

# OLD REPUBLIC UNION INSURANCE COMPANY

## INVEST PRO MANAGEMENT AND PROFESSIONAL LIABILITY POLICY

### Important Notice

This is a claims made policy that applies only to **Claims** first made during the **Policy Period** or the **Extended Reporting Period**, if exercised. **Defense Costs** shall be applied against the Retention, if applicable. **Defense Costs** paid by the Insurer shall reduce and may completely exhaust the Limit of Liability of the **Policy**.

**Please read the entire Policy carefully.**

## GENERAL TERMS AND CONDITIONS

In consideration of the payment of the premium and in reliance on all statements made and information furnished to Old Republic Union Insurance Company (herein, the "Insurer") in the **Application**, which is hereby made a part hereof, and subject to the Declarations and to all other terms of this **Policy**, the Insurer and the **Named Insured** agree as follows:

### I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any purchased Coverage Section listed in Item 4. of the Declarations, the terms and conditions of each Coverage Section of this **Policy** apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section of this **Policy**. In the event of any inconsistency between these General Terms and Conditions and the terms and conditions set forth in any Coverage Section of this **Policy**, the terms and conditions in such Coverage Section shall apply. 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. These General Terms and Conditions are attached to and incorporated with the purchased Coverage Sections listed in Item 4. of the Declarations.

### II. DEFINITIONS

When used in this **Policy**, either in the singular or plural:

- A. **Advisory Board Member** means any natural person member of an advisory committee or advisory board of: (1) an **Investment Advisor** if the members of such advisory committee or advisory board are entitled to indemnification from the **Investment Advisor**; or (2) a **Private Fund** if such advisory committee or advisory board is created pursuant to a limited partnership agreement, membership agreement or equivalent document of the **Private Fund**; provided **Advisory Board Member** does not include a **Manager**, **Executive Officer** or **Employee** of an **Entity**.
- B. **Annual Premium** means the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the **Policy Period** with respect to this **Policy**.
- C. **Application** means (i) the signed application for this **Policy** and any written materials attached thereto or submitted to the Insurer in connection with the underwriting of this **Policy**, (ii) any public documents filed by the **Entity** with the U.S. Securities and Exchange Commission ("SEC") during the twelve (12) months prior to inception of the **Policy Period**, and (iii) any representations or warranties provided to an insurer by or on behalf of the **Insureds** relating to the underwriting of any policy of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time.
- D. **Books and Records Costs** means reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of the **Entity**) incurred by the **Entity** in response to a **Books and Records Request**.
- E. **Books and Records Request** means any written request submitted by or on behalf of a securities holder of the **Entity** to the **Entity** or its Board of Directors (or equivalent management body) to inspect

the books and records of such **Entity** pursuant to Section 220 of the Delaware General Corporation Law or other similar statute.

F. **Claim** means:

1. with respect to the Investment Advisor Professional Liability Coverage Section, the Investment Advisor Management Liability Coverage Section and the Fund Liability Coverage Section (if purchased):
  - a. a written demand against any **Insured** for monetary damages or other non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand;
  - b. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
  - c. an arbitration, mediation or other alternative dispute resolution proceeding against any **Insured** commenced by the **Insured's** receipt of a demand for arbitration or mediation or similar document;
  - d. a criminal proceeding against any **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**;
  - e. a formal administrative or formal regulatory adjudicatory proceeding against any **Insured** commenced by the filing of a notice of charge, complaint or similar document;
  - f. a formal civil, criminal, administrative or regulatory investigation of an **Insured** by an **Enforcement Body** which is commenced by the filing of a notice of charges, formal order of investigation, subpoena, "Wells Notice" or the functional or foreign equivalent of any of the foregoing from an **Enforcement Body** identifying by name the **Insured** as an entity or individual against whom a formal proceeding may be commenced; provided however, the foregoing shall not include any routine examination, inspection, inquiry, or any industry sweep examination, or any general or informal request for information.
  - g. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
  - h. the arrest or confinement by an **Enforcement Authority** of any **Insured Person** to:
    - (i) a specified residence; or
    - (ii) a secure custodial premises operated by or on behalf of an **Enforcement Authority**, in connection with the business of an **Entity**;
  - i. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand; or
  - j. an **Inquiry**, if and when the **Insured Persons** or the **Entity** elect at their option to give to the Insurer written notice thereof pursuant to Section V. of these General Terms and Conditions;

including any appeal therefrom.
2. with respect to the Employment Practices and Third Party Liability Coverage Section and the Fiduciary Liability Coverage Section (if purchased), the matters defined as a **Claim** in such Coverage Section or any endorsement thereto.

- G. **Controlling Shareholder** means any shareholder: (i) who holds a five percent (5%) or more equity interest in an **Entity** or any **Portfolio Company**; or (ii) who controls an **Entity** or any **Portfolio Company** within the meaning of Section 15 of the Securities Act of 1933, Section 20(a) of the Securities Exchange Act of 1934, Section 48 of the Investment Company Act of 1940 or any similar securities laws or regulations.

