Loss** resulting from any **Claim** under one **Liability Coverage Section** shall not reduce the Retention applicable under any other **Liability Coverage Section**.

- (B) In the event a **Claim** is covered under more than one **Liability Coverage Section**, then the following shall apply:
- (1) with regard to **Loss** resulting from any such **Claim** payable under any **Liability Coverage Section** which is subject to a **Separate Limit of Liability**, the Retention applicable to such **Loss**, as stated in ITEM 5 of the Declarations, shall apply separately to such **Loss**, and such Retention shall not be reduced by payments of **Loss** under any other **Liability Coverage Section**; and
 - (2) with regard to **Loss** resulting from any such **Claim** payable under any **Liability Coverage Sections** which are subject to a **Shared Limit of Liability**, the highest applicable Retention, as stated in ITEM 5 of the Declarations, shall be deemed the Retention applicable to such **Loss**.

V. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES

- (A) Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of any applicable **Liability Coverage Section**, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
- (1) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
 - (2) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.
- (B) All provisions of these General Terms and Conditions and of any applicable **Liability Coverage Section**, including without limitation the Retention, that are applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage extended pursuant to this Section V shall not apply with respect to any loss resulting from an actual or alleged act, error or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

VI. NOTICE

- (A) Any notice to the Underwriter with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section(s) so designated.
- (B) Notice to the Underwriter of a **Claim** or of circumstances which could give rise to a **Claim** under any **Liability Coverage Section**, or of an **Occurrence** under the Crime Coverage Section, shall be given in writing addressed to:

[Chief Claims Officer]
[OneBeacon Professional Insurance]
[199 Scott Swamp Road]
[Farmington, CT 06032]
[obpiclaims@onebeacon.com]

- (C) All other notices to the Underwriter shall be given in writing addressed to:

[OneBeacon Professional Insurance]
[199 Scott Swamp Road]
[Farmington, CT 06032]
[Attn: Underwriting]

- (D) Any such notice shall be effective on the date of receipt by the Underwriter at such address.
- (E) Notice to the **Insured** shall be sent to the **Named Organization** at the address designated in ITEM 1 of the Declarations.

VII. TERRITORY

Coverage shall extend anywhere in the world.

VIII. EXTENDED REPORTING PERIOD

If any **Liability Coverage Section** is canceled for any reason other than non-payment of premium or is not renewed by the Underwriter or the **Named Organization**, then solely with respect to such **Liability Coverage Section** that was canceled or not renewed, an additional period of time during which **Claims** may be reported under this Policy (an "Extended Reporting Period") shall be made available as described in this Section VIII, but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such cancellation or non-renewal ("Termination Date") or the effective date of any event described in Section IX (B) or (C) below, whichever is earlier. No Extended Reporting Period shall in any way increase the Underwriter's Limits of Liability stated in ITEM 4 of the Declarations, and the Underwriter's Limits of Liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the applicable Limits of Liability stated

in ITEM 4 of the Declarations. The offer of renewal terms, conditions, limits of liability, retentions or premium different from those in effect prior to renewal shall not constitute cancellation or refusal to renew for purposes of this Section VIII.

The **Named Organization** may purchase an Extended Reporting Period for one of the periods of time stated in ITEM 9 of the Declarations by notifying the Underwriter in writing of its intention to do so no later than thirty (30) days after the Termination Date. The additional premium for an Extended Reporting Period shall equal the applicable percentage, as stated in ITEM 9 of the Declarations, of the full annual premium (including any premium adjustments made during the **Policy Period**) for the applicable **Liability Coverage Section**, and must be paid no later than thirty (30) days after the Termination Date. The entire additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an Extended Reporting Period is made as described above, or if the additional premium for any such Extended Reporting Period is not paid within thirty (30) days after the Termination Date, there will be no right to purchase any Extended Reporting Period at any later time.

IX. CHANGES IN EXPOSURE

(A) Acquisition/Creation of Another Organization

(1) If before or during the **Policy Period** any **Organization**:

- (a) acquires **Management Control** in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- (b) acquires another organization by merger into or consolidation with the **Organization** such that the **Organization** is the surviving entity,

then coverage shall be provided for such other organization and its **Insureds** with respect to:

- (i) any **Liability Coverage Section**: solely for **Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation unless the Underwriter agrees, after presentation of a complete application and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** committed or allegedly committed by such **Insureds** before such acquisition or creation; or
- (ii) the Crime Coverage Section: after the effective date of such event, pursuant to Section VII(E), Liability for Prior Losses, of such Crime Coverage Section.

