



Starr Surplus Lines Insurance Company

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VENTURE CAPITAL/PRIVATE EQUITY MANAGERIAL AND PROFESSIONAL LIABILITY INSURANCE

In consideration of the payment of the premium and in reliance upon the Application, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the terms, conditions and limitations of this policy, STARR SURPLUS LINES INSURANCE COMPANY (the “Insurer”) and the Named Insured, on behalf of all Insureds, agree as follows:

I. INSURING AGREEMENTS

A. Insured Person Liability-Non- Indemnifiable Loss

The Insurer shall pay the Loss of an Insured Person arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against such Insured Person for any Wrongful Act, except if the Organization has indemnified the Insured Person for such Loss. Insuring Agreement A shall not apply to Loss arising from a Claim made against an Outside Entity Executive.

B. Insured Persons Liability – Indemnifiable Loss

The Insurer shall pay the Loss of an Organization arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against an Insured Person (including an Outside Entity Executive) for any Wrongful Act of such Insured Person, but only if the Organization has indemnified the Insured Person for such Loss.

C. Organization Liability

The Insurer shall pay the Loss of an Organization arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against such Organization for any Wrongful Act of the Organization, including those from Investment Advisory Services, and for Organizational Vicarious Liability.

D. Outside Entity Executive Liability

The Insurer shall pay the Loss of an Outside Entity Executive arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against such Outside Entity Executive, for any Wrongful Act of such Outside Entity Executive, but only excess of: (1) any indemnification actually paid by an Outside Entity and (2) any valid and collectible insurance coverage afforded to an Outside Entity or its Executives applicable to such Claim.

II. DEFINITIONS

- (a) “Advisory Board Member” means any person serving on an advisory board or committee, or investment committee of an Organization, who is not also an Executive or an Employee of an Organization
- (b) “Application” means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy and any public documents filed by an Organization within the 12 months immediately preceding the inception date of this policy with any federal, state, local or foreign regulatory agency.
- (c) “Claim” means any:
- (1) written demand for monetary, non-monetary or injunctive relief made against an Insured;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an Insured, including any appeal therefrom, which is commenced by:
 - a) service of a complaint or similar pleading;
 - b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - c) receipt or filing of a notice of charges;
 - (3) arbitration proceeding commenced against an Insured by service of a demand for arbitration;
 - (4) civil, criminal, administrative or regulatory investigation of an Insured Person:
 - a) which is commenced by the filing or issuance of a notice of charges, investigative order or similar document;
 - b) which in the case of an investigation by the SEC or a similar state or foreign government is commenced by:
 - (i) the service of a subpoena upon such Insured Person; or
 - (ii) the Insured Person is identified in a written "Wells" or other notice, including a “Target Letter,” from the SEC or a similar state or foreign government authority that describes actual or alleged violations of securities or other laws by such Insured Person;
 - (5) a proceeding or investigation by the Equal Employment Opportunity Commission (“EEOC”) (or similar state, local or foreign agency) which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to an Insured.

- (6) written request to toll or waive the applicable statute of limitations relating to a Claim or potential Claim against an Insured for a Wrongful Act; or
- (7) Extradition Proceeding.

However, in no event, shall the term “Claim” include any labor or grievance proceeding which is subject to a collective bargaining agreement.

The term “Claim” shall include any Securities Claim, Professional Services Claim and Employment Practices Claim.

- (d) “Cleanup Costs” means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.
- (e) “Controlling Person” means any Insured that controls an Organization or a Portfolio Entity within the meaning of Section 15 of the Securities Act of 1933 (as amended), or Section 20 of the Securities Exchange Act of 1934, as amended.
- (f) “Defense Costs” means:
 - (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a Claim;
 - (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond;
 - (3) reasonable and necessary fees, costs, charges or expenses incurred in response to any Extradition Proceeding or similar proceeding brought against an Insured Person in connection with a Claim; and
 - (4) any fees, costs, charges or expenses incurred by the Insured at the specific request of the Insurer to assist the Insurer in the investigation, defense or appeal of a Claim.

“Defense Costs” do not include: (i) amounts incurred prior to the date a Claim is first made and reported to the Insurer; and (ii) compensation or benefits of any Insured or any overhead expenses of an Insured.

- (g) "Employee" means any past, present or future employee, other than an Executive of an Organization, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee. Provided, further, that solely with respect to an Employment Practices Claim, the term "Employee" shall also include any individual who is leased to an Organization or who is an independent contractor for an Organization, but only if and to the extent that such Organization provides indemnification to such leased individual or independent contractor in the same manner as is provided to the Organization's employees pursuant to a written contract or agreement.
- (h) "Employment Practices Claim" means a Claim against any Insured by an Employee or Executive of or an applicant for employment with an Organization or an Outside Entity alleging: (1) wrongful dismissal, discharge or termination, either actual or constructive, of employment; (2) harassment or disparagement (including, but not limited to, sexual harassment, including quid pro quo, hostile work environment or otherwise); (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability); (4) retaliation; (5) breach of an actual or implied employment contract (6) employment-related misrepresentation; (7) employment-related libel, slander, humiliation, defamation, invasion of privacy or wrongful infliction of emotional distress; (8) wrongful failure to employ or promote; (9) wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation; (10) wrongful discipline; (11) failure or refusal to promote, including wrongful failure to train, advance or grant bonuses or perquisites (12) failure to grant tenure; (13) with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights; or (14) any other violation of a natural person's employment-related civil rights relating to any of the above.

With respect to a Claim brought by a natural person customer or client, Employment Practices Claim shall also mean actual or alleged sexual harassment or discrimination, whether committed directly, indirectly, intentionally or unintentionally.

- (i) "Executive" means:
- (1) any past, present or future duly elected or appointed managing director, director, CEO, Chairman, president, vice president, secretary, operating partner, managing member, officer, trustee (other than a bankruptcy trustee) or governor of a corporation, partnership, limited liability company or similar entity, management committee member of a joint venture or a natural person general partner of a partnership (or any other individual serving in a like capacity of any of the positions listed herein);
 - (2) any past, present or future general counsel and risk manager (or equivalent position); or
 - (3) any past, present and future person in a duly elected or appointed position in an entity organized and operated in a Foreign Jurisdiction that is equivalent to an executive position listed in (1) or (2) above.

- (j) “Extradition Proceeding” means any formal process to determine if an Insured Person located in any country is surrendered to any other country to stand trial for any criminal offense arising from any Wrongful Act the Insured Person is alleged to have committed.
- (k) “Financial Impairment” means the Organization becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the Organization.
- (l) "Foreign Jurisdiction" means any jurisdiction, other than the United States or any of its territories or possessions.
- (m) "Foreign Policy" means the Insurer's standard Venture Capital/Private Equity managerial and professional liability policy (including all mandatory endorsements, if any) approved to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then "Foreign Policy" means the standard policy most recently regularly offered for sale (or purchased by the Named Insured) in the Foreign Jurisdiction. The term "Foreign Policy" shall not include any commercial general or pension trust liability coverage.
- (n) “Fund” means any: (1) privately-held entity which is sponsored, formed or controlled by an Organization for purposes of making investments in accordance with the objectives set forth in any private placement memorandum, prospectus or similar offering document or pursuant to any limited partnership agreement or other organizational constituent document; or (2) any entity listed as such in an endorsement attached to this policy.

"Fund" also means any:

- (1) privately-held entity of which an Organization, or group of Organizations acting in concert, first has Management Control during the Policy Period; and whose aggregate assets and/or capital commitments total less than 200% of the aggregate assets and/or capital commitments of the largest Fund existing as of the effective date of the Policy Period; and
- (2) privately-held entity (other than an entity described in (1) above) of which an Organization, or group of Organizations acting in concert, first has Management Control during the Policy Period but only upon the condition that within 90 days of the date of obtaining such Management Control, the Named Insured shall have provided the Insurer with full particulars of the new Fund and agreed to any additional premium and/or amendment of the provisions of this policy as required by the Insurer relating to such new Fund and pays any additional premium within thirty (30) days after being requested to do so by the Insurer;

With respect to a Claim made against any Fund or any Insured Person thereof, this policy shall only apply to Wrongful Acts committed or allegedly committed after the effective time such entity becomes a Fund and prior to the effective time that such entity ceases to be a Fund.

- (o) “Indemnifiable Loss” means Loss for which an Organization has indemnified or is permitted or required to indemnify an Insured Person pursuant to law or contract, or the charter, by-laws, operating agreement or similar documents of such Organization.

- (p) “Insured” means any: (1) Insured Person; or (2) Organization.
- (q) “Insured Person” means any: (1) Executive of an Organization; (2) Employee of an Organization; (3) Outside Entity Executive; (4) Advisory Board Member; or (5) agent, advisor, independent contractor, consultant or similar position, who is acting in an insured capacity at the request or direction of the Insureds and who is also indemnified by an Insured.
- (r) “Investment Advisory Services” means:
- (1) the giving of financial, economic or investment advice;
 - (2) the rendering of investment management services and/or the rendering of related decisions;
 - (3) any act by an Insured for a Portfolio Entity, including but not limited to the acquisition or divestiture of an investment, the giving of or failure to give advice, in connection with the management, operation, capital structure, financial or legal administration or business of any Portfolio Entity; or
 - (4)
 - (a) agreeing or refusing to make or extend a loan, lease or line of credit;
 - (b) making or extending any such loan, lease or line of credit;
 - (c) restructuring terminating, transferring, repossessing or foreclosing on any such loan, lease or line of credit.
- (s) “Organizational Vicarious Liability” means vicarious liability of an Organization for damages from Wrongful Acts in connection with Professional Services.
- (t) “Loss” means amount an Insured becomes legally obligated to pay, for damages, settlements, judgments (including pre/post-judgment interest on a covered judgment) and Defense Costs; however, “Loss” (other than Defense Costs) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an Insured is not financially liable or which are without legal recourse to an Insured; (4) employment related benefits, stock options, perquisites severance or any similar type of compensation of any Executive or any Employee of any Organization or Outside Entity; and (5) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. Notwithstanding the foregoing subparagraph (5), the Insurer shall not assert that the portion of any settlement in a Securities Claim constitutes uninsurable loss due to alleged violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended.

With respect to subsection (3) above, Loss shall be determined without regard to indemnification or insurance provided by a Portfolio Entity to which an Insured is entitled, but which becomes unavailable for any reason.

Notwithstanding the foregoing paragraph, Loss shall specifically include (subject to this policy’s other terms, conditions and limitations, including, but not limited to, exclusions relating to profit or advantage, fraudulent or criminal acts or intentional or knowing violations of law): (1) civil penalties assessed against any Insured Person pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. Sec. 78dd-2(g)(2)(B); and (2) punitive, exemplary and multiplied damages imposed upon an Insured. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages.

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

- (u) “Management Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies or investments of a person or entity, whether through the ownership of voting stock, by contract or otherwise. For the avoidance of doubt, this does not include (1) any entity that is not under the control, whether direct or indirect, of (i) a Named Insured or (ii) any person who is the managing partner, managing member, partner and/or member of a Named Insured; or (2) any Outside Entity.
- (v) "Non-Indemnifiable Loss" means Loss that is not Indemnifiable Loss;
- (w) “Organization” means:
 - (1) the Named Insured;
 - (2) each Subsidiary;
 - (3) each Fund;
 - (4) (a) each entity which is a general partner, administrative general partner, managing general partner, managing member, manager or any foreign equivalent of any of the foregoing, of a Fund;
 - (b) each entity which is a limited partner or shareholder of a Fund or of an entity described in this definition (w)(4) or in definition (w)(5) hereunder;
 - (c) any entity that co-invests with a Fund in any Portfolio Entity,
but in the case of sub-clauses (b) and (c) of this definition (w)(4), only to the extent that such entity is owned solely by Insureds.
- (5) any entity which is the general partner, administrative general partner, managing general partner, managing member, manager or any foreign equivalent of any of the foregoing, of an entity described in definition (w)(4) or of another entity described in this definition (w)(5);
- (6) any entity formed to hold an interest in a Portfolio Entity or other investment objective or asset as set forth in the Insured’s offering documents, where such entity is formed, majority-owned, or controlled by Insureds;

- (7) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the debtor, debtor's estate or debtor-in-possession (or equivalent status outside the United States of America), if any;

A Portfolio Entity is not an Organization.

With respect to any Claim made against any Organization or any Insured Person thereof, this policy shall only apply for Wrongful Acts committed or allegedly committed after the effective time that such entity became an Organization and prior to the effective time that such entity ceases to be an Organization.

- (x) "Outside Entity" means any: (1) not-for-profit entity; (2) Portfolio Entity; or (3) entity listed as an Outside Entity in an endorsement attached to this policy.

With respect to any Claim made against any Outside Entity or any Outside Entity Executive thereof, this policy shall only apply for Wrongful Acts committed or allegedly committed after the effective time that such entity became an Outside Entity and prior to the effective time that such entity ceases to be an Outside Entity.

- (y) "Outside Entity Executive" means: (1) any Executive of an Organization or other natural person indemnified by the Organization, who is, was, or will be acting at the specific request or direction of such Organization as an Executive, board observer or other position or capacity of: (i) a not-for-profit entity; or (ii) an Outside Entity that is a Portfolio Entity; or (2) any other person listed as an Outside Entity Executive in an endorsement attached to this policy.

- (z) "Policy Period" means the period of time from the effective date shown in Item 2 of the Declarations to the earlier of the expiration date shown in such Item 2 or the effective date of cancellation of this policy.

- (aa) "Pollutants" means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

- (bb) "Pollution" means the actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of Pollutants into or on real or personal property, water or the atmosphere. Pollution also means any Cleanup Costs.

- (cc) "Portfolio Entity" means any: (1) public or privately-held entity, which is not otherwise an insured Organization in which one or more Organizations had or has, directly or indirectly, a debt or equity interest or proposes to have a debt or equity interest; or (2) entity listed as such in an endorsement attached to this policy.

- (dd) “Professional Services Claim” means a Claim made against any Insured arising from Investment Advisory Services.
- (ee) “Securities Claim” means a Claim, other than an administrative or regulatory proceeding against, or investigation of an Organization, made against any Insured
- (1) alleging a violation of any law, regulation or rule, whether statutory or common law (including, but not limited to, the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is brought by:
 - (a) any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities representing equity in or debt of an Organization or Portfolio Entity; or
 - (b) a security holder or purchaser or seller of securities representing equity in or debt of an Organization or Portfolio Entity, with respect to such security holder’s, purchaser’s or seller’s interest in securities of such Organization or Portfolio Entity; or
 - (2) brought by a security holder of an Organization or Portfolio Entity, including by class action or derivatively on behalf of such Organization or Portfolio Entity alleging any Wrongful Act by an Insured.

“Securities Claim” shall not mean any Claim brought by any Executive or Employee of an Organization alleging, arising out of, based upon or attributable to the loss of, or failure to receive or obtain, the benefit of stock, stock warrants, stock options or other securities of an Organization or an Outside Entity.

- (ff) “Selling Security Holder” means any Insured that is a security holder of any Insured Organization or Portfolio Company.
- (gg) “Subsidiary” means any privately-held entity that is not a Fund or Portfolio Entity of which an Insured:
- (1) has Management Control (“Controlled Entity”) before the inception of the Policy Period, either directly or indirectly through one or more other Controlled Entities;
 - (2) first acquires Management Control during the Policy Period, either directly or indirectly through one or more other Controlled Entities, if such entity’s annual assets totals less than 25% of the total consolidated assets of each and every Organization as of the inception of the Policy Period; or
 - (3) first acquires Management Control during the Policy Period, either directly or indirectly through one or more other Controlled Entities, if such entity’s annual assets totals 25% or more of the total consolidated assets of the Named Insured as of the inception of the Policy Period, but only if the Named Entity or any other

Insured provides the Insurer with full particulars of the new Subsidiary prior to the end of the Policy Period and agrees to amendment of the provisions of the policy this policy with respect to such entity required by the Insurer and pays any additional premium within thirty (30) days after being requested to do so by the Insurer;

With respect to a Claim made against any Subsidiary or any Insured Person thereof, this policy shall only apply to Wrongful Acts committed or allegedly committed after the effective time such entity becomes a Subsidiary and prior to the effective time that such entity ceases to be a Subsidiary.

(hh) “Wrongful Act” means:

- (1) any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement:
 - (a) with respect to any Executive of an Organization, by such Executive in his or her capacity as such or any matter claimed against such Executive solely by reason of his or her status as such (including, but not limited to, his or her capacity as a Controlling Person or Selling Security Holder);
 - (b) with respect to any Employee of an Organization, by such Employee in his or her capacity as such (including but not limited to his or her capacity as a Controlling Person or Selling Security Holder, but solely in regard to any: (i) Securities Claim; (ii) Professional Services Claim; (iii) Employment Practices Claim; or (iv) other Claim; provided, however, that with respect to (iv), such other Claim is also made and continuously maintained against an Executive of an Organization;
 - (c) with respect to any Outside Entity Executive, by such Outside Entity Executive in his or her capacity as such, (including, but not limited to, his or her capacity as a Controlling Person or Selling Security Holder) or any matter claimed against such Outside Entity Executive solely by reason of his or her status as such; or
 - (d) with respect to any Advisory Board Member, by such Advisory Board Member in his or her capacity as such , (including, but not limited to, his or her capacity as a Controlling Person or Selling Security Holder) or any matter claimed against such Advisory Board Member solely by reason of his or her status as such.

- (2) with respect to an Organization, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such Organization committed or omitted, including but not limited to, in its capacity as general partner, administrative general partner, managing general partner, managing member, or any foreign equivalent of any of the foregoing, of any other Organization, or any matter claimed against such Organization solely by reason of its status as such, in connection with any Securities Claim (including but not limited to in its capacity as a Controlling Person or Selling Security Holder), in connection with a Professional Services Claim or in connection with an Employment Practices Claim.

III. EXCLUSIONS

This policy shall not cover any Loss in connection with any Claim:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration if a final judgment or adjudication establishes that such Insured was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;
- (b) arising out of, based upon or attributable to any deliberate fraudulent act or any willful violation of law by an Insured if a final judgment or adjudication establishes that such act or violation occurred;
- (c) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (d) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 5 of the Declarations, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (e) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Insured Person serving in his or her capacity as an Executive or an Employee of any entity that is not an Organization or an Outside Entity, or by reason of his or her status as an Executive or an Employee of such other entity;
- (f) for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof, or for emotional distress of any person; provided, however, this exclusion shall not apply to emotional distress asserted as part of an Employment Practices Claim;

- (g) which is brought by, on behalf of or in the right of an Organization or any Insured Person other than an Employee of an Organization, in any respect and whether or not collusive, or which is brought by any security holder or member of, or investor in an Organization, whether directly or derivatively, unless such security holder's, member's, or investor's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Executive of an Organization or any Organization; provided, however, this exclusion shall not apply to:
- (1) any Claim brought by an Insured Person in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a Claim that is covered by this policy;
 - (2) any Employment Practices Claim brought by an Insured Person;
 - (3) any Claim brought by a Fund, where a failure to bring or maintain such Claim would be a breach of a fiduciary duty owed by any Insured to such Fund or investors in such Fund;
 - (4) any Claim brought by or on behalf of an Organization in bankruptcy, by the examiner, trustee, receiver, liquidator, conservator, creditors' committee or rehabilitator (or any assignee thereof) or similar authority of or for such Organization, if any;
 - (5) any Claim brought by any past Executive of an Organization who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, natural person general partner, General Counsel or Risk Manager (or equivalent position) of or consultant to an Organization for at least two (2) years prior to such Claim being first made against any person;
 - (6) any Claim brought by an Executive of an Organization formed and operating in a Foreign Jurisdiction against such Organization or any Executive thereof, provided that such Claim is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
 - (7) any Claim brought by an Advisory Board Member, who is not an Executive of an Organization, in his or her capacity as a security holder or member of, or investor in an Organization, whether directly or derivatively, so long as such security holder's, member's or investor's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Executive of an Organization or any Organization;

- (8) any Securities Claim, provided that such Securities Claim is instigated and continued independent of, and without the solicitation of, or assistance of, or active participation of, or intervention of, any Organization or any Executive (except as otherwise allowed in the preceding subsections) of an Organization, however, an Executive's engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws; shall not be deemed to be assistance, active participation or intervention of an Executive under this paragraph (8).
- (h) for any Wrongful Act arising out of an Insured Person serving as an Executive of an Outside Entity (i) if such Claim is brought by, in the right of or on behalf of the Outside Entity or by any Executive thereof; or (ii) which is brought by any security holder of the Outside Entity, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of any Insured, any Outside Entity, or any Executive thereof; provided, however, this exclusion shall not apply to:
- (1) any Claim brought by an Outside Entity Executive or other Executive of an Outside Entity in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a Claim that is covered by this policy;
 - (2) any Claim by a Portfolio Entity or Executive of a Portfolio Entity where such Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured.
- (i) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, Pollution; provided, however, that this exclusion shall not apply to any Professional Services Claim and Non-Indemnifiable Loss, except for Loss constituting Cleanup Costs;
- (j) for injury from libel, slander, defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any Employment Practices Claim;
- (k) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (solely with respect to any plan of which an Organization is the plan sponsor), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules, regulations and amendments thereto, or any similar foreign, federal, state or statutory law or common law;

- (l) solely with respect to an Organization, alleging, arising out of, based upon or attributable to, directly or indirectly, any actual breach of contract, or liability or obligation under contract or agreement; provided, however, that this exclusion does not apply to:
 - (1) any Claim against an Insured based upon, arising out of, directly or indirectly resulting from or in any way involving the rendering or failure to render Investment Advisory Services for any Portfolio Entity;
 - (2) any liability an Organization would have in the absence of such contract or agreement; or
 - (3) Employment Practices Claims.
- (m) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, claims for unpaid wages or overtime pay for hours actually worked or labor actually performed by any Employee of an Organization, for improper payroll deductions or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto; provided, however, that this exclusion shall not apply to Defense Costs in connection therewith or to any Non-Indemnifiable Loss;
- (o) for the return or reimbursement of fees, commissions, or other compensation or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation, or the cost of correcting or re-performing or completing any Investment Advisory Services; provided, however, that this exclusion shall not apply to Defense Costs;
- (p) alleging, arising out of, based upon or attributable to any Insured's activities as an Underwriter, Broker or Dealer as those terms are defined respectively in Section 2(11) of the Securities Act of 1933 (as amended) and Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (as amended); however, this exclusion shall not apply with respect to any Investment Advisory Services provided to any Portfolio Entity in connection with any mergers or acquisitions by such Portfolio Entity..

For the purpose of determining the applicability of Exclusions (a), (b) and (c), the facts pertaining to or knowledge possessed by any Insured Person shall not be imputed to any other Insured Person.

Only facts pertaining to and knowledge possessed by any past, present or future president, Chief Executive Officer or Chief Financial Officer of the Organization shall be imputed to an Organization.

IV. LIMITS OF LIABILITY

The Limit of Liability stated in Item 3 of the Declarations is the aggregate limit of the Insurer's liability for all Loss combined arising out of all Claims first made against each and every Insured during the Policy Period or (Discovery Period if applicable). Further, a Claim which is made subsequent to the Policy Period (or Discovery Period if applicable) and which, pursuant to Clause VI is considered made during the Policy Period or Discovery Period, shall also be subject to the one aggregate Limit of Liability stated in Item 3 of the Declarations.

Defense Costs are part of, and not in addition to, the Limit of Liability as set forth in Item 3 of the Declarations. Defense Costs are part of Loss and as such are subject to the Limit of Liability for Loss.

If the Discovery Period is purchased by the Named Insured pursuant to Clause VIII, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Period as set forth in Item 2 of the Declarations.

V. RETENTIONS

Subject to all other terms and conditions of this policy, the Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the applicable Retention amount as set forth in Item 4 of the Declarations solely with regard to all Indemnifiable Loss. No Retention amount shall apply to Non Indemnifiable Loss.

A single Retention amount shall apply to Loss arising from all Claims alleging the same Wrongful Act or related Wrongful Acts. The Retention amount shall be borne by the Insureds and remain uninsured.

If the Organization is required or permitted to indemnify an Insured Person for any Loss pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of an Organization and does not do so because of Financial Impairment, the Insurer shall not require payment of the applicable Retention by the Insured Person. However, the Organization hereby agrees to reimburse the Insurer for the full amount of such applicable Retention.

In the event a Claim triggers more than one of the Retention amounts stated in Items 4 of the Declarations, then, as to that Claim, the highest of such Retention amounts shall be deemed the Retention amount applicable to Loss (to which a Retention is applicable pursuant to the terms of this policy) arising from such Claim.

Further, with respect to all Claims, the applicable Retention amount shall only apply to the percentage of Loss which shall be payable by the Insurer, and shall in no way be applicable to the percentage of Loss payable by any Organization.

No Retention amount is applicable to Non-Indemnifiable Loss.

VI. NOTICE

An Organization or an Insured Person shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer at the address set forth in Item 8 of the Declarations of a Claim made against an Insured as soon as practicable after the risk manager or general counsel (or equivalent position) of an Organization first becomes aware of the Claim; provided, however, in no event shall such notice of a Claim be provided later than sixty 60 days after the end of the Policy Period or (Discovery Period, if applicable).

If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

If written notice of a Claim has been given to the Insurer pursuant to this Clause as set forth above, then a Claim which is subsequently made against an Insured and reported to the Insurer alleging, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the Claim of which such notice has been given, shall be considered related to the first Claim and made at the time such notice was given.

If during the Policy Period (or Discovery Period if applicable) an Organization or an Insured shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against an Insured and shall give written notice to the Insurer of the circumstances, the Wrongful Act allegations anticipated and the reasons for anticipating such a Claim, with full particulars as to dates, persons and entities involved, then a Claim which is subsequently made against such Insured and reported to the Insurer alleging, arising out of, based upon or attributable to such circumstances or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

VII. DEFENSE OF CLAIM AND SETTLEMENT

The Insurer does not assume any duty to defend any Claim under this policy. However, the Insurer shall have the right to fully and effectively associate with the Insured in the control, investigation, defense and settlement of any Claim.

The Insured(s) shall defend and contest any Claim made against them.

The Insured(s) shall not admit or assume any liability, incur any Defense Costs, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the Insurer. Any Loss incurred by the Insured(s) and/or any settlements or judgments agreed to by the Insured(s) without such consent shall not be covered by this policy. However, the Insurer's consent is not required for the Insured to settle a Claim for a Loss amount within the applicable Retention amount.

As a condition precedent to coverage under this policy, each and every Insured shall give the Insurer full cooperation and such information as it may reasonably require relating to the defense and settlement of any Claim and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an Insured's indemnification or contribution rights.

VIII. DISCOVERY CLAUSE

If the Organization or the Insurer refuses to renew this policy, or if this policy is terminated by the Insurer for any reason (except for non-payment of premium), or if an Organizational Change as defined in Clause X. occurs, the Insured(s) shall have the right to purchase a Discovery Period for the period(s) set forth in Item 7 of the Declarations following the effective date of such non-renewal, termination or Organizational Change.

The Insured's right to purchase a Discovery Period shall lapse unless written notice of election to purchase such Discovery Period and the additional premium for such Discovery Period is received by the Insurer or its authorized agent within thirty (30) days after such non-renewal, termination or Organizational Change. The additional premium for the elected Discovery Period is set forth in Item 7 of the Declarations and shall be determined by multiplying the applicable percentage set forth in Item 7 of the Declarations by the premium set forth in Item 6. of the Declarations.

During such Discovery Period, the Insured may provide the Insurer with written notice, pursuant to Clause VI of this policy, of Claims made against an Insured solely with respect to Wrongful Acts occurring prior to the effective date of the non-renewal or termination of the policy or the effective date of the Organizational Change and otherwise covered by this policy.

The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability set forth in Item 3 of the Declarations.

The Discovery Period premium shall be fully earned at the inception of the Discovery Period. The Discovery Period is non-cancellable.

IX. CANCELLATION CLAUSE

This policy may be canceled by the Named Insured at any time only by mailing prior written notice to the Insurer or by surrender of this policy to the Insurer or its authorized agent. This policy may only be canceled by or on behalf of the Insurer in the event of non-payment of premium by the Named Insured. In the event of non-payment of premium by the Named Insured, the Insurer may cancel this policy as long as it has delivered to or mailed to the Named Insured, by registered, certified, or other first class mail, at the Named Insured's address as shown in Item 1 of the Declarations, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Policy Period terminates at the date and hour specified in such notice, or at the date and time of surrender. The Insurer shall have the right to the premium amount for the portion of the Policy Period during which the policy was in effect.

If this policy shall be canceled by the Named Insured, the Insurer shall retain the customary short rate proportion of the premium, unless otherwise stated herein.

X. ORGANIZATIONAL CHANGES

(a) If during the Policy Period:

- (1) the Named Insured shall consolidate with, merge into, or sell 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 shall acquire Management Control of the Named Insured; or
- (3) the Named Insured shall dissolve;

(any of such events being an "Organizational Change"), then this policy shall continue in full force and effect as to Wrongful Acts occurring prior to the effective time of the Organizational Change, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Wrongful Act occurring after the effective time of the Organizational Change. This policy may not be canceled after the effective time of the Organizational Change and the entire premium for this policy shall be deemed earned as of such time. The Named Insured shall also have the right to purchase a Discovery Period described in Clause VIII of this policy.

The Named Insured shall give the Insurer written notice of the Organizational Change as soon as practicable, but no later than sixty (60) days after the effective date of the Organizational Change.

XI. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the Insurer under this policy, the Insurer shall be subrogated to the extent of such payment to all of the Insured(s)' rights of recovery. The Insured(s) shall execute all papers required (including those documents necessary for the Insurer to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

In no event, however, shall the Insurer exercise its rights of subrogation against an Insured Person under this policy unless exclusions (a), (b) or (c) of Clause III apply with regard to such Insured Person.

In its sole discretion, the Insurer may waive any of its rights set forth in this Clause XI.

XII. OTHER INSURANCE AND INDEMNIFICATION

The insurance provided by this policy shall apply only as excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a Claim for which this policy may be obligated to pay Loss. This policy shall not be subject to the terms and conditions of any other insurance policy.

In connection with any covered Claim made against an Outside Entity Executive, a leased employee, or an independent contractor, and subject to all other terms and conditions herein, this policy shall apply specifically excess of any indemnification and any other insurance coverage available to an Outside Entity Executive, a leased employee or an independent contractor. In the event such other insurance coverage available to an Outside Entity Executive, a leased employee or an independent contractor is provided by the Insurer (or would be provided except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the Insurer's maximum aggregate limit of liability for all Loss combined in connection with a Claim covered, in whole or in part, by this policy and such other insurance policy, shall be the greater of (1) the Limit of Liability of the applicable Coverage Section(s) of this policy; or (2) the limit of liability of such other insurance policy.

XIII. AUTHORIZATION AND NOTICES

The Named Insured shall act on behalf of all Insureds with respect to this policy including: (1) the giving of notice of Claim; (2) the giving and receiving of notice of cancellation or nonrenewal; (3), the payment of premiums; (4) the receiving of any return premiums; (5) the receipt and acceptance of any endorsements issued to form a part of this policy; and (6) the exercising of any right to a Discovery Period.

XIV. VALUATION AND CURRENCY

All amounts stated in this policy are expressed in United States dollars and all amounts payable under this policy are payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then 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 rendered or the settlement payment is established.

XV. TERRITORY

This policy extends to Wrongful Acts taking place or Claims made anywhere in the world to the extent permitted by law.

XVI. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

XVII. DISPUTE RESOLUTION PROCESS

In the event of any disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, the Insurer and the Insured agree to participate in a non-binding mediation process to resolve such disputes or differences. Either party shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration proceeding to resolve such disputes or differences. However, such judicial or arbitration proceeding shall not be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated.

Any binding arbitration proceeding commenced pursuant to this Clause shall be submitted to the American Arbitration Association under or in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall be composed of three disinterested individuals. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Each party shall share equally the expenses of the non-binding mediation or binding arbitration.

XVIII. ACTION AGAINST INSURER

Except as provided in Clause XVIII of the policy, no action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, and the amount of the Insured's obligation to pay shall have been finally determined either by judgment against such Insured after actual trial, or by written agreement of the Insured, the claimant(s) and the Insurer.

No person or organization shall have any right under this policy to join the Insurer as a party to any action against any Insured or Organization to determine the Insured's liability, nor shall the Insurer be impleaded by any Insured Person, their spouse or legally recognized domestic partner, any Organization or any legal representative of the foregoing.

XIX. BANKRUPTCY

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

The coverage provided under this policy is intended to protect and benefit the Insured Persons such that, in the event of bankruptcy of the Organization, as a matter of priority the Insurer shall first pay Loss under Insuring Agreements A and D prior to paying Loss under Coverage B.

XX. COVERAGE EXTENSIONS

A. SPOUSAL AND LEGAL REPRESENTATIVE EXTENSION

Subject to all the other terms and conditions of this policy, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of any deceased person who was an Insured Person at the time the Wrongful Acts upon which such Claims are based were committed; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of any such estates, heirs, or legal representatives, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

This policy shall also cover Loss arising from any Claims made against the legal representatives of any incompetent, insolvent or bankrupt person who was an Insured Person at the time the Wrongful Acts upon which such Claims are based were committed; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of any such legal representatives, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

This policy shall also cover Loss arising from any Claims made 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 or any formal program established by the Organization) of an Insured Person for all Claims 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, property jointly held by the Insured Person and the spouse or domestic partner, or property transferred from the Insured Person to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act by or on the part of the spouse or domestic partner, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Insured Person.

B. CONTROLLING PERSON & SELLING SECURITY HOLDER EXTENSION

Subject to all the other terms and conditions of this policy, this Insurer shall pay the Loss of any Controlling Person or Selling Security Holder arising from a Securities Claim made against such Controlling Person or Selling Security Holder for any Wrongful Act of such Controlling Person or Selling Security Holder, including but not limited to Loss of an Organization when and to the extent that such Organization has indemnified such Controlling Person or Selling Security Holder for such Loss. Solely for purposes of this Clause, "Wrongful Act" shall mean: (1) any actual or alleged, direct or indirect, error, misstatement, misleading statement, act, failure to act, omission, neglect, inducement to do any of the foregoing or breach of duty committed or attempted or allegedly committed or attempted by a Controlling Person or Selling Security Holder in his, her or its capacity as such; or (2) any matter claimed against such Controlling Person or Selling Security Holder by reason of his, her or its status as such.

C. JOINT VENTURE LIABILITY EXTENSION

This Policy shall pay the Loss of any Insured which such Insured becomes legally obligated to pay as a result of a Claim arising out of the Insured's participation in a joint venture but solely to the extent of the percentage amount of the Insured's ownership interest in such joint venture. The coverage afforded by this extension applies only to Claims made against an Insured in connection with their participation in the joint venture, and does not afford coverage to any joint venture entity or to any interest holder in a joint venture that is not an Insured.

XXI. SEVERABILITY AND REPRESENTATIONS

In granting coverage under this policy, it is agreed that the Insurer has relied upon the statements, warranties and representations contained in the Application as being accurate and complete. All such statements, warranties and representations are the basis for this policy and are to be considered as incorporated into this policy.

The Insureds agree that in the event that the particulars and statements contained in the Application are not accurate and complete and materially affects either the acceptance of the risk or the hazard assumed by the Insurer under the policy, then this Policy shall be void ab initio solely with respect to any of the following Insureds:

- (1) solely with respect to Loss other than Non-Indemnifiable Loss, any Insured Person who knew as of the inception date of the Policy Period the facts that were not accurately and completely disclosed in the Application.,
- (2) an Organization, under Clause 1. Insuring Agreement B., to the extent it indemnifies any Insured Person referenced in (1), above, and
- (3) an Organization, under Clause 1. Insuring Agreement C., if any past or present Chief Executive Officer or Chief Financial Officer of the Organization knew as of the inception date of the Policy Period, the facts that were not accurately and completely disclosed in the Application,

whether or not such Insured Person knew that such facts were not accurately and completely disclosed in the Application.

Solely with respect to any Non-Indemnifiable Loss of any Insured Person, under no circumstances shall the coverage provided by this Policy be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the Policy

It is understood and agreed that this provision supersedes any inconsistent language contained in the Application.

XXII. ORDER OF PAYMENTS

In the event a Loss arising from a covered Claim for which payment is due under the provisions of this policy, then the Insurer shall in all events:

- a. first, pay Loss of a natural person Insured for which coverage is provided under Insuring Agreement A or D of this policy; and then

- b. only after payment of Loss has been made pursuant to (a) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the Named Insured, either pay or withhold such payment of such other Loss for which coverage is provided under Insuring Agreement B of this policy; and then
- c. only after payment of Loss has been made pursuant to Clause (a) and (b) above, with respect to whatever remaining amount of the Limited of Liability is available after such payment, at the written request of the Named Insured, either pay or withhold payment of such other Loss for which coverage is provided under Insuring Agreement C of this policy.

In the event the Insurer withholds payment pursuant to (b) and/or (c) above, then the Insurer shall, at such time and in such manner as shall be set forth in written instructions of the Named Insured, remit such payment to an Organization or directly to or on behalf of an Insured Person.

The bankruptcy or insolvency of any Organization and/or entity Insured and/or any Insured Person shall not relieve the Insurer of any of its obligations to prioritize payment of covered Loss under this policy pursuant to this Clause.

XXIII. CONFORMITY TO STATUTE

If any terms of this policy are in conflict with the terms of any applicable laws construing this policy, such are hereby amended to conform to such laws.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

XXIV. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.