# DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART

## I. INSURING AGREEMENTS

### (A) Insured Person Liability

The Insurer shall pay **Loss** on behalf of the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**, except for **Loss** that an **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.

### (B) Corporate Reimbursement

The Insurer shall pay **Loss** on behalf of an **Insured Entity** that such **Insured Entity** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

### (C) Entity Liability (Elective)

If Entity Liability Coverage is included in ITEM 5 of the Declarations, the Insurer shall pay **Loss** on behalf of an **Insured Entity** resulting from an **Entity Claim** first made against such **Insured Entity** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by an **Insured Entity.**

This Insuring Agreement shall be subject to the Entity Liability Coverage Retention and Prior or Pending Date in ITEM 5 of the Declarations.

### (D) Derivative Demands

The Insurer shall pay **Investigation Costs** on behalf of an **Insured Entity** that such **Insured Entity** incurs resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to a Sub-limit of Liability of $500,000. Such Sub-limit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sub-limit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Retention shall apply to this Insuring Agreement.

## II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

- **"Claim"** means any:

  **(1) Insured Person Claim**;

  **(2) Entity Claim**;

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**(3) Derivative Demand.**

- **"Damages"** means the amounts, other than **Defense Costs**, that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including:

  **(1)** compensatory damages;

  **(2)** settlement amounts;

  **(3)** pre- and post-judgment interest;

  **(4)** costs awarded pursuant to judgments;

  **(5)** regarding Insuring Agreement (D), **Investigation Costs;**

  **(6)** punitive and exemplary damages;

  **(7)** the multiple portion of any multiplied damage award; or

  **(8)** where permissible by law, and notwithstanding sub-paragraph (a) below, civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-2(g)(2)(B)).

  However, **Damages** shall not include:

  **(a)** taxes, fines or penalties imposed by law, including, without limitation, **Data Privacy Regulatory Expenses**;

  **(b)** non-monetary relief;

  **(c)** any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive and exemplary damages, or the multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages; or

  **(d) Notification and Credit Monitoring Expenses**.

- **"Data Privacy Event"** means any **Insured Entity's** negligent and improper dissemination of **Nonpublic Personal Information.**

- **"Data Privacy Laws"** means any U.S. federal, state, territorial and local statutes and regulations governing the confidentiality, control and use of **Nonpublic Personal Information** including but not limited to:

  **(1)** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA");

  **(2)** Gramm-Leach-Bliley of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999;

  **(3)** State privacy protection laws, including but not limited to the California Database Protection Act of 2003 (Cal. SB 1386) and Cal.Civ.Code § 1798.82, that require commercial internet sites or on-line services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and

adopt specific privacy controls or to notify those impacted by identity or data thief, abuse or misuse;

**(4)** Federal and state consumer credit reporting laws, including but not limited to the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA); or

**(5)** The Fair and Accurate Credit Transaction Act of 2003 (FACTA).

However, **Data Privacy Laws** shall not include any foreign law, regulation or statute.

- **"Data Privacy Regulatory Expenses"** means fines or penalties incurred by an **Insured Entity** and assessed pursuant to a **Data Privacy Laws** in a **Data Privacy Regulatory Proceeding**.

- **"Data Privacy Regulatory Proceeding"** means a civil, formal administrative or formal regulatory proceeding against an **Insured** by a U.S. federal, state or local governmental authority alleging violation of any **Data Privacy Laws.**
- **"Derivative Action"** means any civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** made on behalf of, or in the name or the right of, an **Insured Entity** by any security holders of such **Insured Entity**, in their capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Manager.**

- **"Derivative Demand"** means any written demand by any security holders of an **Insured Entity**, in their capacity as such, upon the board of directors or managers of such **Insured Entity** to bring a civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** if such demand is made without the assistance, participation or solicitation of any **Manager**. A **Derivative Demand** shall be deemed commenced by the receipt of such demand.

- **"Entity Claim"** means any:

  **(1)** written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand;

  **(2)** civil proceeding, including an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or

  **(3)** criminal proceeding commenced by the return of an indictment, or formal administrative or regulatory proceeding commenced by the filing of a notice of charges, or similar document;

  against an **Insured Entity**.

