



## MANAGEMENT LIABILITY SOLUTIONS - PRIVATE EQUITY FIRMS

THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MUST BE REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION VI. DEFENSE COSTS ARE WITHIN THE LIMITS OF LIABILITY.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Terms in bold face type have special meaning. See the definitions sections of this policy.

The Insurer and the **Insureds** agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer."

### I. COVERAGES

#### A. INSURING AGREEMENTS

##### 1. Insured Person Liability

The Insurer shall pay on behalf of the **Insured Person** that **Loss** for which the **Insured Person** is not indemnified by an **Insured Entity** and which results from any **Claim** first made against the **Insured Person** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

##### 2. Insured Entity Liability

a. The Insurer shall pay on behalf of the **Insured Entity** that **Loss** for which the **Insured Entity** has indemnified the **Insured Persons** and which results from any **Claim** first made against the **Insured Persons** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**;

b. The Insurer shall pay on behalf of the **Insured Entity** that **Loss** resulting from any **Claim** first made against an **Insured Entity** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Entity**.

#### B. COVERAGE EXTENSIONS

##### 1. **Outside Entity Executive Liability**

Insuring Agreements 1 and 2.a. above are extended to include coverage for any **Claim** first made against an **Outside Entity Executive** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** while serving in such capacity.

##### 2. **Outside Entity Executive Liability Runoff Extension**

If an **Outside Entity Executive** ceases acting as an **Executive** in any **Outside Entity**, the coverage provided under Paragraph B.1. above shall continue for such **Outside Entity Executive** until the termination of this policy or renewal thereof, or the Extended Reporting Period, if applicable, but only with respect to **Wrongful Acts** occurring prior to the time the **Outside Entity Executive** ceased acting as such.



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### 3. Estates, Legal Representatives and Domestic Partners

The estates, heirs, legal representatives, assigns, and any **Domestic Partner** of **Insured Persons** shall be considered **Insureds** under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the **Domestic Partners**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign or **Domestic Partner**. All terms and conditions of this policy, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Persons** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, and **Domestic Partners**.

## II. DEFINITIONS

**Advisory Board Member** means any natural person who has been, now is or shall become a member of an advisory board or advisory committee of a **Private Equity Fund**.

**Application** means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this policy is a direct or indirect renewal or replacement. **Application** also means any public documents filed by the **Insured Entity** prior to inception of this policy, with any federal, state, local or foreign regulatory agency (including, but not limited to the Securities and Exchange Commission).

**Claim** means:

- A. a written demand for monetary damages or non-monetary relief;
- B. a civil proceeding in a court of law or equity or an arbitration;
- C. a formal administrative or regulatory proceeding against an **Insured Person**;
- D. a criminal proceeding;

against an **Insured** and alleging a **Wrongful Act**, including any appeal therefrom.

A **Claim** also includes a **Formal Investigation** of an **Insured Person**.

**Controlling Shareholder** has the same meaning as set forth in Section 15 of the Securities act of 1933 or Section 20(a) of the Securities Exchange Act of 1934.

**Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the Insurer (such consent not to be unreasonably withheld) and incurred by the **Insureds** in the investigation, adjustment, defense or appeal of any covered **Claim**, and includes premium for appeal bonds, attachment bonds or similar bonds arising out of a covered judgment. The Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with any person included as an **Insured Person** for any purpose.

**Domestic Partner** means any spouse and any person qualifying as a domestic partner under any federal, state or local laws or under the **Insured Entity's** employee benefit plans.

**Employee** means any past, present or future full-time, part-time, seasonal or temporary employee of the **Insured Entity**. **Employee** does not include any **Executive**.

**Employment Practices Claim** means a **Claim** against an **Insured** by an **Employee** or an **Executive** (other than an **Executive** who is a member of the Board of Directors, management board or a **General Partner** or equivalent position) of, or an applicant for employment with, an **Insured Entity** or an **Outside Entity** alleging a **Wrongful Employment Practice**.



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**Employment Related Benefits** means perquisites, fringe benefits, deferred compensation 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. **Employment Related Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

**ERISA or any Similar Act** means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

**Executive** means any past, present or future natural person:

- A. duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or member of the board of managers of a limited liability company; or any duly elected, appointed or designated **General Partner** or partnership manager of a partnership or **Manager** of a limited liability company; or
- B. official in an entity organized and operated in a jurisdiction other than the United States or any of its territories or possessions who is holding a position that is equivalent to an executive position listed in A..

Solely with respect to the **Named Insured**, **Executive** also means In-House General Counsel, Chief Compliance Officer, or Risk Manager (or equivalent position).

**Financial Insolvency** means, with respect to an **Insured Entity**:

- A. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured Entity**, or such **Insured Entity** becoming a debtor in possession; and
- B. the inability of such **Insured Entity**, financially or under applicable law, to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**.

