

MANAGEMENT AND COMPANY LIABILITY COVERAGE PART

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

I. INSURING AGREEMENTS

- A. The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**, except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- B. The Insurer shall pay on behalf of the **Company Loss**:
1. which the **Company** is required or is permitted to pay as indemnification to the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons**; or
 2. resulting from a **Claim** first made against the **Company**;
- during the **Policy Period**, or, if applicable, the Optional Extension Period, for a **Wrongful Act**.

II. DEFINITIONS

- A. "**Claim**," as defined in GENERAL DEFINITIONS C. of the General Terms & Conditions of this Policy, shall include, for purposes of this Coverage Part, a formal civil, criminal, administrative, or regulatory investigation of an **Insured Person** which is commenced by the filing or issuance of notice of charges, formal investigative order or similar document specifically identifying in writing such **Insured Person** as a person against whom a proceeding as described in GENERAL DEFINITIONS C. 2. or 3. of the General Terms & Conditions of this Policy may be commenced.
- B. "**Insured**" means the **Insured Persons** and the **Company**.
- C. "**Insured Person**" means:
1. any past, present or future director or officer, or member of the Board of Managers, of the **Company**;
 2. any past, present or future employee of the **Company**;
 3. any managing member or manager of any **Company** organized as a limited liability company; and
 4. those persons serving in a functionally equivalent role as above for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States; and
 5. any individual identified above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor, or in an equivalent executive position, of a **Non-Profit Entity**.
 6. an individual identified in C. 1., 3. or 4., above who, at the specific written request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager, regardless of the name or title by which such position is designated, of a **Joint Venture**.

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- D. "**Joint Venture**" means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the **Parent Company**, either directly or through one or more **Subsidiary(s)**:
- owns or controls at least thirty three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
 - has the right, by contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty three (33%) of those persons described in D. 1. above.
- E. "**Non-Profit Entity**" means any corporation or organization, other than the **Company**, which is a non-profit organization.
- F. "**Roadshow Wrongful Act**" means a **Wrongful Act** occurring prior to the effective date of any initial public offering of the **Company's** securities in connection with documents distributed to, and presentations and representations made to lenders, prospective lenders, investors, prospective investors and analysts in conjunction with the initial public offering.
- G. "**Wrongful Act**" means:
- with respect to Insuring Agreement A. or B. 1., any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** solely by reason of his or her status as such; and
 - with respect to Insuring Agreement B. 2., any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Company**.

III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** made against an **Insured**:

- A. brought about or contributed to in fact by any:
- intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - profit or remuneration gained by any **Insured** to which such **Insured** is not legally entitled;
- as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION A., such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance policy, directors and officers liability insurance policy or any similar insurance policy;
- C. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for,

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abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste. With respect to a **Claim** made under INSURING AGREEMENT A. only, and other than a **Claim** that is based upon, arising out of directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of nuclear material or nuclear waste, this exclusion D. will not apply;

- E. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the applicable Pending And Prior Proceeding Date set forth in ITEM 7.(a) of the Declarations;
- F. brought by, or on behalf of, or at the direction of any **Insured**, except and to the extent such **Claim** is brought:
1. derivatively by a security holder of the **Company** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, active participation or intervention of any **Insured**;
 2. by the Bankruptcy Trustee or Examiner of the **Company** or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**;
 3. in the form of a cross-claim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
 4. by an **Insured Person** of the **Company** pursuant to any federal or state whistleblower protection statute or any rule or regulation promulgated thereunder;
 5. for the actual or alleged wrongful termination of an **Insured Person** as defined in Section II. Definition C. 1., 3. or 4. only; or
 6. by an **Insured Person**:
 - a. who has not served as a director, officer, member of the Board of Managers of the **Company** for at least three (3) years prior to the date such **Claim** is first made; or
 - b. who is an **Insured Person** solely by reason of his or her status as a current or former employee of the **Company**,

who is acting independently of, and without the solicitation, assistance, participation or intervention of any other **Insured Person** or the **Company**.
- G. for any actual or alleged liability of the **Company** under any express contract or agreement. With respect to this EXCLUSION G., an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION G. will apply only to the coverage available to the **Company** under INSURING AGREEMENT B. 2.;
- H. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured Person** acting in his or her capacity as a director, officer, employee, member of Board of Managers, managing member or manager of, or in an equivalent position with respect to, any entity other than the **Company, Non-Profit Entity** or **Joint Venture**;
- I. for any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty in connection with the rendering of, or actual or alleged failure to render, any services for a fee or commission or on any other compensated basis by any person or entity otherwise entitled to coverage under this Policy; provided that this EXCLUSION I. is not intended, however, nor shall it be construed, to apply to a **Claim** against an **Insured Person** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured Person** in connection with the management or supervision of any division, **Subsidiary** or group of the **Parent Company** offering any of the aforementioned services;