- H. **Defense Costs** means reasonable costs, charges, fees (including but not limited to attorneys' and other service providers' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of the **Entity**) incurred by the **Insureds** (i) to investigate, adjust, defend or appeal **Claims** and the premium for appeal, attachment or similar bonds but without any obligation to apply for or furnish any such bonds, (ii) to defend against or facilitate the return of amounts required to be repaid by an **Insured Person** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, or any internal policy of the **Company** requiring the return of compensation, provided the Insurer shall not be liable for the amount of any such repayment and shall not assert that the costs, charges, fees and expenses described in this subpart (ii) are uninsurable, or (iii) at the Insurer's request, to assist the Insurer in investigating a **Claim**. **Defense Costs** shall not include **Derivative Investigation Costs**, **Inquiry Costs**, **Books and Records Costs**, or amounts incurred in connection with routine or regularly scheduled audits, inspections, examinations or general oversight or compliance activity.
- I. **Derivative Demand** means a written demand by one or more equity owners of the **Entity** upon the **Entity's** Board of Directors (or equivalent management body) to bring a lawsuit against any **Insured Person** for a **Wrongful Act**.
- J. **Derivative Investigation Costs** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of the **Entity**) incurred by an **Entity** (including its Board of Directors or equivalent management body or any committee thereof) solely with respect to an evaluation as to whether it is in the best interest of the **Entity** to prosecute the claims alleged in a **Derivative Demand** or a derivative lawsuit on behalf of the **Entity**.
- K. **Domestic Partner** means any natural person qualifying as a domestic partner under either (i) the provisions of any applicable federal, state or local law, or (ii) the provisions of any formal program established by the **Entity**.
- L. **Employee** means any natural person (other than an **Executive Officer**) whose service or labor was, now is, or shall become engaged and directed by an **Entity**, including any part-time, leased, seasonal or temporary employee, intern or volunteer. Any natural person who is contracted to perform work for an **Entity**, or who is an independent contractor for an **Entity**, shall also be an **Employee**, but only if the **Entity** has agreed pursuant to a written contract, prior to the date of any alleged **Wrongful Act** by such individual, to provide indemnification to such individual in the same manner as that provided to the **Entity's** employees.
- M. **Employment Claim** means any of the following which are brought and maintained against an **Insured** by or on behalf of any past, present, prospective or alleged **Employee** or applicant for employment by an **Entity**, including if applicable, any appeal therefrom:
1. a written demand against an **Insured** for monetary damages or non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand, including a written demand for reinstatement, reemployment, or re-engagement;
  2. a civil proceeding against an **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
  3. an arbitration, mediation or other alternative dispute resolution proceeding against an **Insured** commenced by the **Insured's** receipt of a demand for arbitration or mediation or similar document;
  4. a criminal proceeding against an **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**;
  5. an administrative or regulatory proceeding against an **Insured** commenced by the filing of a notice of charges, formal investigative order or similar document which names the **Insured** as a target or subject of such proceeding, including but not limited to any such administrative or regulatory proceeding before or brought by or on behalf of the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction

over the employment practices of the **Entity**; provided that with respect to an audit by the Office of Federal Contract Compliance Programs, such a proceeding shall be commenced by the **Insured** receiving a Notice of Violation or Order to Show Cause; or

6. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Employment Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand.

Notwithstanding anything to the contrary in this definition, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to or governed by a collective bargaining agreement.

N. **Enforcement Authority** means:

1. any federal, state, local, foreign or offshore law enforcement authority or other governmental investigative authority including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the U.S. Commodities Futures Trading Commission, the Financial Services Authority, the Financial Industry Regulator Authority and any attorney general; or
2. the enforcement unit of any securities or commodities exchange or other self-regulatory organization.

O. **Entity** means, with respect to each Coverage Section, any **Investment Advisor, Fund, Plan** or other entity defined in this **Policy**, including any endorsement or schedule hereto, as an **Insured** with respect to such Coverage Section.

P. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

Q. **Executive Officer** means with respect to any **Entity**, any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, **Manager**, regent, governor, **Advisory Board Member**, officer, in-house general counsel, controller, risk manager or director of human resources of, or the functional equivalent of any such position with, such **Entity**.

R. **Extended Reporting Period** means the period for the extension of coverage, if exercised, described in Section IX. A. of these General Terms and Conditions.

S. **Extradition** means any formal process (including without limitation an extradition proceeding pursuant to the U.K. Extradition Act of 2003 or the equivalent in any other jurisdiction) by which an **Insured Person** located in any country is surrendered or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.

T. **Financial Impairment** means the status of the **Entity** resulting from (i) the appointment by any state or federal or foreign official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Entity**, or (ii) the **Entity** becoming a debtor in possession.

U. **Foreign Jurisdiction** means any jurisdiction, other than the United States or any of its territories or possessions.

V. **Fund** means:

1. the **Named Insured**, if such entity is identified in Item 1. of the Declarations or by endorsement to this **Policy** as a **Fund**;
2. any **Private Fund** or **Registered Fund**;
3. any entity listed as a **Fund** by endorsement to this **Policy**;
4. any **Investment Vehicle**, including any series or portfolio thereof;

5. any **General Partner** in its capacity as such;
6. any private entity that is formed by the **Entity** solely for the purposes of winding down or liquidating the operations of any **Fund**;
7. the debtor, debtor's estate or debtor-in-possession (or any foreign equivalent), if any, of any entity described above or in the event a bankruptcy proceeding is instituted by or against any such entity; and
8. any entity that qualifies as a new **Fund** as described in Section VIII. C. of these General Terms and Conditions.

in each case including such entity's capacity as a **Controlling Shareholder** or selling security holder of a **Portfolio Company**.

