

**PRIVATE EQUITY PROFESSIONAL AND  
MANAGEMENT LIABILITY INSURANCE POLICY**

THIS IS A CLAIMS MADE AND REPORTED POLICY

To be eligible for coverage under this Policy a **Claim**, as defined below, must be first made against an **Insured** during the **Policy Period** and reported to the Insurer as soon as practicable but in no event later than: (i) sixty (60) days after the termination of the **Policy Period**; or, (ii) if elected, after the date of termination of the **Extended Reporting Period**.

In consideration of the payment of the premium, in reliance on the statements in the **Application**, and subject to all of the provisions of this Policy and any endorsements thereto, the Insurer and the **Insureds** agree as follows:

**I. INSURING AGREEMENTS:**

**A. PRIVATE EQUITY PROFESSIONAL LIABILITY**

The Insurer shall pay, on behalf of the **Insured**, **Loss** arising from **Claims** for **Wrongful Acts** in the performance of **Private Equity Activities**. This Insuring Agreement A. shall not apply to **Loss** arising from **Claims** involving **Portfolio Company Outside Position** Liability.

**B. PORTFOLIO COMPANY OUTSIDE POSITION LIABILITY**

The Insurer shall pay, on behalf of any **Insured Person**, **Loss** in excess of any indemnification and any valid and collectible insurance provided by a **Portfolio Company** arising from **Claims** for **Wrongful Acts** committed in the performance of **Private Equity Activities** while in an **Outside Position**.

**C. PRIVATE EQUITY MANAGEMENT LIABILITY**

- (1) The Insurer shall pay, on behalf of any **Insured Person**, **Loss** which the **Insured Person** is legally obligated to pay and which is not indemnified by the **Insured Organization** or **Portfolio Company** (either by reason of the **Insolvency** of the **Insured Organization** or **Portfolio Company**, or because the **Insured Organization** or **Portfolio Company** is not permitted to indemnify the **Insured Person** by law), arising from **Claims** against such **Insured Person** for a **Wrongful Act**.
- (2) The Insurer shall pay, on behalf of the **Insured Organization** for **Loss** which the **Insured Organization** pays as indemnification to any **Insured Person** arising from a **Claim** for a **Wrongful Act**.
- (3) The Insurer shall pay, on behalf of the **Insured Organization**, **Loss** which the **Insured Organization** is legally obligated to pay arising from **Claims** against any **Insured Organization** for a **Wrongful Act**.

## **OPTIONAL INSURING AGREEMENTS:**

The following Insuring Agreements are applicable only when the Declarations page of this Policy reflects that such Insuring Agreements have been purchased, and then subject to the terms and conditions for such additional coverage.

### **D. EMPLOYMENT PRACTICES LIABILITY INSURANCE**

The Insurer shall pay, on behalf of any **Insured**, **Loss** arising from **Claims** for **Wrongful Acts** in connection with **Wrongful Employment Practices**.

### **E. FIDUCIARY LIABILITY INSURANCE**

The Insurer shall pay, on behalf of any **Insured**, **Loss** arising from **Claims** for **Wrongful Acts** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan** of the **Insured Organization**.

## **II. DEFINITIONS**

**Please Note: the use of any defined term in this policy shall, where appropriate, be deemed to include both the singular and plural version of that term.**

**A. Application** means the application for insurance submitted in connection with this Policy or any policy of which this Policy is a renewal or replacement including attachments and other materials submitted therewith or referred to or incorporated therein.

**B. Claim** means:

- (1) any written demand for monetary or non-monetary damages or injunctive relief against an **Insured** alleging a **Wrongful Act**, deemed to be first made by receipt of such demand by the **Insured**;
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding, including but not limited to any investigation commenced by the United States Securities and Exchange Commission ("SEC") or similar state agency, initiated by the service of a complaint, formal order of investigation, target letter or other similar document or pleading initiated against any **Insured** for a **Wrongful Act**, including any appeal therefrom;
- (3) any criminal proceedings against any **Insured** for a **Wrongful Act** commenced by the return of an indictment or the filing of an information (or similar document), including any appeal therefrom; or
- (4) a written agreement with any **Insured** to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding involving a **Wrongful Act**.