  **Entity Claim** also means a written request to an **Insured Entity** to toll or waive a statute of limitations regarding a potential **Entity Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

- **"Insured Person"** means any:

  **(1) Manager**; or

  **(2) Employee.**

- **"Insured Person Claim"** means any:

  **(1)** written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand against an **Insured Person**;

  **(2)** civil proceeding, including an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading against an **Insured Person**;

  **(3)** criminal proceeding commenced by the return of an indictment, or formal administrative or regulatory proceeding commenced by the filing of a notice of charges, or similar document against an **Insured Person**; or

  **(4)** formal civil, criminal, administrative or regulatory investigation of an **Insured Person** in which such **Insured Person** is being investigated pursuant to a Wells Notice, target letter (within the meaning of Title 9, §11.151 of the U.S. Attorney's Manual), subpoena or similar document, as someone against whom a proceeding as set forth above may be brought.

  **Insured Person Claim** also means a written request to an **Insured Person** to toll or waive a statute of limitations regarding a potential **Insured Person Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

  Solely with regard to coverage provided under Insuring Agreement A, "**Insured Person Claim**" also means the service of a subpoena or other similar written request upon an **Insured Person** requiring the **Insured Person** to provide testimony or documents in connection with a covered **Claim**. However, in such situation the Insurer shall pay the **Defense Costs** which are incurred solely by the **Insured Person** who receives such subpoena or written request.

- **"Insured(s)"** means any:

  **(1) Insured Entity**; or

  **(2) Insured Person**.

- **"Investigation Costs"** means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand** by an **Insured Entity**, including its board of directors, board of managers, or any committee thereof, provided that **Investigation Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds.**

- **"Nonpublic Personal Information"** means a natural person's first name and last name in combination with any one or more of the following:

  **(1)** social security number;

  **(2)** medical or healthcare information or data;

  **(3)** drivers license number or state identification number; or

  **(4)** financial account information that would permit access to that individual's financial account.

- **"Notice Manager"** means the natural persons in the offices of the chief executive officer, chief financial officer, general counsel, risk manager or any equivalent position to the foregoing, of an **Insured Entity**.

- **"Notification and Credit Monitoring Expenses"** means the amount of reasonable and necessary expenses incurred by the **Insured Entity:**

  **(1)** to notify its customers or clients of a **Data Privacy Event** to comply with **Notification Laws;**

  **(2)** for credit monitoring services offered by the **Insured Entity** to individuals after a **Data Privacy Event** to comply with **Notification Laws**; or

  **(3)** to provide courtesy notifications to individuals when such notifications are not mandated by **Notification Laws** but are reasonably necessary to preserve the reputation and good name of the **Insured Entity**.

- **"Notification Laws"** means any U.S. statute or regulation that, at the time of a **Data Privacy Event**, requires an **Insured Entity** storing **Nonpublic Personal Information** on a computer system to provide notice to specified individuals of any actual or potential **Data Privacy Event**. However, **Notification Laws** shall not include any foreign law, regulation or statute.

- **"Outside Capacity"** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of an **Insured Entity**.

- **"Outside Entity"** means any:

  **(1)** not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986,

  **(2)** entity organized for a religious or charitable purpose under any not-for-profit statute, or

  **(3)** entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy,

  that is not an **Insured Entity**.

- **"Sarbanes-Oxley Whistle-blowing"** means the lawful act of a **Manager**, in which such Manager provides information, causes information to be provided, or otherwise assists in an investigation regarding any conduct which the **Manager** reasonably believes constitutes a violation of:

  **(1)** any rule or regulation of the Securities and Exchange Commission, or

  **(2)** any provision of Federal, state or foreign law relating to fraud against shareholders, when the information or assistance is provided to, or the investigation is conducted by:

    **(a)** a Federal, state or foreign regulatory or law enforcement agency;

    **(b)** any Member of Congress or any committee of Congress; or

**(c)** a person with supervisory authority over the **Manager** (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).

- **"Wrongful Act"** means any actual or alleged:

  **(1)** error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed by an **Insured Person** in their capacity as such or in their **Outside Capacity,** or, with regard to Insuring Agreement (C) an **Insured Entity**; or

  **(2)** matter claimed against an **Insured Person,** solely by reason of their serving in such capacity, including service in an **Outside Capacity.**

## III. COVERAGE EXTENSIONS

### (A) OUTSIDE DIRECTORSHIP LIABILITY

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage is afforded for **Loss** resulting from any **Insured Person Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer's Limit of Liability available under this Policy for such **Claim**.