- W. **General Partner** means any private entity that was, now is or shall become (i) a manager, member of the Board of Managers, general partner or equivalent executive of a **Fund** organized as a limited liability company or limited partnership, or (ii) a trustee or equivalent executive of a **Fund** organized as a trust.
- X. **Independent Director** means any **Insured Person** who is a director, trustee or equivalent executive of a **Fund**, and who is not an "Interested Person" as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940, as amended.
- Y. **Inquiry** means any request, demand or subpoena by an **Enforcement Authority** to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such, whether or not such **Insured Person** allegedly committed a **Wrongful Act**, provided that such request, demand or subpoena (i) is not part of a routine or regularly scheduled audit, inspection, examination or general oversight or compliance activity, and (ii) shall not preclude coverage under this **Policy** for any related subsequent **Claim** first made during the **Policy Period** or any applicable **Extended Reporting Period** if the **Insured Persons** and the **Entity** do not give notice to the Insurer of such request, demand or subpoena. An **Inquiry** is commenced by the **Insured Person's** receipt of such request, demand or subpoena.
- Z. **Inquiry Costs** means reasonable costs, charges, fees (including but not limited to attorneys' and other service providers' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers, **Managers** or **Employees** of the **Entity**) incurred by the **Insured Persons** in defense or response to an **Inquiry**.
- AA. **Insured Persons** means with respect to each Coverage Section the natural persons defined as **Insured Persons** or **Insureds** in such Coverage Section or any endorsement thereto.
- BB. **Insureds** means with respect to each Coverage Section the entities, funds, plans and natural persons defined as **Insureds** in such Coverage Section or any endorsement thereto.
- CC. **Interrelated Wrongful Acts** means all **Wrongful Acts** based upon, arising out of, or attributable to the same or related facts, circumstances, situations, events, transactions or causes.
- DD. **Investment Advisor** means:
1. the **Named Insured**, if such entity is identified in Item 1 of the Declarations or by endorsement to this **Policy** as an **Investment Advisor**;
  2. any entity listed as such by endorsement to this **Policy**;
  3. any private entity (other than a **Portfolio Company**) under direct or indirect **Management Control** by the **Named Insured** on or before the inception date of this **Policy** if such entity is an investment advisor registered as such under the Investment Advisors Act of 1940, as amended;

4. the debtor, debtor's estate or debtor-in-possession (or any foreign equivalent), if any, of any entity described above in the event a bankruptcy proceeding is instituted by or against any such entity; and
5. any entity that qualifies as a new **Investment Advisor** as described in Section VIII. B. of these General Terms and Conditions.

in each case including such entity's capacity as a **Controlling Shareholder** or selling security holder of a **Portfolio Company**.

EE. **Investment Advisory Services** means any of the following services for or on behalf of any client of any **Investment Advisor** or any client of any **Insured Person** of any **Investment Advisor**:

1. financial, economic or investment advice or any investment management services provided to others for consideration and pursuant to a contract including, but not limited to, the selection and oversight of advisers and/or outside service providers;
2. the formation, organization, capitalization, recapitalization or reorganization of, or the solicitation, purchase or sale of any interest in, a **Fund** or a prospective **Fund**;
3. advisory, consulting or management services provided to a **Portfolio Company** including, but not limited to, advice regarding (i) the capital structure or market capitalization of or the sale of assets or any financing transaction by such entity, or (ii) any merger, acquisition, consolidation or other business combination transaction involving such entity; or
4. the preparation and publication of written material in connection with, and compliance and regulatory monitoring, reporting, and oversight incidental to, the services described in subparagraphs 1. through 3. of this definition.

FF. **Investment Vehicle** means any private entity under **Management Control** by the **Named Insured** on or before the **Policy Period** whose sole purpose is holding and/or acquiring debt or equity investments, or interests in any financial derivatives (either directly or indirectly through another **Investment Vehicle** including, but not limited to, any feeder, blocker, co-investment or other entity that facilitates the transfer, collection or distribution of such funds by and between any **Entity**, **Portfolio Company** and/or investor in any **Fund**) on behalf of one or more **Funds**.

GG. **Loss** means:

1. with respect to the Investment Advisor Professional Liability Coverage Section, the Investment Advisor Management Liability Coverage Section and the Fund Liability Coverage Section (if purchased), the amount which the **Insureds** become legally obligated to pay on account of **Claims** for which coverage under such Coverage Section applies, including, but not limited to, (i) damages (including punitive, exemplary or multiple damages if insurable as provided below), (ii) judgments, (iii) any award of pre-judgment and post-judgment interest with respect to covered damages, (iv) settlements, (v) **Defense Costs**, (vi) claimant's attorney's fees and costs for which an **Insured** against whom the **Claim** is made is legally obligated to pay by reason of a court order or settlement agreement to which the Insurer consents pursuant to Section VI. of these General Terms and Conditions, (vii) civil fines or penalties assessed against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-2(g)(2)(B) or Section 11(1)(a) of the United Kingdom Bribery Act of 2010, Chapter 23, (viii) solely for purposes of Section II. A. of either the Investment Advisor Management Liability Coverage Section or the Fund Liability Coverage Section, **Derivative Investigation Costs** and **Books and Records Costs**, and (ix) solely for purposes of Sections II. C. and D., respectively, of either the Investment Advisor Management Liability Coverage Section or the Fund Liability Coverage Section, the fees, costs, charges and expenses described therein.

**Loss** (other than **Defense Costs**) does not include (a) any amount for which the **Insureds** are absolved from payment, (b) taxes, other than taxes imposed on an **Insured Person** solely by reason of the Insurer's payment of covered **Loss** incurred by such **Insured Person**, (c) fines or penalties imposed by law, other than civil fines or penalties expressly referenced above, (d) any costs incurred by the **Entity** to comply with any injunctive or other non-monetary relief or any

agreement to provide such relief, (e) any amount which represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by an **Entity** in connection with its purchase of any securities or assets, except to the extent the **Insured Persons** are legally liable for such amount and the **Entity** is not legally permitted or is not financially able to indemnify the **Insured Persons** for such amount, (f) cleanup costs relating to hazardous materials or pollution, (g) the return, credit or payment of any fee, expense or other compensation paid or payable to an **Insured**, (h) payment of any dividends or other similar profit distributions of the **Entity** to any shareholder, stakeholder or equity holder of the **Entity**, or (i) matters uninsurable under the law pursuant to which this **Policy** is construed.

The insurability of punitive, exemplary or multiple damages, fines, penalties or taxes otherwise included within this definition shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Named Insured**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim** is located. The Insurer shall not assert that **Loss** attributable to an actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended, constitutes uninsurable loss.

2. with respect to the Fiduciary Liability Coverage Section and the Employment Practices and Third Party Liability Coverage Section, the amounts defined as **Loss** in such Coverage Section or any endorsements thereto.

