



SPECIMEN

ExecPro®

Private Equity Liability Insurance

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Private Equity Liability Insurance Policy

Great American Insurance Company - Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

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GREAT AMERICAN INSURANCE COMPANY®

Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the **Proposal Form** and subject to all terms, conditions and limitations of this Policy, the **Insured** and the **Insurer** agree:

Section I. Insuring Agreements

- A.** Except for **Loss** which the **Insurer** pays pursuant to Sections I.B. or I.C. of this Policy, the **Insurer** will pay on behalf of the **Insured Persons** all **Loss** which the **Insured Persons** become legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act**.
- B.** The **Insurer** will pay on behalf of the **Insured Organization**:
- (1) **Loss** which the **Insured Persons** become legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** but only to the extent an **Insured Organization** is permitted or required by law to indemnify such **Insured Persons**; or
 - (2) **Loss** which the **Insured Organization** becomes legally obligated to pay as a result of a **Claim** first made against the **Insured Organization**;
- provided that such **Claim** is first made during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act**.
- C.** Except for **Loss** which the **Insurer** pays pursuant to Sections I.A. and I.B. and subject to all of this Policy's terms and conditions, the **Insurer** will pay on behalf of the **Insured Persons** serving in an **Outside Position** all **Loss** which the **Insured Persons** become legally obligated to pay as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act**; provided, however, that such coverage shall be specifically excess of any indemnity and/or valid and collectible insurance available from or provided by the entity in which the **Insured Person** serves in such **Outside Position**.

Section II. Discovery Period

- A.** In the event the **Insurer** refuses to renew this Policy or the **Named Insured** chooses to cancel or not renew this Policy, the **Named Insured** shall have the right, upon payment of the Additional Premium stated in Item 8(A) of the Declarations, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the Additional Period of time stated in Item 8(B) of the Declarations following the effective date of such cancellation or non-renewal, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the effective date of such cancellation or non-renewal.

- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the **Discovery Period** must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.
- D. A renewal quotation by the **Insurer** incorporating different terms, conditions, Retention, Limit of Liability or premium with respect to the coverage afforded by this Policy shall not be deemed to constitute a refusal to renew by the **Insurer** for the purpose of determining the right to the **Discovery Period**.

Section III. Definitions

- A. "Claim" means:
- (1) a written demand for monetary or non-monetary relief against an **Insured** commenced by such **Insured's** receipt of such demand;
 - (2) an administrative, regulatory, or arbitration proceeding including but not limited to a proceeding before a federal or provincial human rights tribunal or commission, a federal or provincial employment standards tribunal or director, the Equal Employment Opportunity Commission, any **Self-Regulatory Organization** or similar federal, provincial or state agency, initiated against any **Insured** commenced by such **Insured's** receipt of a complaint, application for relief, demand for arbitration, notice of charges, formal investigative order or similar document;
 - (3) a criminal or civil proceeding including any appeal therefrom made against any **Insured** and commenced by the return of an indictment, information, summons or similar charging document, or service of a complaint, Writ of Summons, Statement of Claim, Petition, pleading or similar document;
 - (4) a written agreement to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or arbitration proceeding;
 - (5) any civil, criminal, administrative or regulatory investigation of an **Insured** by a provincial, federal, state, local or foreign government authority or agency (including without limitation an investigation by a federal or provincial human rights tribunal or commission, federal or provincial employment standards tribunal or director, the, Equal Employment Opportunity Commission, a provincial Securities Commission, Securities and Exchange Commission, Commodity Futures Trading Commission, Department of Justice, Department of the Treasury, Minister of National Revenue, Department of Labor, Superintendent of Financial Institutions, provincial Superintendent of Financial Services, provincial Superintendent of Pensions, Pension Benefit Guarantee Corporation, the Financial Services Authority or Grand Jury) or **Self-Regulatory Organization** but only after service of a subpoena, receipt of a Wells Notice, receipt of a notice of intention to commence enforcement action, receipt of a target letter or receipt of a formal order of investigation; or
 - (6) an **Employment Practices Claim**.