- (2) If, at the time of an acquisition or creation described in paragraph (A)(1) above:
- (a) the total assets of any such acquired or created organization exceed thirty-five percent (35%) of the total assets of the **Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Organization**, respectively, as of the date of such acquisition or creation); or
 - (b) solely with respect to the Employment Practices Liability Coverage Section, if purchased as stated in ITEM 3 of the Declarations, the total number of employees of the acquired or created organization exceeds thirty-five percent (35%) of the total number of employees of the **Organization** immediately prior to the acquisition or creation,

then the **Organization** shall provide the Underwriter written notice of such acquisition or creation, containing full details thereof, as soon as practicable, but in no event later than ninety (90) days after the date of such acquisition or creation, and the Underwriter, in its sole discretion, may require additional terms, conditions and limitations of coverage and additional premium shall be paid. If the **Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Underwriter, coverage for such acquired or created organization and its **Insureds** shall terminate with respect to **Claims** first made more than ninety (90) days after such acquisition or creation.

(B) **Acquisition by Another Organization**

If:

- (1) the **Named Organization** merges into or consolidates with another organization and the **Named Organization** is not the surviving entity; or
- (2) another organization or person or group of organizations and/or persons acting in concert acquires **Management Control** of the **Named Organization**,

then coverage under this Policy with respect to:

- (a) any **Liability Coverage Section**: shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition; or
- (b) the Crime Coverage Section: shall terminate subject to Section III EXCLUSIONS (L) of such Crime Coverage Section.

Upon the occurrence of any event described in paragraph (B)(1) or (2) above, the entire premium for this Policy shall be deemed fully earned. The **Named Organization** shall give written notice of such merger, consolidation or acquisition to the Underwriter as soon as practicable, but in no event later than ninety (90) days after the date of such merger, consolidation or acquisition, together with such other information as the Underwriter may require. Upon receipt of such notice and information and at the request of the **Named Organization**, the Underwriter shall provide to the **Named Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Underwriter and the **Named Organization**) with respect to **Claims for Wrongful Acts** committed or allegedly committed by the **Insureds** before such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium as the Underwriter, in its sole discretion, may require.

(C) **Cessation of Subsidiary**

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then with respect to:

- (1) any **Liability Coverage Section**: coverage with respect to such former **Subsidiary** and its **Insureds** shall continue until termination of such Coverage Section, but only with respect to **Claims for Wrongful Acts** committed or allegedly committed while such organization was a **Subsidiary**; or
- (2) the Crime Coverage Section: such former **Subsidiary** and its **Insureds** shall cease to be **Insureds** as of the effective date of such cessation, and coverage under such Crime Coverage Section shall thereafter apply only as provided in such Crime Coverage Section.

X. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in any Coverage Section, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

XI. ASSISTANCE AND COOPERATION

In the event of a **Claim** or **Occurrence**, the **Insured** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: investigating,

defending and settling **Claims** or **Occurrences**; enforcing any right of contribution or indemnity against another who may be liable to any **Insured**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

XII. SUBROGATION

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in its name. The **Insureds** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insureds** under this Section XII shall survive the expiration or termination of this Policy.

In no event, however, shall the Underwriter seek subrogation against any **Insured** under this Policy unless:

- (A) such **Insured** has been convicted of a criminal act;
- (B) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** committed a deliberately fraudulent or dishonest act or omission, or willfully violated any statute, rule or law; or
- (C) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** gained any profit, remuneration or advantage to which such **Insured** was not legally entitled.

XIII. NO ACTION AGAINST UNDERWRITER

- (A) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Underwriter.
- (B) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

XIV. NAMED ORGANIZATION RIGHTS AND OBLIGATIONS

The **Named Organization** will act on behalf of all **Insureds** with respect to: the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

XV. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or estop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

XVI. ASSIGNMENT

No assignment of interest under this Policy shall bind the Underwriter without its written consent issued as a written endorsement to form a part of this Policy.

XVII. CANCELLATION/NONRENEWAL

- (A) The Underwriter may not cancel this Policy except for the **Named Organization's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Named Organization** by the Underwriter.
- (B) This Policy may be cancelled by the **Named Organization** at any time by mailing written notice to the Underwriter stating when thereafter such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (C) The Underwriter will not be required to renew this Policy upon its expiration. The Underwriter will provide the **Named Organization** with sixty (60) days' notice of any non-renewal.

XVIII. TERMINATION OF PRIOR BONDS OR POLICIES

Any bonds or policies issued by the Underwriter or its affiliates and stated in ITEM 7 of the Declarations shall terminate, if not already terminated, as of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations.

XIX. INSOLVENCY OF INSURED

The Underwriter will not be relieved of any of its obligations under this Policy by the

bankruptcy or insolvency of any **Insured** or his/her/its estate.

XX. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

XXI. HEADINGS

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

Specimen