**C. Controlling Person** shall have 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.

- D. Defense Costs** mean reasonable and necessary legal fees and expenses (including expert fees) and cost of attachment or similar bonds incurred by the **Insured** in defense of a **Claim**, but shall not include:
- (1) directors' fees, salaries, wages, overhead or benefit expenses associated with any **Insured Person** or any directors, officers, equivalent executives, or employees of any **Portfolio Company**; or
  - (2) any amounts incurred in the defense of a **Claim** for which any other insurer has a duty to defend.
- E. Discrimination** means termination of the employment relationship, demotion, failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment action including, but not limited to, retaliation because of race, color, religion, age, sex, sexual orientation, sexual preference, disability (including AIDS and other diseases), pregnancy or national origin, or any other basis prohibited by federal, state or local law.
- F. Employee Benefit Plan** means
- (1) any plan as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); or
  - (2) any other benefit plan sponsored solely by the **Insured Organization** and solely for the benefit of the employees of the **Insured Organization**.
- G. Extended Reporting Period** means the period described in Section III.D. of this Policy.
- H. Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: (1) explicitly or implicitly are made a condition of employment; (2) are used as a basis for employment decisions; or (3) create a work environment that interferes with performance. **Harassment** includes allegations of assault and battery, but only if they are related to a charge of sexual harassment.
- I. Insolvency** means the status of any **Insured Organization** or **Portfolio Company** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Insured Organization** or **Portfolio Company**, or any **Insured Organization** or **Portfolio Company** becoming a debtor-in-possession.
- J. Insured** means **Insured Organization** and each **Insured Person**, however, with respect to Insuring Agreement E. only, **Insured** means: (1) **Insured Organization**; or (2) **Employee Benefit Plan**; or (3) **Insured Person**, solely while serving as an administrator, trustee or fiduciary of an **Employee Benefit Plan**.
- K. Insured Organization** means:
- (1) **Named Insured**;
  - (2) those entities listed by Endorsement to this Policy;
  - (3) any **Subsidiary** thereof; and
  - (4) in the event a bankruptcy proceeding is instituted by or against the foregoing entities, the

resulting debtor in possession (or equivalent status outside of the United States), if any.

**Insured Organization** shall not include any **Portfolio Company**.

**L. Insured Person** means any:

- (1) natural person who was, is, or shall become a duly appointed or elected director, officer, general partner, manager, managing member, board representative, board observer, trustee or equivalent executive or an employee of an **Insured Organization**;
- (2) natural persons designated by the **Insured Organization** to sit on the board of a **Portfolio Company**;
- (3) natural persons serving on management committees, advisory boards, and similar committees formed pursuant to any **Insured Organization's** articles of incorporation, by-laws, operating agreement, partnership agreement or similar document; and
- (4) the functional equivalent to the positions identified in (1), (2) and (3) above, in the event the **Insured Organization** is incorporated or domiciled outside the United States.

**M. Interrelated Wrongful Acts** means any **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

**N. Loss** means damages, settlements and **Defense Costs** incurred by any **Insured**, including punitive damages where insurable under the law of the most favorable venue to the **Insured** pursuant to which this Policy shall be construed. **Loss** shall not include:

- (1) the multiple portion of any multiplied damage award or fines or penalties other than, with respect to Insuring Agreement E only, the five percent or less of civil fines and penalties under Section 502(i) of ERISA, or the twenty percent or less of civil fines and penalties under Section 502(l) of ERISA, imposed upon an **Insured**;
- (2) taxes or loss of tax benefits, criminal or civil fines or penalties imposed by law;
- (3) matters deemed uninsurable under the law pursuant to which this Policy shall be construed;
- (4) any amounts paid to or on behalf of any **Insured Person** as indemnification from a **Portfolio Company** under any applicable agreement or as required or permitted by statute, by-laws or charter of a **Portfolio Company**, or any amounts paid to or on behalf of any **Insured Person(s)** under any insurance coverage provided by a **Portfolio Company**;
- (5) any amount allocable to uncovered **Loss** under this Policy;
- (6) the return and/or disgorgement of any capital commitments or any money, assets or personal profit received by an **Insured** to which such **Insured** is not legally entitled as established in fact by an adjudication;
- (7) any amount or claim for variable compensation or pay of any sort including, but not limited to, bonuses, stock or other options, equity, benefits, and interest; or

- (8) any amount for which the **Insured** is not legally responsible.
- O. Named Insured** means the entity identified in Item A. of the Declarations of this Policy.
- P. Non-Profit Entity** means any non-profit corporation, community chest, fund or foundation that: (1) is not included in the definition of **Insured Organization**; and (2) is exempt from federal income tax as an organization described in Section 501 of the Internal Revenue Code of 1986, as amended.
- Q. Outside Position** means the position held by an **Insured Person** in a **Portfolio Company** or **Non-Profit Entity**, at the request, consent or direction of the **Insured Organization**.
- R. Policy Period** means the period from the effective date and hour of this Policy to the Policy expiration date and hour, as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any.
- S. Portfolio Company** means any corporation, partnership, limited liability company or other type of organization in which any **Insured Organization** maintained, maintains or proposes to maintain an equity and/or debt investment and/or **Outside Position**, but solely in connection with **Private Equity Activities** by the **Insured Organization**.
- T. Private Equity Activities** means: (1) services of an **Insured Person** in an **Outside Position**; or (2) the investment in, formation of, capitalization or disposition of, or rendering of management or advisory services to a third-party pursuant to a fee-based written agreement for such activities by the **Insured Organization**; or (3) the rendering of management or advisory services to a **Portfolio Company** by the **Insured Organization**; or (4) the creation, distribution, sale of securities in, or the management or administration of a private equity fund by an **Insured Organization**; and (5) an **Insured's** purchase or sale of, or offer to purchase or sell, any securities issued by a **Portfolio Company**, so long as the **Insured Organization** is deemed to be a **Controlling Person** of such **Portfolio Company**.
- U. Subsidiary** means any entity:
- (1) in which more than fifty percent (50%) of the voting stock or other equity interest is owned by any **Insured Organization**, either directly or through one or more of its **Subsidiaries** as of this policy's inception date; or
  - (2) which becomes so owned after the inception date of this Policy, provided the assets of the organization do not exceed twenty percent (20%) of the consolidated assets of the **Insured Organization** on the inception date of this Policy; or
  - (3) which, for an **Insured Organization**, serves as the legal owner of any investment and/or as a pass-through conduit to facilitate the making of any investment.
- Subsidiary** shall not include any **Portfolio Company** or **Non-Profit Entity**.
- V. Wrongful Act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:

- (1) with respect to Insuring Agreement A., by any **Insured Organization, Insured Person** or any other person for whose **Private Equity Activities** any **Insured Organization** is legally liable;
- (2) with respect to Insuring Agreement B., by the **Insured Person** while serving in an **Outside Position**, or any matter claimed against such **Insured Person** solely by reason of the status of such **Insured Person** in such **Outside Position**;
- (3) with respect to Insuring Agreement C., by the **Insured Organization** or any **Insured Person** in their respective capacities as such, or any matter claimed against them solely by reason of their status as an **Insured Person**;
- (4) with respect to Insuring Agreement D, **Wrongful Employment Practices**; and
- (5) with respect to Insuring Agreement E., by any **Insured** in connection with the creation, administration, operation or termination of an **Employee Benefit Plan**.

**W. Wrongful Employment Practices** means any actual or alleged:

- (1) **Discrimination**;
- (2) **Harassment**;
- (3) termination, actual or constructive, of an employment relationship in any manner which is allegedly against the law;
- (4) wrongful demotion, retaliation, misrepresentation, promissory estoppel and intentional interference with contract which arises from an employment relationship;
- (5) libel, slander, defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy and other personal injury allegations which arise from the employment relationship;
- (6) breach of an implied employment contract and breach of the covenant of good faith and fair dealing in the employment contract;
- (7) employment terminations, disciplinary actions, demotions or other employment decisions which violate public policy or the Family Medical Leave Act or similar state law;
- (8) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (9) breach of an employee's federal, state or local civil rights including, but not limited to, any violation of the Civil Rights Act of 1966 or 42 U.S.C. Section 1983;
- (10) retaliation against an **Insured Person** including, but not limited to, retaliation for filing claims under the Federal False Claims Act, retaliation in connection with whistleblowing, retaliation for union activities or in connection with strikes or lockouts;
- (11) wrongful deprivation of career opportunity which arises from the employment relationship but only with respect to (1) or (2) above; and,
- (12) Negligent hiring, negligent supervision or negligent retention.

### III. EXTENSIONS

#### A. ESTATE AND REPRESENTATIVES EXTENSION

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from a **Claim** first made during the **Policy Period** against the estates, heirs, or legal representatives of any deceased **Insured Person**, and the legal representatives of any **Insured Person** in the event of incompetence, insolvency or bankruptcy, who was an **Insured Person** at the time the **Wrongful Act** upon which such **Claim** is based was committed.

#### B. SPOUSAL AND DOMESTIC PARTNERS EXTENSION

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from a **Claim** first made during the **Policy Period** against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an **Insured Person**, for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property or property jointly held or transferred from the **Insured Person** to the spouse or domestic partner.

#### C. NON-PROFIT OUTSIDE POSITION LIABILITY EXTENSION

Subject to all its terms and conditions, this Policy covers any **Insured Person** serving in an **Outside Position** as a director, officer, general partner, manager, manager member, board representative, board observer, trustee or equivalent executive in any **Non-Profit Entity**, provided such position is with the knowledge and consent of the **Insured Organization**.

#### D. EXTENDED REPORTING PERIOD

- (1) If this Policy is not renewed by the **Insured Organization** or by the Insurer, then the **Insured Organization** shall have the right, upon payment of an additional premium calculated at the percentage(s) shown in Item G. (1) of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item G. (2) of the Declarations after the effective date of such cancellation or, in the event of such refusal to renew, after the Policy expiration date, but only with respect to any **Wrongful Act** committed before such date.
- (2) 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 terminate unless written notice together with full payment of the premium for the **Extended Reporting Period** is given to the Insurer within thirty (30) days prior to the end of the **Policy Period** or, in the event of the Insurer's refusal to renew, within thirty (30) days after the Policy expiration date. If such notice and premium payment is not timely given to the Insurer, there shall be no right to purchase the **Extended Reporting Period**.
- (3) If the **Extended Reporting Period is purchased**, the entire premium therefore shall be deemed earned at its commencement.

- (4) The exercise of the **Extended Reporting Period** shall not in any way increase the aggregate Limit of Liability of the Insurer as shown in Item C. of the Declarations.
- (5) The rights contained in this Section of this Policy shall not apply to any cancellation resulting from the non-payment of premium.

#### IV. EXCLUSIONS

The Insurer shall not be liable to make any payment in connection with any **Claim**:

- A. for bodily injury, sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of the use thereof), and, except to the extent a **Claim** is made for **Wrongful Employment Practices**, assault, battery, invasion of privacy, emotional distress, libel, slander or defamation;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - (1) any demand, suit, action or other proceeding against the **Insured Organization**, any **Portfolio Company**, or any **Insured Person** which was first made on or before the Pending and Prior Litigation date stated in Item H. of the Declarations, or based upon or arising from the same or substantially similar facts, circumstances or allegations involved in such demand, suit, action or other proceeding;
  - (2) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other policy or policies providing similar coverage of which this Policy is a renewal or replacement or succeeds in time; or
  - (3) any other **Wrongful Act**, fact, circumstance or allegation, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- C. for an accounting of profits made from the purchase or sale of securities of the **Insured Organization** or **Portfolio Company** by any **Insured Person** within the meaning of Section 16(b) of the 1934 Securities Exchange Act and amendments thereto or similar provisions of any federal, state, local or common law;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind; provided, however, this exclusion will not apply to **Loss** for which an **Insured Person** is not entitled to indemnification from the **Insured Organization** or any third party;
- E. for any deliberately dishonest, fraudulent or criminal act or omission committed with the willful intent to deceive, or any personal profit or advantage gained by any **Insured** to which they were not legally entitled, if such deliberately dishonest, fraudulent or criminal act or personal profit or advantage is established by judgment or other final adjudication adverse to the **Insured**;
- F. for any actual or alleged violation of the responsibilities, obligations and duties imposed by ERISA or any similar federal, state, local or common law in connection with the activities of any

**Insured** as a fiduciary for, or in the administration of, any pension and/or welfare plan sponsored, established, created or maintained for the benefit of the employees of the **Insured** except: (i) with respect to any **Claim** under Insuring Agreement D for retaliation for the filing for benefits under such laws; or (ii) to the extent that coverage is provided under Insuring Agreement E;

- G.** for the liability of any **Insured Organization** based upon or arising under any express contract or agreement, regardless of whether such liability is direct or assumed; provided however, that this exclusion shall not apply to:
- (1) liability which would have existed without such contract or agreement; or
  - (2) any portion of **Loss** that arises from the breach of any contract, or portion of any contract, describing or requiring the performance of **Private Equity Activities**;
- H.** by or on behalf of any **Insured**, provided, however, this exclusion shall not apply to:
- (1) a **Claim** brought directly or derivatively by a security or interest holder of an **Insured Organization**, or a direct **Claim** by any **Portfolio Company**, if such **Claim** is brought and maintained without the solicitation or assistance of any **Insured**; provided, however, that with respect to any **Claim** against the **Insured Organization** brought on behalf of an **Insured** who also is an interest holder in an **Insured Organization** which is a private equity fund, such **Claim** will not be excluded solely because such **Insured** may be an interest holder in the private equity fund, if such **Claim** is brought without the solicitation or assistance of any **Insured**;
  - (2) a cross-claim or third party claim or similar judicial process seeking contribution or indemnity which is part of, and results directly from, a **Claim** not otherwise excluded by this Policy;
  - (3) is brought by **Insured Person** for **Wrongful Employment Practices**;
  - (4) a **Claim** brought by one or more natural person limited partners of an **Insured Organization** serving on management committees, advisory boards and similar committees formed pursuant to the **Insured Organization's** articles of incorporation, by-laws, operating agreement, partnership agreement or similar document;
  - (5) with the exception of Insuring Agreement B, a **Claim** brought by any examiner, trustee, liquidator, receiver, rehabilitator (or any assignee thereof), of any **Insured Organization** in a bankruptcy proceeding; or
  - (6) a **Claim** brought by any **Insured Person** who has not served in such capacity for an **Insured Organization** for at least five (5) years prior to such **Claim** being first made;
- I.** arising from **Wrongful Acts** committed by any **Insured Person** in their capacity with any entity other than the **Insured Organization**, a **Non-Profit Entity**, a **Portfolio Company** or any **Employee Benefit Plan**;
- J.** solely with respect to Insuring Agreement D, based upon, arising out of, directly or indirectly resulting from:

- (1) any actual or alleged violation of responsibilities, duties or obligations imposed by any federal, state or local statutory law or common law that governs wage, hour, and payroll policies and practices;
- (2) any actual or alleged violation of responsibilities, duties or obligations existing under any workers compensation law, disability benefits, unemployment compensation law or any similar law;
- (3) any actual or alleged violation of responsibilities, duties or obligations existing under the National Labor Relations Act, the Workers' Adjustment and Retraining Notification Act (WARN), Public Law 100-379, the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statute or law; provided, however, Exclusion J. (3) does not apply to any **Claim** for retaliation based upon the filing for benefits under such law; and,
- (4) in consequence of, or in any way involving, strikes, lockouts, picket lines, replacement or other similar action resulting from labor disputes or labor negotiations or any protections contained within the National Labor Relations Act;

**K.** solely with respect to Insuring Agreement E, based upon, arising out of or involving:

- (1) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act committed prior to the creation, or sponsorship by an **Insured** of an **Employee Benefit Plan**; or
- (2) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or negligent act committed subsequent to the termination of sponsorship by an **Insured** of an **Employee Benefit Plan**;

**L.** solely with respect to Insuring Agreement E, that part of **Loss**, other than **Defense Costs**, which:

- (1) is based upon or arises from the failure of an **Insured** to collect the necessary employers' contributions owed to an **Employee Benefit Plan**, unless such failure results from the negligence of the **Insured**;
- (2) constitutes benefits due or to become due under the terms of an **Employee Benefit Plan**; or
- (3) constitutes the return or reversion of any contribution or asset of an **Employee Benefit Plan**.

It is agreed that the acts of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the above stated Exclusions.

## **V. LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM**

**A.** The Insurer shall be liable to pay the percentage of **Loss** set forth in Item F. of the Declarations in excess of the amount of the individual Retentions set forth in Item D. of the Declarations for

Insuring Agreements A., B., C., D. and E. up to the policy's aggregate Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured.

- B.** In the event a single **Claim** is covered under more than one Insuring Agreement then only the largest of the applicable Retentions as set forth in Item D. of the Declarations shall apply.
- C.** The Insurer's maximum liability under this Policy, whether covered under one or more Insuring Agreements, shall be the Limit of Liability shown in Item C. of the Declarations of this Policy.
- D.** More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
  - (1) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
  - (2) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been first reported pursuant to Section VIII.B.
- E.** Payments of **Loss** by the Insurer, including **Defense Costs**, shall reduce the Limit of Liability.
- F.** The Retentions applicable to Insuring Agreements B. and C.(1) shall apply to **Loss** covered by such Insuring Agreement if indemnification by the **Insured Organization** or **Portfolio Company** is required by law or legally permissible to the fullest extent permitted by law, regardless whether actual indemnification is made, unless the **Insured Organization** or **Portfolio Company** is unable to make such actual indemnification by reason of its **Insolvency**.

## VI. SETTLEMENTS AND DEFENSE

- A.** As a condition precedent to coverage, no settlement negotiations or settlement agreements shall occur and no **Defense Costs** shall be incurred without the Insurer's prior written consent, though such consent is not to be unreasonably withheld.
- B.** The Insurer shall have the right to associate in the defense and settlement of any **Claim** made under this Policy. The Insurer may make any investigation it deems appropriate. However, it shall be the duty of the **Insured**, and not the duty of the Insurer, to defend **Claims**.

## VII. ALLOCATION

If both **Loss** covered under this Policy and loss not covered by this Policy are incurred in connection with any **Claim**, the **Insured Persons**, the **Insured Organization** and the Insurer shall use all reasonable efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered loss.

If there can be an agreement on **Defense Costs**, the Insurer shall advance, on a quarterly calendar basis, **Defense Costs** allocated to covered **Loss**. If there can be no agreement on an allocation of **Loss**:

- A.** No presumption as to allocation shall exist in any arbitration, suit or other proceeding;

- B** The Insurer shall advance, on a quarterly calendar basis, **Defense Costs** which the Insurer believes to be covered under the Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- C.** The Insurer, if requested by an **Insured Person** or the **Insured Organization**, shall submit such dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Person** or the **Insured Organization**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

## VIII. CLAIMS NOTIFICATION

- A.** The **Insured** shall, as a condition precedent to their rights to payment under this Policy, give to the Insurer notice in writing of any **Claim** as soon as practicable after the **Insured Organization's** Risk Manager, General Counsel, Managing Member, Chief Financial Officer, General Partner, Administrative Partner or equivalent executive responsible for reporting such **Claims**, first becomes aware of the **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.
- B.** If, during the **Policy Period**, the **Insured Organization's** Risk Manager, General Counsel, Managing Member, Chief Financial Officer, General Partner, Administrative Partner or equivalent executive responsible for reporting such **Claims** first becomes aware of a specific **Wrongful Act**, and if the **Insured** during the **Policy Period** gives written notice to the Insurer of: (1) the specific **Wrongful Act**; (2) the consequences which have resulted or may result therefrom; and (3) the circumstances by which the **Insured** first became aware thereof, then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.
- C.** Notice to the Insurer provided for in this Section shall be given in writing to the individual identified in Item J. of the Declarations. Such notice may be provided by mail or may be submitted electronically to: Usclaims@hcc-global.com.

## IX. OTHER INSURANCE

If **Loss** arising from a **Claim** is insured by another valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any applicable deductibles, retentions and Limits of Liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to the Policy Number indicated on this Policy's Declarations page.

## X. GENERAL CONDITIONS

### A. WARRANTY

It is warranted by the Insureds that the particulars and statements contained in the **Application** and the information incorporated by reference therein are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

By acceptance of this Policy, the **Insureds** agree that:

- (1) the statements in the **Application** are its representations, that it shall be deemed material to the acceptance of the risk or the nature of the risk assumed by the Insurer under this Policy and that this Policy is issued in reliance upon the truth of such representations and warranties; and
- (2) in the event the **Application** contains misrepresentations which materially affect the acceptance of the risk or nature of the risk assumed by the Insurer under this Policy, this Policy in its entirety shall be void and of no effect whatsoever with respect only to those **Insured Persons** who had knowledge of any such misrepresentation.

### B. PORTFOLIO COMPANY OUTSIDE DIRECTOR LIABILITY – CONDITION PRECEDENT

It shall be a condition precedent to coverage under Insuring Agreement B, that, as of the inception date of the first Private Equity Professional Insurance Policy issued to the **Insured Organization** or the date such **Insured Person** first begins serving in an **Outside Position**, whichever is later, such **Insured Person** was not aware of any facts or circumstances that reasonably could be expected to give rise to a **Claim** under this Policy.

### C. ACQUISITIONS, MERGERS AND CONSOLIDATIONS

- (1) In the event the **Insured Organization**, after the inception date of this Policy, acquires any other entity or acquires substantially all of the assets of another entity or merges with or is consolidated with another entity such that the **Insured Organization** is the surviving entity, coverage shall be afforded for **Loss** arising from **Wrongful Acts** attributable to and occurring subsequent to such acquisition, merger or consolidation for **Claims** first made within ninety (90) days of the effective date of such acquisition, merger or consolidation. After ninety (90) days, coverage under this Policy shall only be provided to the **Insured** if:
  - (a) written notice of such transaction or event was given to the Insurer by the **Insured Organization**; and
  - (b) the **Insured Organization** provides the Insurer with such information in connection therewith as the Insurer deems necessary; and
  - (c) the **Insured** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

However, the provisions of this Section **C. ACQUISITIONS, MERGERS AND CONSOLIDATIONS**, shall not apply to any acquired entity qualifying as a “**Subsidiary**” pursuant to Section II. DEFINITIONS, U.(2) of this Policy. Such newly-

acquired **Subsidiaries** shall be automatically covered under this Policy.

(2) In the event:

- (a) the **Insured Organization** merges with or is consolidated with another entity such that the **Insured Organization** completely ceases to actively engage in its primary business; or,
- (b) another entity, person or group of entities and/or persons acting in concert, acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or persons of greater than 50% of the outstanding securities representing the present right to vote for the election of directors or select general partners of the **Insured Organization**; or
- (c) of **Insolvency of the Insured Organization**;

then, coverage under this Policy shall continue until termination of the Policy, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by an **Insured(s)** prior to such acquisition, merger, consolidation, or **Insolvency**. The **Insured Organization(s)** shall give written notice of such merger, consolidation, acquisition, or **Insolvency** to the Insurer as soon as practicable together with such information as the Insurer may require. The full annual premium for the **Policy Period** shall be deemed fully earned immediately upon the occurrence of any event outlined in items (a) through (c) above.

#### D. NEW INVESTMENT FUNDS

In the event the **Insured Organization** creates a new investment fund or funds, coverage will automatically be provided under the Policy for **Wrongful Acts** subsequent to such creation if: (1) the offering size of any newly created investment fund does not exceed 200% of the largest investment fund existing at the time of this Policy's inception; and (2) the investment objectives of the investment fund, as disclosed in the prospectus or offering circular, do not differ materially from the investment objective of those investment funds already disclosed to the Insurer. If the new investment fund does not meet the foregoing criteria, coverage will be afforded for **Loss** arising from **Wrongful Acts** by **Insureds** subsequent to the creation of the new investment fund for **Claims** first made within ninety (90) days of the effective date of such creation, merger or acquisition. After ninety (90) days, coverage under this Policy shall only be provided to the **Insureds** if:

- (1) written notice of such transaction or event was given to the Insurer by the **Named Insured**; and
- (2) the **Named Insured** provides the Insurer with such information in connection therewith as the Insurer deems necessary; and
- (3) the **Named Insured** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

**E. CANCELLATION AND TERMINATION**

- (1) By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on its behalf to the **Named Insured**. The **Named Insured** may cancel this Policy by surrender thereof to the Insurer, or by mailing to the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- (2) The Insurer may cancel this Policy only for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than the (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Insurer shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
- (3) If this Policy is cancelled pursuant to (1) hereinabove, the Insurer shall retain the customary short rate proportion of the premium. If this Policy is cancelled pursuant to (2) hereinabove, the Insurer shall retain the pro rata proportion of the premium. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation.

**F. INSURED ORGANIZATION AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving of all notices to the Insurer, the receiving of notices from the Insurer, the payment of the premium and the receipt of any return premium.

**G. WORLDWIDE TERRITORY**

This Policy extends to **Wrongful Acts** taking place, and **Claims** made, anywhere in the world.

**H. ORDER OF PAYMENTS CLAUSE**

In the event **Loss** arising from a covered **Claim** exceeds the available Limit of Liability, then this Policy shall:

- (1) first, pay **Loss** for which coverage is provided under Insuring Agreement C(1) of this Policy; then
- (2) only after payment of **Loss** has been made pursuant paragraph (1) above, and with respect to whatever remaining amount of the Limit of Liability is available after such payment, either pay or withhold payment of any remaining **Loss** for which coverage is provided under Insuring Agreement C(2) pursuant to the written request of the chief executive officer of the **Insured Organization**; then
- (3) only after payment of **Loss** has been made pursuant to paragraphs (1) and (2) above, and with respect to whatever remaining amount of the Limit of Liability is available, either pay or withhold payment of such other **Loss** for which coverage is provided under any

other applicable Insuring Agreements pursuant to the written request of the **Insured Organization's** Risk Manager, General Counsel, Managing Member, Chief Financial Officer, General Partner, Administrative Partner or equivalent executive.

In the event the Insurer is instructed to withhold payment pursuant to paragraphs (2) and/or (3) above, the Insurer shall, at such time and in such manner set forth in written instructions from the **Insured Organization's** Risk Manager, General Counsel, Managing Member, Chief Financial Officer, General Partner, Administrative Partner or equivalent executive, remit such payment to the **Insured Organization** directly to, or on behalf of, an **Insured Person**.

The bankruptcy or **Insolvency** of any **Insured Organizations** or any **Insured Persons** shall not relieve the Insurer of any of their obligations to prioritize payment of covered **Loss** under this Policy.

## **XI. PORTFOLIO COMPANY OUTSIDE DIRECTORSHIP RUN-OFF COVERAGE**

If during or prior to the **Policy Period** an **Insured Person** ceases serving in an **Outside Position**, coverage under Insuring Agreement B. of this Policy shall continue with respect to such **Insured Person** in such capacity but only with respect to a **Claim** for **Wrongful Acts** occurring prior to the time such **Insured Person** ceased serving in such capacity.

## **XII. ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES**

- A.** As a condition precedent to coverage, the **Insureds** agree to provide the Insurer with such information, assistance and cooperation as the Insurer or their counsel may reasonably request in connection with the defense, negotiation and settlement of any **Claim**, and the **Insureds** further agree that they shall not take any action which in any way increases the Insurer's exposure under this Policy.
- B.** In the event of any payments under this Policy, the Insurer shall be subrogated to the **Insureds'** rights of recovery therefore against any person or entity. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and shall provide all other assistance and cooperation which the Insurer may reasonably require.
- C.** All recoveries from third parties for payments made under this Policy shall be applied (after first deducting the costs and expenses incurred in obtaining in such recovery) in the following order of priority:
  - (1) the **Insureds** shall first be reimbursed for the amount by which their legal liability exceeds the amounts paid under this Policy;
  - (2) the Insurer shall then be reimbursed for the amount of its liability under this Policy; and
  - (3) any remaining sum shall be applied towards reimbursement of the Retention borne by the **Insureds** under this Policy.

**XIII. ASSIGNMENTS AND ACTION AGAINST THE INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the Claimant and the Insurer. Nothing contained herein shall give any person or organization any right to join the Insurer as a party to any **Claim** against the **Insureds** to determine their liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representative in any **Claim**. Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

**XIV. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and the Insurer or any of their agents relating to this insurance. Notice to any agent 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 estop the Insurer from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the Insurer to form a part of this Policy.

**XV. SERVICE OF SUIT**

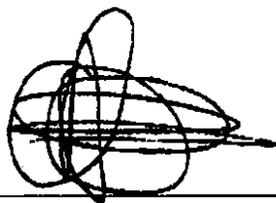
It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the **Insureds**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Section constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon HCC GLOBAL FINANCIAL PRODUCTS, 8 Forest Park Drive, Farmington, CT 06032, Attention: Claims Manager, and that in any suit instituted against any one of them upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the **Insureds** to give a written undertaking to the **Insureds** that they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or such individual's successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insureds** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

BY Michael J. Schell  
PRESIDENT

  
SECRETARY