**Formal Investigation** means a civil, criminal, administrative or regulatory investigation of an **Insured Person** by a federal, state or foreign governmental authority commenced by the receipt by such **Insured Person** of a written notice from the investigating authority identifying such **Insured Person** as an individual against whom a formal proceeding may be commenced. **Formal Investigations** are subject to the sublimit of liability as set forth in the Declarations.

**General Partner** means any natural person or entity designated as such in the partnership agreement or equivalent documents of a limited partnership.

**Insured** means the **Insured Person** and **Insured Entity**.

**Insured Entity** means:

- A. any **Private Equity Fund** listed in the **Application**;
- B. any entity **General Partner** of a **Private Equity Fund**;
- C. the entity managing member of each **Private Equity Fund** organized as a limited liability company
- D. the entity management company identified in the partnership agreement or operating agreement of a **Private Equity Fund**;
- E. any **Subsidiary** of any entity described in B, C or D above;
- F. any **Special Purpose Acquisition Vehicle**;
- G. any other entity specifically included as an **Insured Entity** by endorsement to this policy;
- H. any **Investment Manager**,

including any such entity as a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country. **Insured Entity** does not include any **Outside Entity**.



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**Insured Person** means any:

- A. **Executive** of an **Insured Entity**;
- B. **Employee** of an **Insured Entity**;
- C. **Outside Entity Executive** but solely with respect to Coverage Extensions 1 & 2;
- D. **Advisory Board Member** provided such board or committee was created pursuant to a limited partnership agreement or equivalent document of the **Private Equity Fund**.

**Investment Manager** means any entity that provides **Professional Services** to a **Private Equity Fund**.

**Interrelated Wrongful Acts** means any **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.

**Loss** means damages, settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment) and **Defense Costs** for which the **Insured** is legally obligated to pay on account of a covered **Claim**.

However, **Loss** shall not include:

- A. criminal or civil fines, penalties or taxes imposed by law;
- B. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
- C. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- D. the payment of any dividends or other distributions of corporate profits of the **Insured Entity** to any shareholder of the **Insured Entity**;
- E. the return of any contribution of capital to any **Executive** or **Employee** or any **Private Equity Fund**;  
or
- F. costs incurred by the **Insured Entity** to comply with any injunctive or other non-monetary relief or an agreement to provide such relief.
- G. any actual principle, interest, or other amounts for which the **Insured** is liable pursuant to any express or implied promise to contribute or lend money to a **Portfolio Company** or a potential **Portfolio Company**.

In addition, solely with respect to any **Professional Services Claim**, **Loss** shall not include fees, costs and expenses paid or incurred or charged by any **Insured**, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing.

Notwithstanding the foregoing paragraph, **Loss** shall include (subject to this policy's other terms, conditions and limitations, including but not limited to exclusions relating to profit or advantage, deliberate fraud or deliberate criminal acts), punitive, exemplary and multiple damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defense Costs** or to any **Non-Indemnifiable Loss** in connection with such **Claim**.

**Management Control** means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee



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members of a joint venture; or the members of the management board of a limited liability company; or the **General Partners** or the partnership managers of a partnership;

- B. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Insured Entity**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; the members of the management board of a limited liability company; or the **General Partners** or the partnership managers of a partnership.

**Manager** means any natural person manager, member of the Board of Managers or equivalent executive of an **Insured Entity** that is a limited liability company.

**Named Insured** means the **Insured Entity** named in Item 1 of the Declarations.

**Non-Indemnifiable Loss** means **Loss** which:

- A. an **Insured Entity** fails or refuses to indemnify an **Insured Person** because of **Financial Insolvency**; or  
B. is not permitted or required to indemnify the **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of the **Insured Entity**.

**Not-for-Profit Outside Entity** means any entity, other than an **Insured Entity**, exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3), as amended.

**Outside Entity** means any **Not-for-Profit Outside Entity** or any **Portfolio Company**.

**Outside Entity Executive** means an **Executive** of an **Insured Entity** who is acting as an **Executive** in any **Outside Entity**, provided and so long as such service is at the specific request, consent or direction of the **Insured Entity**.

**Outside Entity Executive Claim** means a **Claim** against an **Outside Entity Executive**.

**Policy Period** means the period from the effective date of this policy to the policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.

**Pollutants** means any substance exhibiting hazardous characteristics as or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.

**Portfolio Company** means:

- A. any **Private Entity** in which a **Private Equity Fund** owns debt or equity securities pursuant to the investment objectives set forth in any private placement memorandum, prospectus or similar document of such **Private Equity Fund**; or  
B. any other organization specifically identified as a **Portfolio Company** in an endorsement to this policy.

**Private Entity** means any corporation, partnership, limited liability company or other entity none of whose securities are either traded in a public market or have been the subject of a public offering, sale or distribution.