### (B) DATA PRIVACY EVENT EXPENSE COVERAGES

If the **Insured Entity** has a **Data Privacy Event** which first occurs during the **Policy Period** and, as conditions precedent, (i) notifies the Insurer in writing of such **Data Privacy Event** within 30 days of its first occurrence and (ii) at all times endeavors to use its best efforts to mitigate the effect and duration of such **Data Privacy Event**, then, subject to the Insurer's prior written consent, such consent not to be unreasonably withheld, the Insurer shall reimburse the **Insured Entity** for **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses** resulting from such **Data Privacy Event**, subject to the following additional terms and conditions:

**(1)** All **Data Privacy Events** that have as a common nexus any fact, circumstance, situation, event, transaction, goal, motive, methodology, or cause or series of causally connected facts, circumstances, situations, events, transactions, goals, motives, methodologies or causes are deemed one **Data Privacy Event** first occurring on the date of the first such dissemination of **Nonpublic Personal Information.**

**(2)** All exclusions applicable to **Loss** under this **Liability Coverage Part**, other than exclusion V.(A)(7), also apply to any **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses**.

**(3)** Coverage provided by this extension shall be subject to an aggregate Sub-limit of $50,000. Such Sub-limit shall be the maximum aggregate amount that the Insurer shall pay under this **Liability Coverage Part** for all **Data Privacy Regulatory Expenses** and **Notification and Credit Monitoring Expenses** from all **Data Privacy Events**. Such sub-limit shall be part of, and not in addition to, the Aggregate Limit of Liability applicable to this **Liability Coverage Part**.

**(4)** No retention applies to the coverage provided by this extension.

## IV. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not pay **Loss**:

**(A)** for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use or diminution of value thereof;

**(B)** in connection with any **Claim** based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in ITEM 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;

**(C)** in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance, situation or **Wrongful Act** that, before the Inception Date in ITEM 3 of the Declarations, was the subject of any notice given under any other directors and officers, management liability, or similar insurance policy;

**(D)** in connection with any **Claim** based upon, arising from, or in any way related to any:

**(1)** actual or alleged discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or

**(2)** direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

provided, however, that this exclusion shall not apply to **Loss** otherwise covered under Insuring Agreement A or to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand**.

**(E)** in connection with any **Claim** based upon, arising from, or in any way related to any:

**(1)** claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits or social security benefits;

**(2)** actual or alleged violation of the Equal Pay Act, Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, or any similar law; or

**(3)** any **Wage and Hour Violation;**

provided, however, that this exclusion shall not apply to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand.**

**(F)** in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:

**(1)** malfunction of any product, or failure of any product to perform in any manner as a result of any deficiency, inadequacy, unfitness, defect or dangerous condition in any

product or in its design or manufacture; or

**(2)** rendering of, or failure to render, any services for or on behalf of others for a fee, including, without limitation, services performed by or on behalf of the **Insureds** for or on behalf of a customer or client;

provided, however, that this exclusion shall not apply to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or (ii) a **Derivative Action** or a **Derivative Demand.**

**(G)** for any actual or alleged violation of **ERISA** or any similar law;

**(H)** in connection with any **Claim** brought or maintained by or on behalf of any **Insureds** (in any capacity) or any security holder of an **Insured Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from:

**(1)** a civil proceeding by a security holder of an **Insured Entity**, in their capacity as such, that is brought and maintained without the solicitation, assistance, or active participation of any **Insured Entity** or **Manager**; or

**(2)** a **Derivative Action** or a **Derivative Demand**;

Note: **Sarbanes-Oxley Whistle-blowing** alone shall not be deemed solicitation, assistance or participation for purposes of paragraphs (1) and (2) above.

**(3)** an **Insured Person Claim** by or on behalf of an **Employee** who is not a past or present **Manager** if such **Claim** is made without the assistance, participation or solicitation of any **Manager**;

**(4)** an **Insured Person Claim** by or on behalf of a **Manager** for wrongful termination of such **Manager**;

**(5)** a civil proceeding by or on behalf of a former **Manager** who has not served in such capacity for at least one year prior to such **Claim** being made, provided that such **Claim** is made without the assistance, participation or solicitation of any current **Manager** or any former **Manager** who has served in such capacity during the one year prior to such **Claim** being made;

**(6)** a civil proceeding by or on behalf of an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;

**(7)** an **Insured Person Claim** brought and maintained in a jurisdiction outside the United States of America, Canada, Australia or any other common law country (including territories thereof) by a **Manager** due to a pleading requirement of such jurisdiction; or