- B. “Costs of Defence”** means reasonable and necessary legal fees, costs and expenses incurred in the investigation, defence or appeal of any **Claim** including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defence** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Persons**.
- C. “Domestic Partner”** means any natural person qualifying as a domestic or common law partner under the provisions of any applicable provincial, federal, state or local law.
- D. “Employment Practices Claim”** means any **Claim** brought by or on behalf of any past, present or future employee of an **Insured Organization, Portfolio Company** or **Non-Profit Entity**, or any applicant for employment with an **Insured Organization, Portfolio Company** or **Non-Profit Entity** alleging an **Employment Practices Wrongful Act**.
- E. “Employment Practices Wrongful Act”** means:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
 - (2) employment related misrepresentation;
 - (3) sexual or workplace harassment of any kind;
 - (4) discrimination;
 - (5) wrongful failure to employ or promote;
 - (6) wrongful discipline;
 - (7) wrongful deprivation of career opportunity, including defamatory statements made in connection with an employee reference;
 - (8) failure to grant tenure;
 - (9) negligent evaluation;
 - (10) failure to provide adequate workplace or employment policies and procedures;
 - (11) wrongful retaliation; or
 - (12) employment related libel, slander, defamation, or invasion of privacy.
- F. “Executive Officer”** means the functional equivalent of a chief executive officer, chief financial officer, or in-house general counsel, regardless of the actual title or position.
- G. “Financial Insolvency”** means the status of the **Insured Organization** as a result of the appointment of any receiver, receiver-manager (whether appointed pursuant to an instrument or by means of a court order), monitor, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Insured Organization**, or the **Insured Organization** becoming a debtor in possession, and includes proceedings against the **Insured Organization** undertaken pursuant to either the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended, or the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended.
- H. “General Partner(s)”** means any natural person or organization identified as such in the limited partnership agreement of an **Operating Entity** formed as a limited partnership.
- I. “Insured Organization”** means the **Named Insured** and any **Operating Entity**. **Insured Organization** shall not include any **Portfolio Company**.

J. "Insured Person(s)" means:

- (1) any natural person who was, is or shall become a director, officer, general partner, manager, equivalent executive or employee of an **Insured Organization**;
- (2) any natural person representative of an investor in an **Investment Fund** while serving in his or her capacity as a member of any advisory board or committee of an **Investment Fund**; or
- (3) any natural person other than a director, officer, general partner, manager, equivalent executive or employee of an **Insured Organization** while serving in an **Outside Position**; provided that the **Insured Organization** has agreed to indemnify such natural person for any **Wrongful Act(s)** while serving in such **Outside Position**.

K. "Insured(s)" means the Insured Persons and the Insured Organization.

L. "Interrelated Wrongful Acts" means Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

M. "Investment Fund" means an Organization which is created or established prior to or during the **Policy Period** by an **Insured Organization** consisting of a sum of money whose principal is invested pursuant to the objectives set forth in such **Organization's** private placement, prospectus, or similar document.

N. "Loss" means compensatory damages, including aggravated damages, punitive or exemplary damages, the multiple portion of any multiplied damage award, settlements, pre-judgment interest, post-judgment interest, assessable or taxable costs recoverable by a claimant and Costs of Defence.

It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

"**Loss**" shall not include:

- (1) taxes, fines or penalties, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
- (2) non-monetary relief;
- (3) employment-related benefits, stock options, perquisites, deferred compensation, severance, or any other type of compensation other than front pay or back pay;
- (4) any portion of damages, judgments, or settlements arising out of any **Claim** alleging the **Insured Organization** paid an inadequate price or consideration for any securities; or
- (5) salary or income in lieu of reasonable notice or damages for failing to provide salary or income in lieu of reasonable notice.

O. "Named Insured" means the entity named in Item 1 of the Declarations.

P. "Non-Profit Entity" means any non-profit organization as defined by s. 149 of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), as amended, or any similar federal, provincial or state legislation, and/or eleemosynary organizations.

Q. “**Operating Entity**” means any **Organization** (including any **Investment Fund** and its **General Partner(s)**) created or acquired prior to or during the **Policy Period** of which an **Insured** or several **Insured’s** collectively possess, directly or indirectly, the power to control, manage or direct by reason of an **Insured’s**:

- (1) ownership of greater than 50% voting securities in such **Organization**;
- (2) right to elect or appoint a majority of the directors, officers, trustees, trust managers, managers, members, **General Partner(s)**, partnership managers, or joint venture managers of such **Organization**; or
- (3) rights and obligations pursuant to a written agreement governing the management and operation of such **Organization**.

Operating Entity shall not include any **Organization** created or acquired by any **Insured Person(s)** where such **Organization**: (i) was not created or established in connection with or to support an **Investment Fund**; and (ii) is one for which the **Named Insured** is not responsible for the financial reporting and tax filings of such **Organization**.

R. “**Organization**” means any corporation, trust, limited liability company, limited liability partnership, limited partnership, general partnership or joint venture. **Organization** shall also include any entity organized outside of Canada and/or the United States that is the functional equivalent of any corporation, trust, limited liability company, limited liability partnership, limited partnership, general partnership or joint venture.

S. “**Outside Position**” means the position of director, officer, board observer, member of a creditor committee, member, manager, trustee, member of an advisory board or other equivalent executive or management position in any:

- (1) **Portfolio Company**;
- (2) **Non-Profit Entity**; or
- (3) other entity specifically scheduled by endorsement to this Policy,

provided, however, that service in such position is with the knowledge and consent or at the request of the **Insured Organization**.

T. “**Policy Period**” means the period set forth in Item 2 of the Declarations or any shorter period that may occur as a result of a cancellation or termination of this Policy.

U. “**Portfolio Company**” means any entity in which any **Investment Fund** has or had or proposes to have a financial interest pursuant to the investment objectives set forth in any private placement memorandum, prospectus or similar document issued by an **Insured Organization**. **Portfolio Company** shall also mean any entity in which an **Insured Organization** other than an **Investment Fund** has or had or proposes to have a financial interest provided that such financial interest was acquired in connection with an investment in such entity by an **Investment Fund**.

V. “**Professional Services**” means:

- (1) any advisory, management, administrative or other consultative services performed by an **Insured** for an **Insured Organization** or other third party; provided that any such services rendered to a third party are (i) pursuant to an express contract; (ii) for a fee or other compensation; and (iii) in furtherance of the business objectives of any **Insured Organization**;
- (2) the formation, creation, distribution or sale of securities in, or the management, administration or investment decision of any **Investment Fund**;

- (3) any advisory or other consultative services performed by an **Insured** for any **Portfolio Company**, including but not limited to, advice as to the **Portfolio Company's** capital structure, sale of assets, share issuance, contemplated financing or capitalization, internal controls, legal compliance programs, software and/or hardware systems, hiring of experts, marketing policies, financial reporting, risk management programs or other operational or business matters; or
- (4) legal services provided by an **Insured Person** as an attorney, but only if such services are performed for an **Insured Organization** and in the **Insured Person's** capacity as an employee of an **Insured Organization**. **Professional Services** shall also include pro bono legal services rendered by an **Insured Person** for indigent clients or for non-profit public interest Companies; provided that such legal services are rendered with the knowledge and prior written consent of the **Named Insured**.

- W.** "**Proposal Form**" means the application for this Policy, any attachments to such application, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this Policy.
- X.** "**Self-Regulatory Organization**" means any association of investment advisors or securities dealers registered under provincial, state or federal securities laws, including the Investment Dealers Association of Canada, or any national securities exchange registered with the Securities Exchange Commission under the Securities and Exchange Act of 1934, as amended, or any similar Canadian or other national or international exchange or commission.
- Y.** "**Wrongful Act**" means any actual or alleged **Employment Practices Wrongful Act** or error, misstatement, misleading statement, act, omission, neglect or breach of duty, or any actual or alleged error or omission in the rendering of or the failure to render **Professional Services**:
- (1) by the **Insured Persons**, in their capacity as such;
 - (2) with respect to Insuring Agreement (B)(2), by the **Insured Organization**; or
 - (3) with respect to Insuring Agreement (C), by the **Insured Persons** while serving in an **Outside Position**.

Section IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured**:

- A.** for any actual or alleged:
- (1) bodily injury, sickness, disease, or death of any person;
 - (2) damage to or destruction of any tangible property, including the loss of use thereof; or
 - (3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander; provided, however, that part (3) of this exclusion shall not apply to any **Employment Practices Claim**;
- B.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Interrelated Wrongful Acts**, or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

C. brought or maintained by or on behalf of any **Insured**, provided, however, this exclusion shall not apply to:

- (1) any **Claim** brought by any shareholder of an **Insured Organization**, or a complainant as defined by s. 238 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, or any similar provincial legislation, all as amended, whether directly or derivatively, if the shareholder bringing such **Claim** is acting totally independent of, and without the solicitation, assistance, active participation or intervention of any **Insured**;
- (2) any **Employment Practices Claim**;
- (3) any **Claim** brought by any **Insured Person** where such **Claim** is 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** which is not otherwise excluded by the terms of this Policy;
- (4) any **Claim** brought by the bankruptcy trustee, monitor or examiner of an **Insured Organization** or any assignee of such bankruptcy trustee, monitor or examiner, or any receiver, receiver-manager (whether appointed pursuant to an instrument or by means of a court order), conservator, rehabilitator, or liquidator or comparable authority, including any official appointed pursuant to either the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended, or the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended, of an **Insured Organization**;
- (5) any **Claim** brought by any **Insured Person** who is no longer employed, contractually or otherwise, by an **Insured Organization**; provided, however, that when such **Claim** is made and maintained, such natural person is acting independently of, and without the solicitation, assistance, participation or intervention of any **Insured**;
- (6) any **Claim** made in a jurisdiction outside of the United States of America, Canada or Australia by an **Insured Person** of an **Insured Organization** created in such jurisdiction;
- (7) any **Claim** brought by an **Insured Organization**, where prior to bringing such **Claim**, independent legal counsel for such **Insured Organization** has stated in a written opinion that a failure to bring or maintain such **Claim** would be a breach of fiduciary duty owed by any **Insured** to such **Insured Organization** or investors in such **Insured Organization**; or
- (8) any **Claim** brought by an **Insured Person** serving as a member of an **Investment Fund's** advisory board, advisory committee or any similar board or committee; provided, however, that such **Insured Person** is serving in such capacity at the request and direction of a shareholder of an **Investment Fund**;

D. brought about or contributed to by:

- (1) any **Insureds** gaining any profit, advantage or remuneration to which they were not legally entitled; or
- (2) the deliberately fraudulent or criminal acts of any **Insureds**;
provided, however, this exclusion shall only apply if it is finally adjudicated that such conduct in fact occurred; and this exclusion shall not apply to coverage provided under Insuring Agreement I.B(1);

- E. for: (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or (2) any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste;

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed;

- F. for, based upon, arising from, or in any way related to any **Wrongful Act** of any **Insured Person** serving as a director, officer, board observer, member of a creditor committee, member, manager, trustee, member of an advisory board or other equivalent executive or management position of any entity other than the **Insured Organization** even if such service is at the direction or request of the **Insured Organization**, provided, however, this exclusion does not apply to any **Claim** for any **Wrongful Act** of an **Insured Person** while serving in an **Outside Position**;
- G. for any **Wrongful Act** of any **Insureds** in connection with the activities of any **Insured(s)** as a fiduciary for, or in the administration of, any pension, disability, flexible benefit, welfare, or any similar employee benefit plans of an **Insured Organization** or a **Portfolio Company**;
- H. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving any **Insured** as of the date stated in Item 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- I. for any **Wrongful Act** of any **Operating Entity** or the **Insured Persons** of such **Operating Entity** occurring:
- (1) prior to the date such entity became an **Operating Entity**;
 - (2) subsequent to the date such entity became an **Operating Entity** or was merged with an **Insured Organization** which, together with a **Wrongful Act** occurring prior to the date such entity became an **Operating Entity** or was merged with an **Insured Organization**, would constitute **Interrelated Wrongful Acts**; or
 - (3) subsequent to the date an **Insured** ceased to possess, directly or indirectly, the power to control, manage or direct such **Operating Entity**;
- J. solely with respect to the **Insured Organization**, for, based upon, arising from, or in any way related to any actual or alleged breach of contract or agreement, whether written or oral; provided, however, this exclusion shall not apply to:
- (1) liability for **Loss** which would have attached even in the absence of such contract or agreement;
 - (2) any actual or alleged breach of any contract describing or calling for **Professional Services**;
 - (3) any indemnification obligation between an **Insured Organization** and an **Insured Person**;
 - (4) any actual or alleged breach of an **Investment Fund's** partnership agreement, articles of incorporation, by-laws, trust indenture or similar organizational or constituting document;

- K. for, based upon, arising from, or in any way related to any public offering of securities of an **Insured Organization** or the purchase or sale of such securities subsequent to such public offering; provided, however, that this exclusion shall not apply to the offering of securities of an **Insured Organization** that is exempt from registration under the Securities Act of 1933 or similar provisions of any provincial Securities Act, or any such similar legislation;
- L. which is insured in whole or in part by another valid and collectible policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise;
- M. for any actual or alleged violation by an **Insured** of workers' compensation, unemployment compensation, employment insurance, Canada Pension Plan benefits, disability benefits, old age security benefits, or social security laws, or the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, the Canada Health Act, R.S.C. 1985, c. C-6, the Ontario Health Insurance Act, R.S.O. 1990, c. H.6, Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act of 1970, the Workers' Adjustment and Retraining Notification Act, the Ontario Employment Standards Act, 2000, S.O. 2000, c. 41, the Canada Labour Code, R.S.C. 1985, c. L.2 or any similar provincial, federal, state, local or foreign law except a **Claim** alleging retaliation for the exercise of any rights under such laws.

NOTE: For the purpose of determining the applicability of the aforementioned Exclusion D., it is understood and agreed that:

- (1) the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**; and
- (2) only the **Wrongful Acts** of any past, present or future **Executive Officer** shall be imputed to the **Insured Organization**.

Section V. Limit of Liability

- A. The **Insurer** shall be liable to pay one hundred percent (100%) of **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B. **Costs of Defence** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defence** shall serve to reduce the Limit of Liability.
- C. The **Insurer's** liability for all **Loss** shall be the amount shown in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period**, regardless of the time of payment, the number of **Insureds**, or the number of **Claims**.

Section VI. Retention

- A. One Retention shall apply to each and every **Claim**. The **Insured Organization** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention. With respect to Insuring Agreement B.(1), if the **Insured Organization** is permitted or required by the **Insured Organization** agreement, by-laws, certificate of incorporation, or similar document to indemnify the **Insured Persons** for **Loss**, or to advance **Costs of Defence** on their behalf, and does not in fact do so other than for reasons of **Financial Insolvency**, then the **Insurer** shall pay all such **Loss** on behalf of such **Insured Persons** subject to the Retention applicable to Insuring Agreement B.(1) and all terms and conditions of this Policy. For purposes of this paragraph, any partnership agreement, operating agreement, shareholder and/or board of director's resolutions of an **Insured Organization** shall be deemed to provide indemnification and advancement for such **Loss** to the fullest extent permitted or required by the law.

- B. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Interrelated Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.
- C. In the event **Loss** arising from a single **Claim** is subject to more than one Retention, the largest Retention amount set forth in Item 4 of the Declarations shall be the maximum Retention applicable to such **Claim**.

Section VII. Costs of Defence and Settlements

- A. No **Costs of Defence** shall be incurred or settlements made, obligations assumed or liability admitted with respect to any **Claim** without the **Insurer's** written consent, which shall not be unreasonably withheld. The **Insurer** shall not be liable for any **Costs of Defence**, settlement, assumed obligation or admission to which it has not consented. Notwithstanding any of the foregoing, if all **Insureds** are able to dispose of all **Claims** that are subject to one Retention amount (inclusive of **Costs of Defence**) for an amount not exceeding any applicable Retention amount, then the **Insurer's** consent shall not be required for such disposition.
- B. The **Insurer** shall have the right to associate itself in the defence and settlement of any **Claim** that appears reasonably likely to involve this Policy. The **Insurer** may make any investigation it deems appropriate. However, it shall be the duty of the **Insureds**, not the **Insurer**, to defend any **Claim** provided that the **Insureds** shall only retain counsel as is mutually agreed upon with the **Insurer**.
- C. The **Insurer** shall advance on behalf of the **Insureds**, excess of any applicable Retention, covered **Costs of Defence** which the **Insureds** have incurred in connection with covered **Claims** made against them prior to disposition of such **Claims** and within ninety (90) days of receipt and review of the invoices containing such **Insured's Costs of Defence**, provided that to the extent it is finally established that any such **Costs of Defence** are not covered under this Policy, the **Insureds**, severally according to their relative interests, agree to repay the **Insurer** such non-covered **Costs of Defence**. Any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid.
- D. The **Insureds** shall as a condition precedent to their rights under this Policy, give to the **Insurer** all information and cooperation as the **Insurer** may reasonably require and shall do nothing that may hinder the **Insurer's** position or its potential or actual rights of recovery.

Section VIII. Notice of Claim

- A. The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the **Insurer** written notice of any **Claim** made against any **Insureds** as soon as practicable after the **Named Insured's** Chief Financial Officer or General Counsel first becomes aware of such **Claim** but in no event later than: (i) ninety (90) days after the termination of the **Policy Period**; or (ii) the expiration date of the **Discovery Period**, if applicable.
- B. If during the **Policy Period** or **Discovery Period** any **Insureds** become aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against any **Insureds**, and, if such **Wrongful Act** is reported to the **Insurer** during the **Policy Period** or **Discovery Period** in writing with particulars as to the reasons for anticipating such a **Claim**, the nature and dates of the alleged **Wrongful Act**, the alleged injuries or damages sustained, the names of potential claimants, any **Insureds** involved in the alleged **Wrongful Act** and the manner in which the **Insureds** first became aware of the specific **Wrongful Act**, then any **Claim** subsequently arising from such specific **Wrongful Act** duly reported in accordance with this paragraph shall be deemed under this Policy to be a **Claim** made during the **Policy Period** or **Discovery Period**.

- C. All notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, or by email, properly addressed to the appropriate party. Notice to the **Insured(s)** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act(s)** shall be given to the **Insurer** at the following address:

GREAT AMERICAN INSURANCE COMPANY
EXECUTIVE LIABILITY DIVISION
CLAIMS DEPARTMENT
1515 Woodfield Road, Suite 500
Schaumburg, Illinois 60173

Or

By Email: ELDClaims@gaig.com

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

Section IX. General Conditions

A. Cancellation or Non-Renewal

- (1) This Policy may be canceled by the **Named Insured** at any time by written notice to the **Insurer**. In the event the **Named Insured** cancels this Policy for reasons other than the downgrade of the **Insurer's** rating by A.M. Best, the **Insurer** shall retain the customary short rate premium. However, if the **Named Insured** cancels the Policy due to a downgrade of the **Insurer's** rating to below [A-], the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.
- (2) The **Insurer** may cancel this Policy for non-payment of premium by sending not less than ten (10) days notice to the **Named Insured** at its last known address. The **Insurer** may not otherwise cancel this Policy.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Named Insured** with no less than sixty (60) days advance notice thereof.

B. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded or made a third party by any **Insured** or their legal representative in any such **Claim**.

C. Amalgamation, Merger or Acquisition

If, during the **Policy Period**, an **Insured Organization** acquires the assets of another entity other than a **Portfolio Company**, by amalgamation, merger or otherwise, and the acquired assets of such other entity exceed twenty-five percent (25%) of the assets of such **Insured Organization** as of the inception date of the Policy, written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of the transaction, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**.

D. Run-Off Coverage

(1) Acquisition of **Named Insured**

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Named Insured** through the ownership of more than fifty percent (50%) of the voting shares of the **Named Insured**, or the **Named Insured** merges into another entity or consolidates with another entity such that the **Named Insured** is not the surviving entity, then:

- (a) the **Named Insured** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- (b) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- (c) the entire premium for this Policy shall be deemed earned as of the date of such transaction;

provided, however, this condition shall not apply if the transaction is a reorganization or restructuring of security ownership of the **Named Insured** among **Insured Persons**.

(2) Withdrawal, Resignation, Replacement or Substitution of **General Partner**

If, during the **Policy Period**, the **General Partner** of an **Investment Fund** withdraws, resigns, is replaced or is substituted with another entity that is not an **Operating Entity**, then:

- (a) the **Named Insured** must give written notice of such transaction to the **Insurer** within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary; and
- (b) with respect to coverage for such **Investment Fund**, this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction.

(3) Sale of **Portfolio Company**

If before or during the **Policy Period** an organization ceases to be a **Portfolio Company**, coverage with respect to: (i) an **Insured Person** serving in an **Outside Position** of such **Portfolio Company**; or (ii) any **Professional Services** rendered by an **Insured** shall continue until termination of this Policy but only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Portfolio Company**.

An entity ceases to be a **Portfolio Company** when all **Insured Organizations** no longer maintain a financial interest in such entity.

E. Coverage Extensions

(1) Spousal/Domestic Partner Provision

In the event a **Claim** made against an **Insured Person**, which is otherwise within the coverage afforded by this Policy, also includes a **Claim** against such **Insured Person's** lawful spouse or **Domestic Partner** solely by reason of (a) such spousal or **Domestic Partner** status, or (b) such spouse or **Domestic Partner's** ownership interest in property or assets that are sought as recovery for **Wrongful Acts**, then any and all **Loss** for which such spouse or **Domestic Partner** becomes legally obligated to pay on account of such **Claim** shall be deemed **Loss** which such **Insured Person** of the spouse or **Domestic Partner** becomes legally obligated to pay as a result of the **Claim** made against such **Insured Person**.

All terms and conditions of this Policy, including the Retention, applicable to **Loss** sustained by such **Insured Person** in the **Claim** shall also apply to loss sustained by such spouse or **Domestic Partner**. The extension of coverage afforded by this Section IX.E. shall only apply to the extent the **Claim** arises out of any actual or alleged **Wrongful Act** of an **Insured Person**.

(2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Insured Persons** is deemed to include individuals who serve in equivalent positions in foreign **Operating Entities**.

(3) Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Persons** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Persons**.

F. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Insured Organization** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Persons** or the **Insured Organization**.

G. Allocation

If both **Loss** covered under this Policy and **Loss** not covered under this Policy are incurred in connection with any **Claim**, the **Insured Person(s)**, the **Insured Organization** and the **Insurer** shall use their best 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 an allocation of **Loss**, the **Insurer** shall advance, on a current basis, **Costs of Defence** allocated to covered **Loss**. If there can be no agreement on an allocation of **Loss**:

- (1) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (2) the **Insurer** shall advance on a current basis **Costs of Defence** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and

- (3) the **Insurer**, if requested by the **Insured Persons** and/or the **Insured Organization**, shall submit such dispute to binding arbitration. The rules of the Arbitration Act, 1991, S.O. 1991, c. 17, or such similar applicable provincial legislation shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Persons** and/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 **Costs of Defence** on account of a **Claim** shall be applied retroactively to all **Costs of Defence** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Costs of Defence** 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**.

H. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

I. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

J. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Proposal Forms** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

K. Named Insured Represents Insured

By acceptance of this Policy, the **Named Insured** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

L. Representative of the Insurer

Great American Insurance Company, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

M. Order of Payments

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

- (1) first, pay **Loss** for which coverage is provided under Insuring Agreement A of this Policy; then
- (2) only after payment of **Loss** has been made pursuant to Insuring Agreement A of this Policy, with respect to whatever remaining amount of the Limit of Liability is available after such payment, the **Insurer** shall pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements in Section I of this Policy.

The **Financial Insolvency** of any **Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Policy.

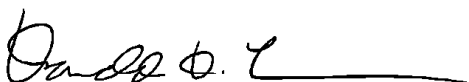
N. Representations and Severability

It is agreed by the **Insureds** that the particulars and statements contained in the **Proposal Form** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto), are the basis of this Policy and are to be considered as incorporated in and constituting a part of the Policy. It is further understood and agreed by the **Insureds** that the statements in the **Proposal Form** or in any information provided therewith are their representations, and that this Policy is issued in reliance upon the truth of such representations. In the event any of the statements, representations or information in the **Proposal Form** and/or any information provided therewith (hereafter referred to as "Facts"), are not true and accurate:

- (1) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement A. of this Policy with respect to any **Insured Persons** who had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the **Proposal Form**, whether or not such **Insured Person** knew of such disclosure in the **Proposal Form**. The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** for the purposes of determining coverage under Insuring Agreement A;
- (2) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement B.1. of this Policy to the extent an **Insured Organization** indemnifies any **Insured Person** who had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the **Proposal Form**, whether or not such **Insured Person** knew of such disclosure in the **Proposal Form**. For purposes of this paragraph (2), knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**;
- (3) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement B.2. of this Policy if the person(s) who signed the **Proposal Form** for this coverage or any **Insured Person** who is or was a past, present or future **Executive Officer** of the **Named Insured** had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the **Proposal Form**, whether or not such **Insured Person** knew of such disclosure in the **Proposal Form**;
- (4) There shall be no coverage for any **Claims** made pursuant to Insuring Agreement C. of this Policy with respect to any **Insured Persons** who had knowledge, as of the effective date of the **Policy Period**, of any Facts that were not truthfully and accurately disclosed in the **Proposal Form**, whether or not such **Insured Person** knew of such disclosure in the **Proposal Form**. The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** for the purposes of determining coverage under Insuring Agreement C.; and
- (5) Solely with respect to Insuring Agreement A, under no circumstances shall the **Insurer** be entitled to rescind such coverage.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE COMPANY®



President



Secretary