HH. **Management Control** means:

1. owning interests representing more than fifty percent (50%) of the voting, appointment or designation power to select a majority of (i) the Board of Directors of a corporation, (ii) the members of the management board of a limited liability company, or (iii) the general partners of a limited partnership;
2. having the right, pursuant to a written contract or the by-laws, charter, operating agreement or similar documents, to elect, appoint or designate a majority of (i) the Board of Directors of a corporation, (ii) the members of the management board of a limited liability company, or (iii) the general partners of a limited partnership; or
3. being the sole general partner of an entity.

II. **Manager** means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of an **Entity** that is a limited liability company.

JJ. **Named Insured** means the organization named in Item 1. of the Declarations, including any such organization as a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country.

KK. **Non-Indemnified Loss** means **Loss** incurred by an **Insured Person** for which the **Entities** fail or refuse to indemnify due to **Financial Impairment** or because such indemnification is not permitted or required pursuant to law.

LL. **Non-Profit Entity** means any non-profit corporation, community chest, fund or foundation that is (1) not included in the definition of **Fund**, and (2) exempt from federal income tax as an organization described in Section 501(c) of the Internal Revenue Code of 1986, as amended.

MM. **Organizational Change** means:

1. the **Named Insured** consolidates with or merges into another entity such that the **Named Insured** is not the surviving entity, or sells all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
2. any person or entity, or group of persons or entities acting in concert, acquires **Management Control** of the **Named Insured**; or
3. the appointment by any **Enforcement Authority** of, or where any **Enforcement Authority** assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to

take control of, supervise or oversee the **Named Insured**, or to liquidate or sell all or substantially all of the assets of the **Named Insured**.

- NN. **Outside Entity** means (1) any **Non-Profit Entity**, (2) any **Portfolio Company**, or (3) any other entity specifically included as an **Outside Entity** by endorsement to this Coverage Section.
- OO. **Outside Position** means the position of director, officer, manager, trustee, member of a special committee or advisory board or other equivalent executive position held by any **Insured Person** described in Section III. B. 1. above in an **Outside Entity** if service in such position is at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Fund**.
- PP. **Plans** means the plans and programs defined as **Plans** in the Fiduciary Liability Coverage Section, if purchased.
- QQ. **Policy** means, collectively, the Declarations, the **Application**, these General Terms and Conditions, all purchased Coverage Sections and any endorsements thereto.
- RR. **Policy Period** means the period of time specified in Item 2. of the Declarations, subject to prior termination in accordance with Section XI. of these General Terms and Conditions.
- SS. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste or waste materials to be recycled, reconditioned or reclaimed.
- TT. **Portfolio Company** means:
1. any entity (other than an **Investment Vehicle**) in which one or more **Funds** has, had or proposes to have a debt or equity interest, either directly or indirectly through one or more **Investment Vehicles**; or
  2. any other entity specifically included as a **Portfolio Company** by endorsement to this **Policy**;
- provided that such interest is consistent with the investment objectives set forth in any private placement memorandum, prospectus or similar document issued by the **Fund(s)**.
- UU. **Private Fund** means:
1. any **Fund** created, sponsored or advised by an **Investment Advisor** which is listed as a **Private Fund** by endorsement to this **Policy**; and
  2. any **Investment Vehicle** created by a **Private Fund** described in subparagraph 1. above or by an **Investment Advisor** to facilitate investment in such **Private Fund**.
- VV. **Registered Fund** means:
1. the **Named Insured**, if such entity is an investment company registered under the Investment Company Act of 1940, which exists as of the Inception Date of the **Policy**;
  2. any entity listed as a **Registered Fund** by an endorsement to this **Policy**;
  3. any investment company that is registered under the Investment Company Act of 1940 that is sponsored by the **Named Entity** as of the Inception Date of this **Policy**; or
  4. any series of portfolios of any entity described in subparagraphs 1, 2 or 3 above.
- WW. **Retaliation** means any actual or alleged retaliatory treatment against an **Employee** based upon such individual:
1. refusing to violate any law, or opposing any unlawful practice, or exercising his or her rights under law;



2. threatening to disclose or disclosing to: (i) an **Insured Person**; or (ii) any governmental agency, any alleged violations of law by an **Insured**;
3. assisting, testifying or cooperating with a proceeding or investigation (including the **Entity's** internal investigation conducted by its human resources or legal department) regarding the **Insured's** alleged violations of law; or
4. filing any claim against the **Entity** pursuant to any federal, state, local or foreign whistleblower law.

XX. **Subsidiary** means:

1. any organization in which one or more **Entities**, in any combination, have **Management Control**; and
2. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Entities**.

**Subsidiary** does not include an investment fund or investment company, any general partner of any investment fund or investment company, any **Fund** or **Investment Vehicle** or any **Portfolio Company**.

YY. **Wrongful Acts** means with respect to any Coverage Section the acts, errors, omissions and other matters defined as **Wrongful Acts** in such Coverage Section or any endorsement thereto.

### III. GENERAL POLICY EXCLUSIONS

#### A. POLICY EXCLUSIONS

In addition to any applicable Exclusion in any purchased Coverage Section, the Insurer shall not be liable under this **Policy** for **Loss** on account of that portion of any **Claim**:

1. Prior Notice

based upon, arising out of, or attributable to any fact, circumstance, situation, **Wrongful Act** or **Claim** which has been the subject of any notice given under any policy of which this policy or coverage section is a direct or indirect renewal or replacement; provided the insurer of such policy does not reject such notice as invalid;

2. Prior Proceedings

based upon, arising out of, or attributable to any **Claim** or other litigation, arbitration or administrative or regulatory proceeding or investigation involving any **Insured**, which was pending and known by an **Insured** on or before the applicable Prior Litigation Date set forth in Item 4. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

3. Bodily Injury/Property Damage

for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property or electronic data including loss of use thereof, provided this Exclusion shall not apply to (i) mental anguish or emotional distress covered under the Employment Practices and Third Party Liability Coverage Section or Fiduciary Liability Coverage Section (if purchased), or (ii) mental anguish or emotional distress in connection with the **Insured's** performance of, or failure to perform, **Investment Advisory Services** covered under the Investment Advisor Professional Liability Coverage Section (if purchased), or **Wrongful Acts** covered under the Fund Liability Coverage Section (if purchased);

4. Conduct

based upon, arising out of, or attributable to:

- a. any deliberately fraudulent act or omission or any willful violation of law by such **Insured**; or
- b. such **Insured** gaining any financial profit or financial advantage or receiving financial remuneration to which such **Insured** was not legally entitled;

if a final and non-appealable adjudication in the underlying proceeding establishes such **Insured** committed such fraudulent conduct or willful violation of law or received such profit, advantage or remuneration; or

5. ERISA

for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Securities Act of 1974, as amended, or any similar federal, state or local common or statutory law anywhere in the world or any rules and regulations promulgated thereunder; provided this Exclusion shall only apply with respect to plans, programs and trusts established or maintained in whole or in part for the benefit of **Insured Persons** and shall not apply to the Fiduciary Liability Coverage Section and the Employment Practices and Third Party Liability Coverage Section (if purchased).

6. Select Employment Statutes

for any actual or alleged violation of the responsibilities, obligations or duties imposed by:

- a. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement or disability benefits, or benefits of any kind;
- b. the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning wage and hour practices, including without limitation any **Claim** for off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to properly maintain accurate time records, or failure to properly determine or timely pay wages, overtime, minimum wage or other compensation;
- c. the National Labor Relations Act;
- d. the Worker Adjustment and Retraining Notification Act;
- e. the Occupational Safety and Health Act;
- f. **ERISA**, except Section 510 thereof;
- g. the Consolidated Omnibus Budget Reconciliation Act; or
- h. any federal, state, local or foreign statute, rule, regulation or common law similar or related to, or promulgated pursuant to, any law otherwise described in this exclusion;

provided that this exclusion shall not apply to **Loss** arising out of any **Employment Claim** for **Retaliation**.

B. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of any Exclusion set forth in this **Policy**:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
2. only the **Wrongful Act** of any past, present or future Chief Executive Officer, Chief Financial Officer, Chief Legal Officer or an equivalent executive of an **Entity** shall be imputed to such

**Entity** and its **Subsidiaries** for purposes of any Exclusion applicable to coverage for **Claims** against an **Entity**.

#### IV. LIMITS OF LIABILITY, RETENTION AND SINGLE CLAIMS

##### A. LIMITS OF LIABILITY

1. Combined Aggregate Limit of Liability

The amount set forth in Item 3. of the Declarations shall be the Insurer's maximum aggregate liability for all **Loss** covered under all Coverage Sections, combined.

2. Each Coverage Section Limit of Liability

The respective Limit of Liability for each Coverage Section, as set forth in Item 4. of the Declarations, shall be the Insurer's maximum aggregate liability for all **Loss** on account of all **Claims** under such Coverage Section. The Limit of Liability for each Coverage Section shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 3. of the Declarations.

3. Shared Liability Coverage Section Limit of Liability

The Insurer's maximum aggregate liability for all **Loss** covered under all Coverage Sections which share a Limit of Liability, as set forth in Item 4. of the Declarations, combined, shall be the largest of such shared Limits of Liability. Such shared Limit of Liability shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 3. of the Declarations. This paragraph further limits the Insurer's maximum liability under each such Coverage Section and does not increase the respective separate Limit of Liability for each Coverage Section.

4. Sublimits of Liability

The Sublimits of Liability set forth in Item 5. of the Declarations are part of and not in addition to any otherwise applicable Limit of Liability under this **Policy**.

5. Defense Costs Within Limit of Liability

**Defense Costs** are part of and not in addition to the applicable Limits of Liability, and the payment by the Insurer of **Defense Costs** reduces such Limits of Liability.

6. Limit of Liability Exhaustion and Payment

If with respect to any **Claim** the applicable Limit of Liability under this **Policy** is exhausted by payment of **Loss**, the Insurer's obligations, including without limitation any duty to defend, with respect to such **Claim** shall be completely fulfilled and extinguished. Subject to Section XII. of these General Terms and Conditions, the Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

##### B. RETENTION

Except as otherwise provided in this Section IV. B., the Insurer's liability with respect to **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention amount set forth in Item 4. of the Declarations. If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention. The applicable Retention shall be eroded by either the **Insureds** or an insurer of an Excess Difference in Conditions Side A policy paying covered **Loss** otherwise subject to such Retention.

If the **Entity** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss** within sixty (60) days after the **Insured Persons'** written request for such indemnification or

advancement, then the Insurer shall advance such **Defense Costs** or such other **Loss** on behalf of such **Insured Persons** subject to the other terms, conditions and exclusions of this **Policy** but without regard to any applicable Retention. However, if the Insurer pays such **Defense Costs** or such other **Loss**, the **Entity** shall reimburse the Insurer for such amounts up to the applicable Retention, and such amounts shall become immediately due and payable as a direct obligation of the **Entity** to the Insurer. The **Entity** agrees to indemnify and advance on behalf of the **Insured Persons** all such **Defense Costs** and other **Loss** otherwise covered under this **Policy** to the fullest extent permitted or required by applicable law. For purposes of this paragraph, the shareholder, **Managers**, and Board of Director resolutions of the **Entity** shall be deemed to provide indemnification for such **Defense Costs** or other **Loss** to the fullest extent permitted by law.

No Retention shall apply under any Coverage Section to (i) **Loss** which is subject to a Sublimit of Liability shown in Item 5. of the Declarations, or (ii) **Non-Indemnified Loss** incurred by **Insured Persons**.

C. SINGLE CLAIMS

For the purposes of this **Policy**, all **Claims** which in whole or in part arise out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

V. NOTICE AND CLAIM REPORTING PROVISIONS

A. CLAIM AND INQUIRY REPORTING

The **Insureds** shall give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after the **Named Insured's** Chief Executive Officer, Chief Financial Officer, Chief Legal Officer or equivalent executive first learns of such **Claim**, but in no event later than (i) ninety (90) days after expiration of the **Policy Period**, if the **Extended Reporting Period** is not exercised, or (ii) expiration of the **Extended Reporting Period**, if exercised. If an **Entity** or an **Insured Person**, in their sole and absolute discretion, elects to seek coverage for a **Claim** that is an **Inquiry** or a demand that an **Insured** toll or waive a statute of limitations, the **Entity** or **Insured Person** shall give written notice to the Insurer of such **Inquiry** or demand. Any coverage under this **Policy** with respect to such **Inquiry** or demand shall only apply to **Inquiry Costs** or **Defense Costs** incurred after the date notice of the **Inquiry** or demand is given to the Insurer.

B. NOTICE OF CIRCUMSTANCES

If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insureds** first become aware of any circumstances which may reasonably give rise to a future **Claim** under this **Policy** and during such **Policy Period** or **Extended Reporting Period**, if exercised, give written notice to the Insurer of the circumstances, the anticipated **Wrongful Act** allegations, the reasons for anticipating such **Claim** and full particulars as to dates, persons and entities involved, then any **Claim** which arises out of such circumstances shall be deemed to have been first made during the **Policy Period** or the **Extended Reporting Period**, if exercised, in which such written notice was received by the Insurer.

If the **Insureds** give to the Insurer a valid notice of circumstance pursuant to this Section V. B. ("Notice of Circumstance") and if a covered **Claim** subsequently arises out of such circumstances within twelve (12) months after such Notice of Circumstances is given to the Insurer, then any **Defense Costs** or **Inquiry Costs** incurred by the **Insureds** after such Notice of Circumstance with respect to such circumstances and in anticipation of such **Claim** shall be treated as **Defense Costs** or **Inquiry Costs** incurred by reason of such **Claim**. Any other **Loss** incurred by the **Insureds** with respect to a **Claim** prior to the date such **Claim** is actually made against the **Insureds** is not covered under this **Policy**.

C. REPORTING REQUIREMENTS

All notices under any provision of this **Policy** shall be in writing and given by email, mail, prepaid express courier, or facsimile properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in Item 1. of the Declarations. Notice to the Insurer shall be given to the respective address set forth in Item 7. of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

VI. DEFENSE AND SETTLEMENT; ALLOCATION OF LOSS

- A. It shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claims** covered under this **Policy**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by one or more purchased Coverage Sections.
- B. The Insurer shall, upon request, advance on a current basis covered **Defense Costs** on behalf of the **Insureds** within sixty (60) days after the Insurer's receipt of itemized invoices for such **Defense Costs**. The **Insureds** agree that any **Defense Costs** advanced by the Insurer shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent it is finally determined that such **Defense Costs** are not covered under any purchased Coverage Section.
- C. If in any **Claim** the **Insureds** who are afforded coverage for such **Claim** incur **Loss** covered by this **Policy** jointly with others (including **Insureds**) who are not afforded coverage for such **Claim**, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then such amount shall be allocated between covered **Loss** and uncovered loss based upon the relative financial benefit of all parties to covered and uncovered matters. If the Insurer and the **Insureds** cannot, after exerting their best efforts, agree on an allocation of **Defense Costs**, then the Insurer shall advance such **Defense Costs** excess of any applicable Retention which the Insurer believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined.
- D. The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings, and agree that in the event of a **Claim** the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery; provided that the failure of any **Insured** to give the Insurer such information, assistance or cooperation shall not impair the rights of any other **Insured Person** under this **Policy**.
- E. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. However, 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**.

VII. OTHER INSURANCE

If any **Loss** is insured under any other valid and collectible policy(ies), prior or current, then this **Policy** shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is (i) written only as specific excess insurance over the Limit of Liability provided in this **Policy**, or (ii) a personal liability or umbrella insurance policy purchased by an **Insured Person**. This **Policy** will not be subject to the terms of any other insurance.

Notwithstanding the foregoing, any coverage provided under the Employment Practices and Third Party Liability Coverage Section, if purchased, shall be primary to and not excess of any other valid and collectible insurance,

unless specifically stated to the contrary within such Coverage Section or an endorsement thereto; provided that any **Loss** payable on behalf of any temporary or leased **Employee** or any **Independent Contractor** under such Coverage Section, and any **Loss** payable on behalf of any **Insured** by reason of any **Third Party Claim** under such Coverage Section, shall be subject to the first paragraph of this Section VI. rather than this second paragraph.

## VIII. TRANSACTIONS CHANGING COVERAGE

### A. NAMED INSURED ORGANIZATIONAL CHANGE

If an **Organizational Change** occurs during the **Policy Period**, this **Policy** shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective date of such **Organization Change**. No coverage shall be afforded under this **Policy** for **Wrongful Acts** occurring after the effective date of an **Organizational Change**. This **Policy** shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective date of the **Organizational Change**. The **Named Insured** shall provide the **Insurer** with written notice of such **Organizational Change** as soon as practicable, but no later than ninety (90) days after the effective date of such **Organizational Change**.

### B. NEW INVESTMENT ADVISOR

If during the **Policy Period** any private entity (other than a **Portfolio Company**) becomes subject to the direct or indirect **Management Control** of the **Named Insured** and is an investment advisor registered as such under the Investment Advisors Act of 1940, as amended, then such entity shall be included as an **Investment Advisor** under this **Policy** for **Wrongful Acts** occurring after such date, provided that if either the assets under management or gross revenues of such **Investment Advisor** equal thirty-five percent (35%) or more of the consolidated assets under management or gross annual revenues, respectively, of all **Investment Advisors** combined, as of the inception date of this **Policy**, then such entity shall cease to be an **Investment Advisor** upon the earlier of: (i) ninety (90) days after the effective date of **Management Control** of such entity; or (ii) the end of the **Policy Period**, unless the Insurer agrees to extend coverage beyond such date. Any such extension of coverage is conditioned upon the **Insureds** requesting such extension with full details, and paying when due any additional premium, and accepting any amended terms and conditions of this **Policy**, as required by the Insurer in its sole discretion.

### C. NEW FUNDS

If during the **Policy Period** an **Investment Advisor** forms, acquires or creates a (i) new investment company which is a **Registered Fund** as defined in this **Policy**, (ii) portfolio or series of an existing **Registered Fund** under this policy, (iii) pooled investment vehicle which has the same or similar investment strategy as an existing **Private Fund** or if the aggregate assets under management in such **Private Fund** is less than \$150,000,000 or 25% of the amount of assets under management or capital commitments by all **Private Funds** combined; then such **Registered Fund** or **Private Fund** and the **Insured Persons** thereof, shall be **Insureds** under this **Policy** for **Wrongful Acts** occurring after such formation, acquisition or creation.

If such newly created **Fund** does not comply with the preceding paragraph then such **Fund** shall cease to be a **Fund** upon the earlier of: (i) ninety (90) days after the effective date of such formation, acquisition or creation; or (ii) the end of the **Policy Period**, unless the Insurer agrees to extend coverage beyond such date. Any such extension of coverage is conditioned upon the **Insureds** requesting such extension with full details, and paying when due any additional premium, and accepting any amended terms and conditions of this **Policy**, as required by the Insurer in its sole discretion.

### D. NEW SUBSIDIARIES

If before or during the **Policy Period** any entity qualifies as a **Subsidiary**, then such **Subsidiary** and its **Insured Persons** shall be **Insureds**, but only with respect to **Wrongful Acts** occurring after such entity qualified as a **Subsidiary**.

E. CESSATION OF INVESTMENT ADVISORS, FUNDS AND SUBSIDIARIES

If before or during the **Policy Period** an **Entity** ceases to be an **Investment Advisor, Fund** or **Subsidiary**, coverage with respect to such **Entity** and its **Insureds** shall continue until termination of this **Policy**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Entity** ceased to be an **Investment Advisor, Fund** or **Subsidiary**.

F. PLAN TERMINATION

1. In the event a **Plan** is terminated by an **Entity** before or after the inception date of this **Policy**, coverage under this **Policy** for such terminated **Plan** and its **Insureds** shall continue until termination of this **Policy** if and to the extent such **Plan** and its **Insureds**:

- a. were **Insureds** at the time of such termination of such **Plan**; or
- b. would have been an **Insured** at the time of such termination of such **Plan** if this **Policy** had been in effect,

provided such coverage shall apply with respect to **Wrongful Acts** occurring prior to or after the date the **Plan** was terminated.

2. In the event the Pension Benefit Guaranty Corporation (“PBGC”) becomes the Trustee of a **Plan** before or after the inception date of this **Policy**, coverage under this **Policy** with respect to such **Plan** and its **Insureds** shall continue until termination of this **Policy**, but only for **Wrongful Acts** which occurred prior to the effective date the PBGC became the Trustee of such **Plan**.

G. CREATION OR ACQUISITION OF AN ESOP

If during the **Policy Period** any **Entity** directly or indirectly acquires or creates an employee stock ownership plan (“ESOP”), the **Entity** shall give the Insurer written notice of such creation or acquisition, along with any other information the Insurer requests. The Insurer shall, at the **Entity’s** request, provide a quotation for coverage for **Claims** based upon, attributable to, or arising out of such ESOP, subject to any terms, conditions, limitation of coverage and such additional premium as the Insurer, in its sole discretion, may require.

H. FIDUCIARY AND EMPLOYMENT PRACTICES COVERAGE SECTION

Notwithstanding anything to the contrary in this Section VIII., if any **Investment Advisor** or **Fund** first becomes an **Insured** after inception of the **Policy Period** and if the size of such new **Entity** exceeds the threshold amount for the respective Coverage Section as shown below, then any coverage otherwise afforded under such Coverage Section for such new **Entity** and its **Insureds** shall apply only if (i) the **Insureds** give written notice to the Insurer of such new **Insureds** within ninety (90) days after the date such entity became an **Insured** during the **Policy Period**, and (ii) the **Insureds** agree to any additional terms and conditions and pay any reasonable additional premium required by the Insurer.

Coverage Section	Threshold
Fiduciary Liability	Total assets of all <b>Plans</b> of the new <b>Entity</b> exceeds thirty-five percent (35%) of assets of all <b>Plans</b> of all <b>Entities</b> , as reflected in the <b>Plans’</b> then most recent regulatory filings.
Employment Practices Liability	Total number of <b>Employees</b> of the new <b>Entity</b> exceeds thirty-five percent (35%) of the number of all <b>Employees</b> of all <b>Entities</b> as of such date.

## IX. COVERAGE EXTENSIONS

### A. EXTENDED REPORTING PERIOD

If the **Insureds** or the Insurer refuse to renew this **Policy**, or terminate this **Policy** for a reason other than non-payment of premium, the **Insureds** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Extended Reporting Period** set forth in Item 6. (b) of the Declarations immediately following the effective date of such nonrenewal or termination, but only with respect to **Claims** first made or deemed to be first made during the **Extended Reporting Period** for covered **Wrongful Acts** taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within sixty (60) days following the effective date of termination or nonrenewal.

The premium due for such **Extended Reporting Period** shall equal that percentage of the **Annual Premium** as set forth in Item 6. (a) of the Declarations. The entire premium for such **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment, and the **Extended Reporting Period** is not cancellable by the Insurer or the **Insureds** except for non-payment of premium.

### B. ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under this **Policy** but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All provisions in these General Terms and Conditions and the respective Coverage Section applicable to **Loss** incurred by the **Insured Person** shall also apply to covered loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

## X. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

### A. REPRESENTATIONS AND SEVERABILITY

The **Insureds** acknowledge and agree that the statements and information contained in the **Application** are true and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. This **Policy** is issued in reliance upon the truth of such representations and warranties.

