



## I. INSURING AGREEMENT

The **Company** agrees to indemnify:

### A. **Insured Person** Liability

the **Insured Person** for all **Damages** and **Claim Expenses** for which the **Insured Person** is not indemnified by the **Named Insured** resulting from a **Claim** that is both first made against the **Insured** and reported to the **Company** during the **Policy Period** or the **Extended Reporting Period**, if applicable, by reason of a **Management Wrongful Act**;

### B. **Named Insured Liability**

1. the **Named Insured** for those **Damages** and **Claim Expenses** in excess of the retention for which the **Named Insured** has indemnified the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or the **Extended Reporting Period**, if applicable, for a **Management Wrongful Act**;
2. the **Named Insured** for those **Damages** and **Claim Expenses** in excess of the retention resulting from a **Claim** first made against the **Named Insured** during the **Policy Period** or the **Extended Reporting Period**, if applicable, for a **Management Wrongful Act** by the **Named Insured**.

provided that:

- I. the **Insured** did not give notice of any such **Management Wrongful Act** or **Interrelated Wrongful Act** under any policy of which this Policy is a direct or indirect renewal or replacement;
- II. prior to the inception date of the first policy issued by the **Company** or any subsidiary or affiliate of the **Company**, if continuously renewed, or the date the **Insured Person** first became a member or employee of the **Named Insured**, whichever is later, no **Insured** had a basis to believe that any **Management Wrongful Act** or **Interrelated Wrongful Act** could reasonably be expected to be the basis of a **Claim**.

## II. DEFINITIONS

For purposes of the coverage under this **Coverage Part**:

**Claim** means:

- A. a written demand for monetary or non-monetary amounts;
- B. a civil proceeding in a court of law or equity or an arbitration seeking monetary or non-monetary relief;
- C. a criminal proceeding;
- D. an administrative or regulatory investigation or proceeding;

against an **Insured** arising out of a **Management Wrongful Act**, including any appeal therefrom. Such **Claim** shall be deemed made:

1. in the case of a written demand, on the earlier of the receipt by the **Insured** or the **Company** of such demand;
2. in the case of a civil proceeding or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint 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 an administrative or regulatory investigation or proceeding on the earliest of the date of service upon or other receipt by the **Insured** of a complaint or similar document against the **Insured**, a notice of charges against the **Insured** or a written notice or subpoena from the regulatory or investigating authority identifying such **Insured** as an individual against whom a regulatory or formal investigative proceeding may be commenced.



**Damages** means judgments, awards (including any award of pre-judgment or post-judgment interest) and settlements, provided any settlement is negotiated with the assistance and approval of the **Company**. **Damages** shall also 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 multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the **Company** shall not challenge that determination of insurability.

However, **Damages** do not include:

- A. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule, including but not limited to awards under 18 U.S.C. §1961, et. seq., Federal Rules of Civil Procedure 11 or 28 U.S.C. §1927 and state statutes, regulations, rules or law so providing, and injuries that are a consequence of any of the foregoing;
- B. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- C. the payment of any dividends or other distributions of profits of the **Named Insured** to any **Insured Person**;
- D. the return of any contribution of capital to any **Insured Person**; or
- E. any capital contribution or any other amounts for which an **Insured Person** is liable pursuant to any express or implied promise to contribute to the **Named Insured**.

**Insured** means the **Named Insured** and **Insured Persons**.

**Insured Person** means:

- A. any individual who currently is or previously was a partner, member, manager, officer, director, principal or shareholder of the **Named Insured**; and
- B. any employee of the **Named Insured** who currently is or previously was a member of a management or administrative board or committee or otherwise employed in a managerial or supervisory position by the **Named Insured**;
- C. any in house general counsel of the **Named Insured**;

provided that all such individuals are listed in the **Schedule of Insured Persons Endorsement** and are acting solely within their **Management Capacity**.

**Management Capacity** means any action taken by an **Insured** pursuant to and in accordance with the management or administrative duties prescribed by the Partnership Agreement, Operating Agreement, Plan of Action, Resolution of the Board or other similar governing document or established policies or procedures of the **Named Insured**.

**Management Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act or omission, neglect, breach of duty, injurious falsehood, interference with contractual relations or interference with prospective advantage by any **Insured** solely within their **Management Capacity**.

### III. EXCLUSIONS

This **Coverage Part** does not apply to any **Claim**:

- A. Fraudulent Acts

based on or arising out of the committing of any dishonest, fraudulent or criminal **Management Wrongful Act** by the **Insured** except that the **Company** shall provide the **Insured** with a defense of such **claim** unless or until the dishonest, fraudulent or criminal act has been determined by any final adjudication,



guilty plea or written admission of guilt by the **Insured**. Such defense will not waive any of the **Company's** rights under this Policy;

B. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease of any person, or damage to or destruction of any tangible property including loss of use except that this exclusion shall not apply to allegations of emotional distress, humiliation or mental anguish;

C. Contractual Liability

based on or arising out of the **Insured's** alleged liability under any express contract or agreement, unless such liability would have attached to the **Insured** in the absence of such agreement. Express contracts or agreements, as used in this exclusion shall not include any Partnership Agreement, Operating Agreement, Plan of Action, Resolution of the Board or other similar governing document;

D. ERISA

for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto or any other similar state or local law;

E. Illegal Profits

based on or arising out of the gaining of any profit, remuneration or advantage to which the **Insured** was not entitled if a final judgment or binding decision in an arbitration against the **Insured** establishes the **Insured** was not legally entitled to such profit or advantage.

For purposes of determining the applicability of this exclusion:

1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
2. only facts pertaining to and knowledge possessed by any past, present or future managing partner or general counsel (or equivalent position) of the **Named Insured** shall be imputed to the **Named Insured**;

F. **Wrongful Employment Practices**

based on or arising out of a **Wrongful Employment Practice**;

G. **Insured v. Insured**

by, on behalf of, or at the direction of

1. the **Named Insured**; or
2. any **Insured Person** who, in their **Management Capacity**, was involved, in the **Management Wrongful Acts** alleged in such **Claim**,

except and to the extent that:

- a. such **Claim** is brought or maintained by, on behalf of, or at the direction of a bankruptcy or insolvency trustee, examiner or receiver for the **Named Insured** or any assignee of such trustee, examiner or receiver;
- b. such **Claim**: is in the form of a cross claim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of the Policy



- c. such **Claim** is brought derivatively by shareholder, partner, counsel, or employee of the **Named Insured** who, when such **Claim** is made and maintained, is acting independently of, and without the active solicitation, assistance, participation or intervention of an **Insured Person** or the **Named Insured**.

H. **Pollution**

based on or arising out of any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; 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 any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to the **Named Insured**;

I. Service in another Entity

based on or arising out of any **Management Wrongful Act** by any **Insured Person** while serving in the capacity, or solely by reason of their status, as a director, officer, trustee, governor, manager, employee or similar position in any entity, other than the **Named Insured**;

J. Professional Services

based on or arising out of any professional services rendered by the **Insured**, including, but not limited to any **Management Wrongful Act** in the **Insured's** capacity as:

1. a lawyer, title agent, arbitrator, mediator, or other neutral fact finder, as a notary public;
2. an administrator, conservator, receiver, executor, guardian, trustee or in any other fiduciary capacity and any investment advice given in connection with such services; or
3. as a member, director or officer of any professional legal association, including any bar association, its governing board or any of its committees,

provided however, that this exclusion shall not apply to the **Management Wrongful Acts** of any **Insured Person** in his or her capacity as a general counsel to the **Named Insured**.