**Private Equity Fund** means any **Private Entity** whose primary business activity is investments in debt or equity securities in one or more other entities, provided one or more **Insured Entities** created and remain contractually or legally entitled to manage, advise or control such **Private Entity**. Any coverage with respect to any such **Private Equity Fund** created or acquired by an **Insured Entity** during the **Policy Period** is subject to Section XIV of this policy.



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**Professional Services** means:

- A. the investment in, formation, capitalization or disposition of, or the rendition, or failure to render, management, investment, administrative or financial services to, a **Portfolio Company** or a prospective **Portfolio Company**;
- B. the creation, management, administration, dissolution or liquidation of, or the sale or distribution of securities with respect to, a **Private Equity Fund** or a prospective **Private Equity Fund**;
- C. an **Insured's** purchase or sale of, or offer to purchase or sell, any securities issued by a **Portfolio Company** of whom any **Insured Entity** is deemed to be a **Controlling Shareholder**; or
- D. any act performed by an **Insured** for a **Portfolio Company** or proposed **Portfolio Company** of a **Private Equity Fund**, arising from the extending or refusal to extend credit or granting or refusal to grant a loan or any transaction in the nature of a loan.

**Professional Services Claim** means a **Claim** based on or arising out of the rendering or failure to render **Professional Services** by an **Insured** and, with respect to the **Insured Entity**, by anyone for whom the **Insured Entity** is liable.

**Securities Claim** means a **Claim** made against any **Insured** and:

- A. brought by:
  1. any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an **Insured Entity** or **Outside Entity**; or
  2. a security holder of an **Insured Entity** with respect to such security holder's interest in securities of such **Insured Entity**; or
- B. brought derivatively on the behalf of an **Insured Entity** by a security holder of such **Insured Entity**.

**Special Purpose Acquisition Vehicle** means any entity which is created or acquired for the sole purpose of acquiring the securities, debentures or voting rights representing the present right to vote for election of directors or to select managing partners or managing members of a **Portfolio Company** and in which a **Private Equity Fund** owns or controls greater than 50% of the outstanding securities or voting rights representing the present right to vote for election or directors or to select general partners or managing members. **Special Purpose Acquisition Vehicles** shall not include any **Portfolio Company**.

**Subsidiary** means:

- A. any entity (other than a partnership or a **Portfolio Company**) in which an **Insured Entity** has **Management Control**:
  1. on or before the effective date of this policy; or
  2. after the effective date of this policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XIV; or
- B. any foundation or political action committee exempt from federal income taxation and sponsored exclusively by the **Insured Entity**.

**Takeover** means:

- A. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
  1. the ownership or control of voting stock of the **Named Insured** resulting in the ownership or control of more than 50% of the voting stock of the **Named Insured**; or,
  2. assets of the **Named Insured** resulting in the ownership of more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;



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- B. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity;
- C. the consolidation of the **Named Insured** with another entity; or
- D. the acquisition or change of control of the sponsorship of the **Private Equity Fund** by another entity or person or group of entities and/or persons acting in concert.

**Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by:

- A. an **Executive** in his or her capacity as such or any matter claimed against such **Executive** solely by reason of his or her status as such; or
- B. an **Employee** but solely with respect to any **Employment Practices Claim, Professional Services Claim, Securities Claim** or any other **Claim** provided that such other **Claim** is also made and continuously maintained against an **Executive** of an **Insured Entity**;
- C. an **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such; or
- D. an **Insured Entity** (other than an **Investment Manager**);
- E. an **Investment Manager** but solely in its capacity as such to the **Private Equity Fund**.

**Wrongful Employment Practice** means any **Wrongful Act** constituting or relating to:

- A. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
- B. employment-related misrepresentation;
- C. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866;
- D. sexual harassment or other unlawful harassment;
- E. wrongful deprivation of career opportunity, failure to grant tenure, demotion, or failure to employ or promote;
- F. wrongful discipline;
- G. retaliation;
- H. negligent evaluation of employees;
- I. failure to adopt adequate workplace or employment policies and procedures;
- J. employment-related defamation, humiliation or invasion of privacy; or
- K. with respect to any of the foregoing items (A) through (J) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

but only if such **Wrongful Employment Practice** relates to an **Executive** of, an **Employee** of or an applicant for employment with an **Insured Entity** or to an **Outside Entity Executive**, whether committed directly, indirectly, intentionally or unintentionally. In addition, with respect to any natural person customer or client, **Wrongful Employment Practice** shall mean only actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether committed directly, indirectly, intentionally or unintentionally.

### III. EXCLUSIONS

The Insurer shall not be liable to pay that part of **Loss** under this policy in connection with any **Claim** made against the **Insured Persons** or the **Insured Entities**:

#### A. **Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or damage to or destruction of any tangible



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property including loss of use except that this exclusion shall not apply to any allegations of emotional distress, mental anguish, libel, slander or defamation by a claimant in an **Employment Practices Claim**;

### B. Violation of Law

based upon or arising out of, or in any way involving any actual or alleged violation of **ERISA or any Similar Act**, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), any law governing workers' compensation, unemployment insurance, social security, disability benefits; the Occupational Safety and Health Act of 1970 (OSHA), the Fair Labor Standards Act (except the Equal Pay Act), the Workers' Adjustment and Retraining Notification Act, the National Labor Relations Act, or any other federal, state or local statutory law or common law anywhere in the world concerning the same topic or subject and any rules, regulations and amendments thereto;

### C. Prior Notice

based upon or arising out of:

1. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event notice of which was given by an **Insured** under any policy of which this policy is a direct or indirect renewal or replacement; or
2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in 1. above, would constitute **Interrelated Wrongful Acts**;

### D. Prior or Pending

based upon or arising out of or constituting any civil, criminal, administrative or regulatory proceeding, investigation or arbitration against any of the **Insureds** which was pending on or prior to the prior or pending Date set forth in Item 8 of the Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration;

### E. Prior Knowledge of Outside Entity Executives

with respect to any **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the date the **Insured Entity** requested, consented to or directed such **Outside Entity Executive** to serve in such capacity, if the **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy;

### F. Pollution

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
3. any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity**, its security holders, or its creditors resulting from any of the aforementioned matters;

provided, however, this exclusion shall not apply to a **Non-Indemnifiable Loss** other than expenses incurred by **Insured Persons** in connection with paragraph 2. of this exclusion;



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### G. **Illegal Profits/Deliberate Acts**

based upon or arising out of:

1. the gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled if a judgment, ruling or other finding of fact in any proceeding adverse to the **Insured** establishes the **Insured** was not legally entitled to such profit or advantage; or
2. the committing of any deliberate fraudulent or deliberate criminal act by the **Insured** if a judgment, ruling or other finding of fact in any proceeding establishes that such act was committed.

For purposes of determining the applicability of Exclusion G, the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**;

### H. **Wrongful Acts of Executives of other Entities**

for any **Wrongful Act** by such **Insured Person** while serving in the capacity, or solely by reason of his or her status, as a director, officer, trustee, governor, manager, employee or similar position in any entity, other than an **Insured Entity** or **Outside Entity**;

### I. **Prior Wrongful Acts of Subsidiaries**

for:

1. any **Wrongful Act** by **Insured Persons** of any **Subsidiary** or by such **Subsidiary** occurring before the date such entity became a **Subsidiary**, or
2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in 1. above, would constitute **Interrelated Wrongful Acts**;

### J. **Hold Harmless or Indemnification Agreement**

for liability assumed by the **Insureds** under any type of hold harmless or indemnification agreement whereby the **Insureds** incur liability arising out of the **Wrongful Acts** of third parties which liability the **Insureds** would not otherwise incur absent such hold harmless or indemnification agreement;

### K. **Outside Entity vs. Outside Entity Executive**

made against an **Outside Entity Executive** by or on behalf of the **Outside Entity** or one or more of the **Outside Entity's Executives** or which is brought by any security holder of the **Outside Entity** whether directly or derivatively, unless such security holder's **Claim** is brought and maintained solely by persons acting totally independent of and totally without the solicitation, assistance, participation or intervention of the **Outside Entity**, any **Executive** of the **Outside Entity**, or an **Insured Entity** or any **Executive** of an **Insured Entity**; provided however, this exclusion shall not apply to:

- a. any **Claim** brought by an **Outside Entity Executive** or **Executives** of an **Outside Entity** in the form of a cross-claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this policy; or
- b. any **Claim** by a **Portfolio Company** where such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured**;



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### L. **Insured vs. Insured**

by or on behalf of:

1. any **Insured Persons** (other than **Employees**) in any capacity; or
2. the **Insured Entity**; or
3. any security holder, member or partner of an **Insured Entity**, whether directly or derivatively, unless such security holder's, partner's or member's **Claim**, is brought and maintained solely by persons acting totally independent of and totally without the solicitation, assistance, participation or intervention of the **Insured Entity** or any **Insured Person** (or the solicitation, assistance, participation or intervention of such **Insured Person** is protected under the Whistleblower Protection for Employees of Publicly Traded Companies provision of the Sarbanes-Oxley Act of 2002 (18 USC 1514a).

provided, however, that this Exclusion shall not apply to:

- a. an **Employment Practices Claim**;
- b. any **Claim** that is in the form of a cross-claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this policy;
- c. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity**, or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator; or
- d. any **Claim** brought by any past **Executive** of an **Insured Entity** who has not served as an **Executive** of or consultant for a **Insured Entity** for at least four (4) years prior to such **Claim** being first made;
- e. any **Claim** brought by or on behalf of a **Private Equity Fund** where prior to bringing such **Claim**, independent legal counsel for such **Private Equity Fund** has stated in a written opinion that a failure to bring such **Claim** would be a breach of fiduciary duty owed by any **Insured** to such **Private Equity Fund** or investors in such **Private Equity Fund**;
- f. any **Claim** brought by any **Advisory Board Member** who is not an **Executive**, in his or her capacity as a security holder, or investor in an **Insured Entity**, whether directly or derivatively, unless such security holder's or investor's **Claim** is brought and maintained solely by persons acting totally independent of and totally without the solicitation, assistance, participation or intervention of the **Insured Entity** or any **Insured Persons**;
- g. any **Claim** brought by an **Executive** of an organization formed and operating in a foreign jurisdiction against such organization or any **Executive** thereof provided that such **Claim** is brought and maintained outside the United States, its territories and possessions, Puerto Rico, Canada or any other common law country.

### M. **Security Broker or Dealer**

for liability involving the activities of any **Insured** as an "underwriter" "broker" or "dealer" in securities, as defined in Sections 2(11) of the Securities Act of 1933 and 3(a) (4) and 3(a) (5), respectively, of the Securities Exchange Act of 1934; provided however, this exclusion shall not apply to the distribution, underwriting or resale of securities purchased directly from the **Private Equity Fund** by a distributor for resale to any broker or dealer;

### N **Exclusions applicable solely to Employment Practices Claims**

Solely with respect to an **Employment Practices Claim**, for:

1. unpaid compensation earned by the claimant in the course of employment, including salary, wages, commissions, bonus or incentive compensation;



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2. any amounts for breach of any written contract of employment;
3. medical or insurance premiums or benefit claim payments;
4. future salary, wages or commissions of a claimant who is hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**; or
5. **Employment Related Benefits**,

provided however, that this exclusion shall not apply to **Defense Costs** or to any **Non-Indemnifiable Loss**.

### **O. Bankruptcy or Insolvency**

based on or arising out of the bankruptcy or insolvency of any broker or dealer in securities or commodities, or any buyer, seller or underwriter of securities or commodities, or any financial organization or provider of services to the **Insured**;

### **P. Commingling**

based on or arising out of any improper commingling of funds;

### **Q. Failure to Maintain Insurance**

based on or arising out of any failure by any **Insured** to effect or maintain adequate insurance;

### **R. Contractual Liability**

based on or arising out of an **Insured's** actual or alleged liability under any oral or written contract or agreement including but not limited to express warranties or guarantees; except that this exclusion does not apply to such **Insured's** liability that exists in the absence of such contract or agreement;

### **S. Proprietary Rights**

based on or arising out of:

1. oral or written publication of material that violates a person's right of privacy.
2. plagiarism, piracy, or breach of confidentiality;
3. infringement or misappropriation of copyright, title, slogan, trademark, trade name, trade dress, logo, service mark or service name;

### **T. Anti-Trust Violations**

based on or arising out of:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud, charges of price fixing, restraint of trade, false advertising or misrepresentation in advertising;
2. any actual or alleged violation of:
  - a. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade; or
  - b. any rules or regulations promulgated under or in connection with the above statutes, or any similar provision of any state, federal or local statutory law or common law.

## **IV. LIMIT OF LIABILITY/RETENTION/PRESUMPTIVE INDEMNIFICATION**

### **A. Aggregate Limit of Liability**

The Limit of Liability stated in Item 6 of the Declarations is the aggregate limit of the Insurer's liability for all **Loss** under this policy arising out of all **Claims** first made against **Insureds** during



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the **Policy Period** and the Extended Reporting Period (if applicable). The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the Limit of Liability for the **Policy Period**. Further, a **Claim** which is made subsequent to both the **Policy Period** and the Extended Reporting Period (if applicable) and which pursuant to Section VI is considered made during the **Policy Period** or Extended Reporting Period shall also be subject to the one aggregate Limit of Liability stated in Item 6 of the Declarations.

**Defense Costs** are part of **Loss** and as such are subject to the Limit of Liability for **Loss**.

### **B. Retention**

The Insurer shall only be liable for the amount of **Loss** arising from each **Claim** (including a **Formal Investigation**) which is in excess of the applicable Retention amount stated in Item 7 of the Declarations. The Retention amount shall apply to **Loss** arising from each **Claim** and from all **Claims** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**. The Retention shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable Retention. No Retention applies with respect to **Non-Indemnifiable Loss**.

An **Outside Entity Executive Claim** Retention, if specified on the Declarations Page, shall be the Retention applicable to all **Loss** in connection with each **Outside Entity Executive Claim**. Any other Retention specified on the Declarations Page shall continue to apply with respect to each **Claim** other than an **Outside Entity Executive Claim**.

### **C. Formal Investigation Sublimit of Liability**

The **Formal Investigation** Sublimit of Liability stated in Item 6 of the Declarations is the aggregate limit of the Insurer's liability for all **Loss** under this policy arising out of all **Formal Investigations** first made against **Insured Persons** during the **Policy Period** and the Extended Reporting Period (if applicable). The **Formal Investigations** Sublimit of Liability shall be part of and not in addition to the aggregate Limit of Liability stated in Item 6. Further, a **Formal Investigation** which is made subsequent to both the **Policy Period** and the Extended Reporting Period (if applicable) and which pursuant to Section VI. is considered made during the **Policy Period** or Extended Reporting Period shall also be subject to the **Formal Investigation** Sublimit of Liability and further subject to the aggregate Limit of Liability stated in Item 6. of the Declarations.

### **D. Presumptive Indemnification**

If the **Insured Entity** fails or refuses to indemnify an **Insured Person** for **Loss**, other than **Non-Indemnifiable Loss**, or to advance **Defense Costs** to the fullest extent permitted by law, then any payment by the Insurer of such **Loss** or such **Defense Costs** shall be subject to the Retention amount stated in Item 7 of the Declarations applicable to Insuring Agreement 2.

## **V. SETTLEMENT/DEFENSE OF CLAIM/ALLOCATION OF LOSS/ADVANCEMENT OF DEFENSE COSTS**

### **A. Settlement/Insurer's Consent**

The **Insureds** shall not admit or assume liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** incurred by an **Insured** to the extent the **Loss** results from such **Insured** admitting liability, consenting to any judgment, agreeing to any settlement or making any settlement offer without the Insurer's prior written consent. The **Insureds** agree that they shall not knowingly take any action while a **Claim** is pending which increases the Insurer's exposure for **Loss** under this policy.



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Notwithstanding the above, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

### B. Defense of Claims

The **Insureds** and not the Insurer have the duty to defend **Claims**. The Insurer shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Claim** that involves or appears reasonably likely to involve the Insurer.

### C. Allocation of Loss

If a **Claim** made against the **Insureds** includes both covered and uncovered matters, or if a **Claim** is made against **Insureds** who are extended coverage therefor and others (including **Insureds**) who are not extended coverage therefor, the **Insureds** agree that there must be an allocation between insured and uninsured **Loss**. The **Insureds** and the Insurer shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured **Loss**.

### D. Conditions for Advancement of Defense Costs

The Insurer, on behalf of the **Insureds**, shall advance **Defense Costs** no later than ninety (90) days after the receipt by the Insurer of itemized defense bills in excess of the applicable Retention. However, advancement of **Defense Costs** shall be subject to the following conditions:

1. if the **Insureds** and the Insurer agree on an allocation of insured and uninsured **Defense Costs**, the Insurer shall advance the amount of insured **Defense Costs**;
2. if the **Insureds** and the Insurer cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defense Costs**, the Insurer then shall advance the percentage of **Defense Costs** which the Insurer states to be fair and proper until a different allocation is agreed upon or determined pursuant to the provisions of this policy and applicable law;
3. the **Insureds** shall provide a written undertaking satisfactory to the Insurer to repay the Insurer any **Defense Costs** finally established not to be insured; and
4. any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss**.

## VI. REPORTING/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE

### A. Notice of Claim

The **Insureds** shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a **Claim** as soon as practicable after the **Named Insured's** In-House General Counsel or Risk Manager (or equivalent position) first become aware of such **Claim**, but in no event later than thirty (30) days after the end of the **Policy Period** or the Extended Reporting Period, if applicable.

### B. Notice of Circumstance

If during the **Policy Period** the **Insureds** first become aware of facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such period give written notice to the Insurer of:

1. the **Wrongful Act** allegations anticipated as the basis of the potential **Claim**, and the names of the potential claimants;



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2. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**;
3. the consequences which have resulted or may result from such specific **Wrongful Act**;
4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**; and
5. the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**;

then any **Claim** otherwise covered pursuant to this policy which is subsequently made and which arises out of such **Wrongful Act** shall be deemed to have been first made against the **Insureds** and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

### C. When a Claim is Deemed Made

Except as provided in B above, a **Claim** shall be deemed made:

1. in the case of a written demand for monetary damages or non-monetary relief, on the **Insured's** receipt of such demand;
2. in the case of a civil proceeding in a court of law or equity, a formal administrative or regulatory proceeding or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint, notice of charges or similar document against the **Insured** in such proceeding or arbitration;
3. in the case of a criminal proceeding, on the date of the return of an indictment, information or similar document against the **Insured**;
4. in the case of a **Formal Investigation**, on the date of the receipt by an **Insured Person** of a written notice from the investigating authority identifying such **Insured Person** as an individual against whom a formal proceeding may be commenced.

### D. Interrelated Claims

More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:

1. the date on which the earliest such **Claim** was first made, or
2. the first date valid notice was given by the **Insureds** to the Insurer under this policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.

### E. To Whom Notices are Sent

The **Insureds** shall give written notice to the Insurer under this policy as specified in Item 4 of the Declarations. If mailed, the date the Insurer receives such notice shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

## VII. EXTENDED REPORTING PERIOD

### A. Optional Extended Reporting Period

If the Insurer decides not to renew this policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium determined as described in Item 5.b of the Declarations, an extension of this policy for the period described in Item 5.a of the Declarations, but only to the extent a **Claim** is first made or deemed to be first made during such period for **Wrongful Acts** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**.

This period shall be referred to as the Extended Reporting Period.



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### B. **Payment of Extended Reported Period Premium**

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this policy must have been paid. The right to purchase the Extended Reporting Period shall end unless the Insurer receives written notice of the **Named Insured's** election to purchase the Extended Reporting Period and full payment of the premium for such period within 30 days after the end of the **Policy Period**.

### C. **Non-Cancelable/Premium Fully Earned**

If the Extended Reporting Period is purchased, it is non-cancelable, and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

### D. **No Separate Limit of Liability**

There is no separate or additional Limit of Liability for the Extended Reporting Period.

## VIII. CANCELLATION

### A. **The Insurer's Right to Cancel**

The Insurer shall not cancel this policy except for non-payment of any premium when due. The Insurer shall provide to the **Named Insured** written notice stating when, not less than 15 days thereafter, such cancellation shall be effective, except that non-payment of premium due at inception of this policy will result in this policy being canceled effective as of the inception date.

### B. **Named Insured's Right to Cancel**

The **Insureds** grant the exclusive authority to cancel this policy to the **Named Insured**. The **Named Insured** may cancel this policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed in accordance with customary short rate provisions and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

## IX. TERRITORY

Coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

## X. APPLICATION

A. The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (all of which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this policy as if physically attached), are true and:

1. are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy;
2. shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this policy.

This policy is issued in reliance upon the truth of such representations.

B. In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contain any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this



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policy, there is no coverage for any **Claim** alleging, arising out of or based upon any facts that were so misrepresented or omitted:

1. with respect to Insuring Agreement 1, including the extension of coverage under Coverage Extensions I.B.1., with respect to any **Insured Person** who knew as of the effective date of this Policy the facts that were misrepresented or omitted, whether or not such person knew of such untruthful disclosure in the **Application**. For purposes of this paragraph, the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**;;
2. with respect to Insuring Agreement 2.a., including the extension of coverage under Coverage Extension I.B.1, with respect to the **Insured Entity** to the extent it indemnifies any **Insured Person** identified in paragraph 1 above;
3. under Insuring Agreement 2.b., with respect to the **Insured Entity** if any past, present or future president, chief executive officer, chief financial officer, general partner or general counsel (or equivalent position) knew as of effective date of the Policy the facts that were misrepresented or omitted, whether or not such person knew of such untruthful disclosure in the **Application**.

The Company shall not be entitled to rescind this Policy with respect to any **Insured**.

### **XI. OTHER INSURANCE**

- A. If any **Loss** resulting from any **Claim** is insured under any other insurance, this policy shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.
- B. Any coverage under this policy for a **Claim** against any **Insured Person** while acting as an **Outside Entity Executive** shall be specifically excess of any insurance and/or indemnification available to such **Outside Entity Executive** from the **Outside Entity**.
- C. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** while acting as an **Outside Entity Executive** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this policy with respect to such **Claim**.

### **XII. NO ACTION AGAINST INSURER**

- A. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this policy nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.
- B. No person or organization shall have any right under this policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

### **XIII. ASSIGNMENT OF INTEREST**

Assignment of interest under this policy shall not bind the Insurer unless the Insurer's consent to such assignment is endorsed to this policy.

**XIV. COVERAGE FOR NEW SUBSIDIARIES AND NEW FUNDS**

**A. Coverage for New Subsidiaries**

If, after the effective date of this policy the **Insured Entity** first has **Management Control** of any entity, then such entity and any subsidiaries, directors, officers, trustees, management committee members, members of the board of managers, or employees of such entity who otherwise would thereby become an **Insured** (other than a **Private Equity Fund**) shall be covered under this policy, subject to its terms and conditions, provided that if the total assets (as reflected in the most recent audited consolidated financial statements of such entity and the **Insured Entity**) exceeds fifteen percent (15%) of the combined total assets of all **Insured Entities**, as of the inception of this policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the policy, may agree to provide coverage for such entity, subsidiaries, directors, officers, trustees, management committee members, members of the board of managers, or employees.

**B. Coverage for New PRIVATE EQUITY FUNDS**

If, after the effective date of this policy, the **Insured Entity** creates or acquires a new **Private Equity Fund**, then such fund and any directors, officers, trustees, management committee members, members of the board of managers, general partners, or employees of such fund who otherwise would thereby become an **Insured** shall be covered under this policy, subject to its terms and conditions, provided that if (i) the offering size of such newly created fund or the aggregate amount of the offerings of all funds which are newly created during the **Policy Period** exceeds 150% of the offering amount of the most recently created **Private Equity Fund** as of the effective date of this policy, or (ii) the investment objective (as set forth in the private placement memorandum, prospectus or similar document issued by the **Insured Entity**) of such newly created fund differ materially from the investment objectives of the most recently created **Private Equity Fund** as of the effective date of this policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the policy, may agree to provide coverage for such fund and its directors, officers, trustees, management committee members, members of the board of managers, general partners, or employees.

C. There shall be no coverage under this policy for any **Wrongful Act** by such entity or fund described in Section XIV.A and B above, or by any persons or entities considered to be **Insureds** pursuant to Section XIV.A and B above, where such **Wrongful Act** occurred in whole or in part before the date of the creation or acquisition of the new fund or for any **Wrongful Act** occurring on or after such date, which together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**.

**XV. CHANGE OF STATUS OF INSUREDS**

**A. Takeover**

In the event of a **Takeover**, coverage under this policy shall continue until this policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Named Insured** accepts any special terms, conditions, exclusions and pays any additional premium charge required by the Insurer. This policy may not be canceled after the effective date of the **Takeover** and the entire premium for this policy shall be deemed earned as of such effective date.



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### **B. Cessation of Subsidiary**

If any organization ceases to be a **Subsidiary**, coverage under this policy shall continue until this policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of such cessation, unless (i) the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Named Insured** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

## **XVI. ASSISTANCE AND COOPERATION**

Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request. The **Insureds** shall do nothing which in any way increases the Insurer's exposure under this policy or in any way prejudices the Insurer's potential or actual rights of recovery.

## **XVII. SUBROGATION AND RECOVERY**

To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **Insureds'** rights of recovery therefor, including without limitation an **Insured Person's** right to indemnification or advancement from the **Insured Entity**. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.

## **XVIII. NOTICES TO THE NAMED INSURED**

Any notices to the **Named Insured** under this policy shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. If properly mailed to the **Named Insured** at such address, the date of mailing shall constitute the date such notice was given.

## **XIX. CHANGES**

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this policy or stop the Insurer from asserting any right under the provisions of this policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this policy.

## **XX. COMPANY AUTHORIZATION**

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section VI. A or B), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this policy, and the agreement to and acceptance of endorsements.

## **XXI. ENTIRE AGREEMENT**

The **Insureds** agree that this policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

## **XXII. BANKRUPTCY**



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Bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.

Coverage provided under this policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding is commenced by the **Named Insured** and/or any other **Insured Entity** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this policy, the **Insureds** hereby:

- A. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this policy under such Bankruptcy Law; and
- B. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this policy as a result of the commencement of such liquidation or reorganization proceeding.

### **XXIII. ALTERNATIVE DISPUTE RESOLUTION PROCESS**

All disputes or differences between the **Insured** and Insurer which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured** may elect the type of **ADR** process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured's** choice of **ADR** process shall control.

The Insurer and each and every **Insured** agrees that there shall be two choices of **ADR** process:

- A. non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or
- B. arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Insured** is incorporated in the construction or interpretation of the provisions of this policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Named Insured**.



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**XXIV. ORDER OF PAYMENTS**

If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this policy exceeds the then-remaining Limit of Liability of this policy, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- A. first, the Insurer shall pay **Loss** for which coverage is provided under Insuring Agreement 1 of this policy; then
- B. only after payment of **Loss** has been made pursuant to A. above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the chief executive officer, or equivalent officer, of the **Named Insured**, the Insurer shall either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreement 2 of this policy.

In the event the Insurer withholds payment pursuant to B. above, then the Insurer shall at such time and in such manner as shall be set forth in written instructions from the chief executive officer, or equivalent position, of the **Named Insured** remit such payment to an **Insured Entity** or directly to or on behalf of an **Insured Person**. The Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

The bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this policy pursuant to this Section.

**XXV. HEADINGS**

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

**XXVI. VALUATIONS**

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Loss** is expressed or calculated in any other currency, payment of such **Loss** due under this policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Loss** is established, or, if not published on that date, on the date of next publication.

IN WITNESS WHEREOF, the Insurer has caused this policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.

Chairman of the Board

Secretary