**(8)** a civil proceeding by any bankruptcy trustee, examiner, receiver, liquidator, creditor(s) committee of the **Insured Entity** or rehabilitator (or any assignee thereof) after such bankruptcy trustee, examiner, receiver, liquidator or rehabilitator has been appointed;

**(I)** of an **Insured Person** based upon, arising from, or in any way related to such **Insured Person's** service, at any time, as a director, officer, trustee, regent, governor or equivalent executive or as

an employee of any entity other than an **Insured Entity** even if such service is at the direction or request of such **Insured Entity,** provided that this exclusion shall not apply to coverage afforded under Section III. of this **Liability Coverage Part** for a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity;**

**(J)** in connection with any **Claim** by or on behalf of any **Outside Entity** upon which an **Insured Person** is serving or has served in an **Outside Capacity**, or any past or present director, officer, trustee, regent, governor or equivalent executive of such **Outside Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from:

**(1)** a derivative action made on behalf of an **Outside Entity** by any persons who are not:

**(a)** **Insured Persons**; or

**(b)** directors, officers, trustees, regents, governors or equivalent executives of the **Outside Entity**,

and who make such **Claim** without the solicitation, assistance or participation of any such persons; or

**(2)** a civil proceeding brought and maintained by any:

**(a)** **Insured Persons**; or

**(b)** directors, officers, trustees, regents, governors or equivalent executives of an **Outside Entity**,

for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;

**(K)** in connection with any **Claim** based upon, arising from, or in any way related to any public listing or offering of securities of an **Insured Entity** or the purchase or sale of such securities subsequent to such public listing or offering; provided that this exclusion shall not apply to that portion of **Loss** directly resulting from:

**(1)** a **Wrongful Act** in any private placement of an **Insured Entity's** securities exempted from the registration requirements of the Securities Act of 1933, including such securities exempted pursuant to Title III - CROWDFUNDING of the Jumpstart Our Business Startups Act ("JOBS Act");

**(2)** a civil proceeding brought and maintained by any security holders of an **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of such **Insured Entity**; or

**(3)** a **Wrongful Act** relating to the **Insured Entity's** preparation for any public offering, including any presentations made by the **Insured Entity** and its **Managers** via any medium in connection with such offering, if such public offering does not occur.

**(L)** of an **Insured,** based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled if a judgment or other non-appealable final adjudication establishes that such a gain did occur; or

**(M)** of an **Insured**, based upon, arising from, or in any way related to any criminal or deliberately fraudulent act or omission or any willful violation of law by such Insured if a judgment or other

non-appealable final adjudication establishes such an act, omission or violation; provided, however, that this exclusion shall only apply to **Insured Entities** under Insuring Agreement (C), if elected, if a past or present chief executive officer, chief financial officer, general counsel or any position equivalent to the foregoing of the **Named Entity** committed such an act, omission or willful violation.

Regarding exclusions (L) and (M) above: The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured**.

## V. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (C)

**(A)** The Insurer shall not pay **Loss** under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:

**(1)** liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;

**(2)** employment-related **Wrongful Act**;

**(3)** discrimination or sexual harassment;

**(4)** false arrest or imprisonment, abuse of process, malicious prosecution, defamation (including libel and slander), invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium;

**(5)** price fixing, restraint of trade, monopolization, or violation of the Sherman Antitrust Act, Clayton Act, or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities; provided, however, this exclusion shall not apply to **Defense Costs** incurred to defend such allegations up to a maximum of the lesser of (i) the remaining amount of the applicable limit of liability listed on the Declarations or (ii) $1,000,000;

In the event that the Defense Outside the Limit of Liability option in ITEM 5 of the Declarations is selected, **Defense Costs** for all such **Claims** shall be limited to the lesser of (i) the remaining **Defense Costs** available pursuant to Section V.(B) of the COMMON TERMS AND CONDITIONS of this Policy or (ii) $1,000,000.