- J. for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" securities law, or any other federal, state or local securities law, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar common law imposing liability in connection with the offering, sale or purchase of securities of the **Company**; provided that this EXCLUSION J. will not apply to **Roadshow Wrongful Acts**;
- K. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA), including any amendments thereto, or any rule or regulation promulgated thereunder or any similar federal, state, local or common law or regulation;
- L. by, on behalf of, at the direction of or in the name or right of any **Non-Profit Entity** or its directors or officers in connection with an **Insured Person's** capacity as a director, officer, trustee, regent or governor of such **Non-Profit Entity**;
- M. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
 - 1. infringement of any patent, copyright or trademark; or
 - 2. unauthorized taking or use of any trade name, trade dress, trade secret, service mark, service name, title, slogan, proprietary process, material or information, other material or information in violation of any right under any patent, copyright or trademark registration or license, or any other intellectual property.

Provided that this EXCLUSION M. will apply only to the coverage available to the **Company** under INSURING AGREEMENT B. 2.; or

- N. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any provision of (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, b) the Employee Retirement Income Security Act of 1974 ("ERISA") (except Section 510 thereof), (c) the Fair Labor Standards Act (except the Equal Pay Act), (d) the National Labor Relations Act, (e) the Worker Adjustment and Retraining Notification Act, (f) the Consolidated Omnibus Budget Reconciliation Act of 1985, (g) the Occupational Safety and Health Act, (h) any other federal, state or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or any provision of any federal, state or local statute, regulation or common law that is similar to any provision of any statute or law described in (a) through (g) of this exclusion, or (i) rules or regulations promulgated under any of such statutes or laws; provided, that this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of a claimant by an **Insured** on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulation.

No conduct of any **Insured** will be imputed to any other **Insured** to determine the application of any of the above EXCLUSIONS.

IV. INDEMNIFICATION AND RETENTIONS

- A. With respect to the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company** and each **Subsidiary** will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- B. With respect to any **Non-Profit Entity's** indemnification of any **Insured Person**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of such **Non-Profit Entity** will be deemed to provide indemnification to the **Insured Person** to the fullest extent permitted by law.
- C. The Retention applicable to INSURING AGREEMENT B. 1. shall apply to any **Loss** as to which indemnification by the **Company** is legally permissible, whether or not actual indemnification is made unless such indemnification is not made by the **Company** solely by reason of its financial insolvency. In the event of financial insolvency, the Retention applicable to INSURING AGREEMENT A. shall apply.

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- D. If different Retentions are applicable to different parts of any **Loss**, the applicable Retentions will be applied separately to each part of such **Loss**, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 5. of the Declarations.
- E. With respect to the **Joint Venture** or the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Joint Venture**, will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

V. OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES

- A. All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** by reason of their service as such.
- B. All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of the **Insured Persons** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Joint Venture** by reason of their service as such.

VI. DEDICATED EXECUTIVE LIMIT

Notwithstanding anything to the contrary in this Policy, the **Insured Persons** defined in Section II. Definition C. 1., 3. and 4. of the Coverage Part ("Executives") shall have available an additional limit of liability of \$500,000 ("Executive Limit of Liability"), which amount is in addition to and not part of the Limits of Liability set forth in Item 3.(a) and Item 3.(d) of the Declarations. This Executive Limit of Liability is available solely for **Loss**, including **Defense Expenses**, resulting from any **Claim** under this Coverage Part to which Insuring Agreement I. A. of the Coverage Part is applicable. The Executive Limit of Liability shall be excess of any insurance available that is specifically excess of this Policy and such excess insurance must be completely exhausted by payment of loss, damages or defense expenses thereunder before the Insurer shall have any obligation to make any payment on account of the Executive Limit of Liability. Except as set forth in this Section VI., all other terms, conditions and limitations of the Coverage Part shall apply to such Executive Limit of Liability.

VII. QUOTATION FOR COVERAGE

If, at least thirty (30) days prior to the effective date of any initial public offering of equitable securities of the **Company**, the **Company** gives the Insurer written notice of such initial public offering and provides the Insurer with any and all information requested by the Insurer in connection with such initial public offering, the Insurer shall provide the **Company** with a quotation for coverage of **Claims** arising out of such initial public offering. Such quotation shall contain such terms and conditions, including additional premium, as the Insurer shall determine in its sole discretion. If the **Company** accepts the terms and conditions offered by the Insurer, and pays any additional premium required by the Insurer, such coverage shall be afforded by endorsement to this Policy and shall be subject to all of the terms, conditions, limitations and exclusions contained in this Policy, including such endorsement.