In the event the **Application** contains any deliberate misrepresentation or omission of material information with respect to any Coverage Section, then the Insurer shall not be liable under such Coverage Section to pay any **Loss** on account of, and shall not be obligated to defend, any **Claim** based upon, arising out of or attributable to the facts that were not accurately and completely disclosed in the **Application** to the extent such **Loss** is incurred by:

1. any **Entity** as indemnification of an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; or
2. any **Entity** and its entity **Insureds** if any past, present or future Chief Executive Officer, Chief Financial Officer, Chief Legal Officer or their functional equivalent of such **Entity** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Person** for purposes of this Section X.

### B. NON-RESCINDABLE POLICY

The Insurer shall not have the right to rescind or void, in whole or in part, this **Policy** or any Coverage Section for any reason.



## XI. TERMINATION AND NONRENEWAL OF POLICY

- A. This **Policy** as a whole or any purchased Coverage Section shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Named Insured** to the Insurer, provided neither this **Policy** nor any purchased Coverage Section may be terminated by the **Named Insured** after an **Organizational Change** described in Section VIII.A of these General Terms and Conditions if the **Policy Period** is more than eighteen (18) months,
  2. twenty (20) days after the receipt by the **Named Insured** of a written notice of termination from the Insurer based upon failure to pay premium due, unless such premium is received by the Insurer prior to such twenty (20) days,
  3. at such other time as may be agreed upon by the Insurer and the **Named Insured**, or
  4. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations.
- B. The Insurer shall refund the unearned premium computed at customary pro-rata rates if this **Policy** is terminated by the **Named Insured**. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable. The Insurer shall not be required to renew this **Policy** upon its expiration.
- C. If the Insurer decides not to renew this **Policy**, the Insurer will mail or deliver to the **Named Insured** written notice of non-renewal at least sixty (60) days prior to the end of the **Policy Period**.
- D. If a financial strength rating for the Insurer is issued (i) below A- by A.M. Best Co., or (ii) below BBB by Standard & Poor's Rating Services (hereinafter "Credit Rating Downgrade"), this **Policy** as a whole may be canceled by the **Named Insured** by mailing written prior notice to the Insurer of such cancellation or by surrender of this **Policy** to the Insurer. If this **Policy** is cancelled by the **Named Insured**, the Insurer shall compute and refund to the **Named Insured** the unearned premium on a pro rata basis.

## XII. PAYMENT PRIORITY

- A. If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under a Coverage Section exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to the applicable Limit of Liability or Sublimit of Liability) in the following priority:
1. First, the Insurer shall pay any such **Loss** which is **Non-Indemnified Loss**;
  2. Second, only if and to the extent the payment under subparagraph 1. above does not exhaust the applicable Limit of Liability or Sublimit of Liability, the Insurer shall pay the remaining portion of such **Loss**.
- B. Subject to the foregoing, the Insurer shall, upon receipt of a written request from the **Named Insured**, delay any payment of covered **Loss** (other than **Non-Indemnified Loss**) due and owing under a Coverage Section until such time as the **Named Insured** designates, provided 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.

## XIII. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured Person** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

If a liquidation or reorganization proceeding is commenced by or against an **Entity** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Entity** and the **Insureds** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Insurer, the **Entity** or any **Insured** to obtain relief from any such stay or injunction.

#### XIV. TERRITORY AND VALUATION

All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States dollars, payment under this **Policy** shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Any **Loss** incurred by an **Entity** in a **Foreign Jurisdiction** shall be deemed, at the written direction of the **Named Insured**, a **Loss** of the **Named Insured** payable to the **Named Insured** at the address shown in Item 1. of the Declarations. Any such payment by the Insurer to the **Named Insured** pursuant to this paragraph shall fully discharge the Insurer's liability under this **Policy** for such **Loss**. Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by an **Entity** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the Insurer.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place, **Loss** incurred, or **Claims** made anywhere in the world, to the extent legally permitted.

#### XV. SUBROGATION

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, including without limitation any right of recovery from an **Entity** for **Loss** incurred by **Insured Persons** which is indemnifiable by the **Entity**. The **Insureds** shall execute and deliver all papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured**. The Insurer shall not exercise its right of subrogation against (i) any clients or prospective clients of an **Insured**, or (ii) an **Insured Person** unless and to the extent the "Conduct" Exclusion for the applicable Coverage Section applies to such **Insured Person**.

Any such recoveries, less the cost of obtaining them, will be distributed as follows:

1. to the **Insured** and the insurer of any other policy specifically excess of this **Policy**, until they are reimbursed for any **Loss** that they sustain that exceeds the sum of this **Policy's** applicable Limit of Liability and applicable Retention, if any;
2. then to the Insurer, until the Insurer is reimbursed for the payment made under this **Policy**; and
3. then to the **Insureds**, until they are reimbursed for their payment of any applicable Retention.

In the event the Insurer recovers amounts it paid under this **Policy**, the Insurer will reinstate the applicable Limit(s) of Liability and Sublimit(s) of Liability of this **Policy** that were eroded or exhausted by such payment to the extent of such recovery, less the Insurer's costs incurred in obtaining such recovery. The Insurer assumes no duty to seek a recovery of any amounts paid under this **Policy**.

#### XVI. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

#### XVII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices, paying premiums and receiving any return premiums that may become due under this **Policy**, and agreeing to endorsements. The **Insureds** agree that the **Named Insured** may act on their behalf with respect to such matters.

**XVIII. ALTERATION, ASSIGNMENT AND HEADINGS**

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is issued by the Insurer.

The titles and headings to the various sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such sections, subsections or endorsements.

**XIX. COMPLIANCE WITH APPLICABLE TRADE AND ECONOMIC SANCTION LAWS**

This **Policy** does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this **Policy** shall be made only if such payment is in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

SPECIMEN