**(6)** infringement, dilution or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property; provided, however that this exclusion shall not apply to the portion of **Loss** directly resulting from:

**(a)** a civil proceeding brought and maintained by a security holder(s) of an **Insured Entity,** in their capacity as such; or

**(b)** a **Derivative Action** or a **Derivative Demand**; or

**(7)** unfair trade practices or any violation of the Federal Trade Commission Act or any similar law.

**(B)** The Insurer shall not pay **Loss** under Insuring Agreement C for any **Claim** based upon, arising from, or in any way related to the actual or alleged payment by an **Insured Entity** of inadequate consideration in connection with an **Insured Entity's** purchase of securities issued by any **Insured Entity;** provided, however, that this exclusion shall not apply to the portion of **Loss** representing **Defense Costs** incurred to defend such allegations.

## VI. ADDITIONAL LIMIT OF LIABILITY FOR CLAIMS AGAINST MANAGERS

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, an additional Limit of Liability of $1,000,000 shall be available for **Loss** resulting from **Insured Person Claims** against **Managers**, provided that:

**(A)** such **Claims** are covered under Insuring Agreement A;

**(B)** such additional Limit of Liability shall be excess of all other insurance available to pay **Loss** for such **Claims**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be exhausted prior to this additional Limit of Liability becoming available to pay **Loss**; and

**(C)** such additional Limit of Liability shall be available for the second covered **Claim** made during the **Policy Period** and all subsequent **Claims**. This Limit of Liability shall not be provided for the first **Claim** made for which coverage is provided under this Policy. The first **Claim** made for which coverage is provided under this Policy shall be determined by the chronological time such **Claim** was made regardless of when coverage is acknowledged by the Insurer for such **Claim**.

The additional Limit of Liability described above shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under this provision.

## VII. SECURITIES OFFERINGS

If any public offering of an **Insured Entity's** securities occurs during the **Policy Period** that is not exempt from registration under the Securities Act of 1933, the Insurer shall furnish the **Insureds** with a quote for insurance coverage of such offering, provided that:

**(A)** at least 30 days prior to the effective date of such offering, the **Insureds** shall give the Insurer written notice of such offering together with all information requested by the Insurer;

**(B)** such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its absolute discretion, chooses;

**(C)** any coverage provided shall be on such forms as are in use by the Insurer for public companies at the time of such offering; and

**(D)** if the **Insureds** choose to cancel this Policy to accept a coverage form offered in such quote, unearned premium for this Policy shall be calculated on a pro rata basis.

## VIII. ORDER OF LOSS PAYMENTS

**(A)** If **Loss** is incurred that is acknowledged by the Insurer to be covered under this **Liability Coverage Part,** except that such **Loss** exceeds the remaining available Limit of Liability for this **Liability Coverage Part**, the Insurer shall first pay **Loss** covered under Insuring Agreement A prior to paying **Loss** under any other Insuring Agreements.

**(B)** If **Loss** is incurred that is acknowledged by the Insurer to be covered under any Insuring Agreement other than Insuring Agreement A, the **Named Entity** shall have the right to direct the Insurer to delay payment of such **Loss** until such time as the **Named Entity** specifies. Any such direction by the **Named Entity** to delay or make payment of **Loss** shall be by written notice to the Insurer. Any such delayed payment of **Loss** shall be available to the

Insurer to pay **Loss** covered under Insuring Agreement A. Any payment of **Loss** under Insuring Agreement A out of funds withheld by the Insurer pursuant to this provision shall terminate the Insurer's liability to make a delayed payment of **Loss** under any Insuring Agreement other than A by the amount of the payment under Insuring Agreement A. No interest shall be due regarding any delayed payment of **Loss**. Nothing in this provision shall increase the Insurer's Limit of Liability applicable to this **Liability Coverage Part**.

## IX. RETENTION WAIVER

No Retention shall apply to **Defense Costs** incurred in connection with a **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Retention otherwise applicable to such **Claim**, if a:

**(A)** final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or

**(B)** complete and final settlement with prejudice;

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.

## X. NOTICE OF CLAIM

**(A)** As a condition precedent to coverage under this **Liability Coverage Part**, the **Insureds** shall give the Insurer written notice of any **Claim** as soon as practicable after a **Notice Manager** becomes aware of such **Claim**, but in no event later than:

**(1)** if this Policy expires or is otherwise terminated without being renewed with the Insurer, ninety (90) days after the effective date of said expiration or termination; or

**(2)** the expiration of the Extended Reporting Period, if applicable;

provided, however, that if the Policy is cancelled for non payment of premium, the **Insured** will give the Insurer written notice of such **Claim** prior to the effective date of cancellation.

**(B)** If during the **Policy Period** the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim,** and if written notice of such **Wrongful Act** is given to the Insurer during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice.