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In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

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## I. INSURING CLAUSES

### Insuring Clause (A): Individual Non-Indemnified Liability Coverage

- (A) The Company shall pay, on behalf of an **Insured Person**, **Loss** on account of a **Claim** first made against the **Insured Person** during the **Policy Period**, or the Extended Reporting Period if applicable, to the extent that such **Loss** is not indemnified by an **Organization**.

### Insuring Clause (B): Individual Indemnified Liability Coverage

- (B) The Company shall pay, on behalf of an **Organization**, **Loss** on account of a **Claim** first made against the **Insured Person** during the **Policy Period**, or the Extended Reporting Period if applicable, to the extent the **Organization** indemnifies the **Insured Person** for such **Loss** as permitted or required by law.
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## II. SUBPOENA DEFENSE COSTS COVERAGE

The Company shall pay **Subpoena Defense Costs** on behalf on an **Insured Person** on account of any **Covered Subpoena** first served during the **Policy Period**, provided that the **Wrongful Act** giving rise to the **Covered Subpoena** has not resulted in a **Claim** against an **Insured Person**, but only if such **Covered Subpoena** is reported to the Company in writing as soon as practicable but in no event later than ninety (90) days after such **Covered Subpoena** is first served. The Company's maximum aggregate limit of liability for such **Subpoena Defense Costs** shall be \$10,000, which shall be part of, not in addition to, the Maximum Aggregate Limit of Liability for this Coverage Part set forth in Item 2 of the ELL Declarations.

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## III. DEFINITIONS

For purposes of this Coverage Part:

### Application means:

- (A) any portion of an application given to the Company for this Policy, including any attachments, written information or materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part; and
- (B) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

### Claim means any:

- (A) written demand first received by an **Insured Person** for monetary or non-monetary relief, including injunctive relief;
- (B) civil proceeding commenced by the service of a complaint or similar pleading;
- (C) criminal proceeding commenced by: (1) an arrest; or (2) a return of an indictment, information or similar document;
- (D) formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
- (E) arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document; or



- (F) official request for **Extradition**,  
against an **Insured Person** for a **Wrongful Act**, including any appeal therefrom;
- (G) judicial, administrative, bar association or other proceeding against an **Employed Lawyer** which concerns the eligibility or license of such **Employed Lawyer** to practice law;
- (H) civil, criminal, administrative or regulatory investigation or interview of an **Employed Lawyer** for a **Wrongful Act** once such **Employed Lawyer** is identified in writing by any investigative authority as a target of such investigation or interview, including when such **Employed Lawyer** is served with a target letter or similar document; or
- (I) written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in Subsections (A) through (H) above.

**Covered Subpoena** means a subpoena seeking documents, testimony or information solely in connection with an **Insured Person's Wrongful Act**.

**Defense Costs** means **Subpoena Defense Costs** and that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of an **Insured Person**, **Executive** or employee of an **Organization**) incurred in investigating, defending, opposing or appealing any **Claim** and the premium for appeal, attachment or similar bonds.

**Employed Lawyer** means any person admitted to practice law anywhere in the world who is, was or becomes a full-time or part-time employee of an **Organization** for the purpose of providing legal services to the **Organization**.

**ERISA** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996), the English Pension Scheme Act 1993 or the English Pensions Act 1995; all as amended; any similar statutory or common law anywhere in the world; or any rule or regulation promulgated under any such Act or law.

**Executive** means any natural person who is, was or will be:

- (A) a duly elected or appointed director, officer, member of the Advisory Board or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; (2) member of the Advisory Board; or (3) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described above in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

**Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

**Financial Impairment** means the status of an **Organization** resulting from:

- (A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (B) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country,

provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Organization**, or other party determined to have standing, for authorization of the **Organization** to indemnify an **Insured Person** for **Loss**; provided further that, the Company may, in its sole discretion, waive the foregoing requirement.



**First Inception Date** means the inception date of the first Employed Lawyers Professional Liability policy or coverage part issued by the Company and continuously renewed by the Company until the inception date of this current Policy.

**Independent Contractor Attorney** means any person admitted to practice law who provides legal services to an **Organization**, is indemnified by the **Organization** under an independent contractor services agreement, and is not employed by a law firm.

**Insured** means any **Organization** and any **Insured Person**.

**Insured Person** means any:

- (A) **Employed Lawyer**;
- (B) **Legal Assistant**;
- (C) person who is, was or becomes a full-time or part-time employee of an **Organization** whose duties include serving as a notary public, but only while acting in his or her capacity as a notary public under the supervision of an **Employed Lawyer**;
- (D) **Temporary Attorney**;
- (E) **Independent Contractor Attorney**; and
- (F) a holder of an equivalent position to Subsections (A), (B) or (C) above in any **Organization** incorporated, formed or organized anywhere in the world,

provided that **Insured Person** shall not include any **Secondment Attorney**.

**Legal Assistant** means any person who is, was or becomes a full-time or part-time employee of an **Organization** who supports an **Employed Lawyer** in the performance of **Professional Services**.

**Loss** means the amount which any **Insured Person** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages;
- (C) civil penalties assessed against an **Employed Lawyer** pursuant to 15 U.S.C. §78dd-2(g)(2)(B) (the Foreign Corrupt Practices Act), if and to the extent such penalties are insurable under the law of the jurisdiction in which such penalties are assessed;
- (D) judgments, including pre-judgment and post-judgment interest;
- (E) settlements; and
- (F) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax, fine, sanction or penalty imposed by law; except as provided in Subsections (B) and (C) above with respect to punitive, exemplary or multiplied damages or civil penalties;
- (4) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim**, other than **Subpoena Defense Costs**, even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding or demand subsequently gives rise to a **Claim**;



- (5) amount that represents or is substantially equivalent to an increase in the consideration paid (or proposed to be paid) by an **Organization** in connection with its purchase of any securities or assets;
- (6) any salary, wages, commissions, benefits or monetary payments owed to any **Insured Person**, **Executive**, or employee of an **Organization**; or
- (7) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

**Moonlighting Legal Services** means legal services performed by an **Employed Lawyer** for others outside the scope of his or her employment with an **Organization**, including legal services rendered to an **Executive** or employee of the **Organization**, solely while such **Employed Lawyer** is a full-time or part-time employee of the **Organization**, provided that **Moonlighting Legal Services** shall not include such services performed by an **Employed Lawyer**: (A) in his or her capacity as an owner, principal, partner, director, officer, member, manager, employee or any equivalent position of an entity that is not the **Organization**; or (B) in connection with a trust or estate when such **Employed Lawyer** is also a beneficiary of such trust or estate.

**Personal Injury** means:

- (A) libel, slander, product disparagement, trade libel or other form of defamation;
- (B) invasion or infringement of the right of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness;
- (C) malicious prosecution or abuse of process;
- (D) false arrest, detention or imprisonment; or
- (E) wrongful entry or eviction, or other invasion of the right of private occupancy.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Professional Services** means:

- (A) legal services and notary public services, rendered to an **Organization** by an **Employed Lawyer** solely while acting in his or her capacity as such;
- (B) legal services and notary public services, rendered to an **Organization** by an **Independent Contractor Attorney**, **Temporary Attorney** or **Legal Assistant** solely while acting: (1) in his or her capacity as such; and (2) under the supervision and direction of an **Employed Lawyer**;
- (C) **Moonlighting Legal Services**; or
- (D) pro bono legal services rendered by an **Employed Lawyer** without compensation to indigent clients or for non-profit public interest groups solely while such **Employed Lawyer** is a full-time or part-time employee of an **Organization**.

**Secondment Attorney** means any person admitted to practice law anywhere in the world employed by an outside law firm and temporarily assigned by agreement between such law firm and an **Organization** to provide legal services.

**Subpoena Defense Costs** means reasonable attorneys fees incurred in connection with a **Covered Subpoena** including: (A) seeking to quash or modify a subpoena, (B) opposing any motion to enforce a subpoena against an **Insured Person**; and (C) representation of an **Insured Person** during the document production, witness preparation, and giving of testimony in connection with such subpoena.

**Temporary Attorney** means any person admitted to practice law anywhere in the world provided by a temporary employment agency through a service agreement between an **Organization** and the temporary employment agency to provide legal services to the **Organization**, but only if the **Organization** agrees in writing no later than thirty (30) days after a **Claim** is reported in accordance with Section V, Reporting, to indemnify the **Temporary Attorney** for **Loss** arising out of such **Claim**.



**Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or **Personal Injury** committed, attempted, or allegedly committed or attempted solely in the performance of or failure to perform **Professional Services** by an **Insured Person** while acting in his or her capacity as such.

#### IV. EXCLUSIONS

The Company shall not be liable for **Loss** on account of any **Claim**:

- (A) Prior Notice  
based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the GTC Declarations, was the subject of any notice accepted under any policy or coverage part of which this Coverage Part is a direct or indirect renewal or replacement;
- (B) Pending or Prior Proceedings  
based upon, arising from or in consequence of any written demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured Person**, on or prior to the Pending or Prior Proceedings Date set forth in Item 4 of the ELL Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (C) Bodily Injury/Property Damage  
for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (C) shall not apply to **Loss** for any mental anguish or emotional distress or humiliation resulting from **Personal Injury**;
- (D) Pollution  
based upon, arising from or in consequence of any:
- (1) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
  - (2) treatment, removal or disposal of any **Pollutants**; or
  - (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,
- including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (D), provided that this Exclusion (D) shall not apply to **Loss** which an **Insured Person** becomes legally obligated to pay and for which such **Insured Person** is not indemnified by an **Organization** either because the **Organization** is not permitted by common or statutory law to grant such indemnification or because of the **Financial Impairment** of the **Organization**, provided that this exception shall only apply to **Claims** first made during the **Policy Period** or the Extended Reporting Period, if applicable;
- (E) ERISA  
for any violation of the responsibilities, obligations or duties imposed by **ERISA**, provided that this Exclusion (E) shall not apply to **Loss** arising out of the performance of **Professional Services** rendered to a fiduciary of a plan sponsored by an **Organization** for the benefit of the employees and **Executives** of the **Organization**;
- (F) Prior Knowledge  
based upon, arising from or in consequence of any **Wrongful Act** first committed before the **First Inception Date**, if, on or before such date, any **Insured Person** knew or could have reasonably foreseen that such **Wrongful Act** did or could result in a **Claim** against any **Insured**;



(G) Insured v. Insured

- (1) brought by an **Insured Person**, provided that this Exclusion (G)(1) shall not apply to a **Claim**:
- (a) for contribution or indemnity arising from another **Claim** otherwise covered under this Coverage Part;
  - (b) brought by any **Insured Person** who has ceased serving in his or her capacity as an **Insured Person** for at least one (1) year; or
  - (c) brought in such **Insured Person's** capacity as a whistleblower as defined under any federal, state, local or foreign law;
- (2) brought by an **Organization**, provided that this Exclusion (G)(2) shall not apply to **Loss** in the event of **Financial Impairment** of the **Organization**.

For all other **Claims** brought by an **Organization**, this Exclusion (G)(2) shall not apply to **Defense Costs**; provided further that the Company's maximum aggregate limit of liability for such **Defense Costs** on account of all such **Claims** shall be equal to eighty percent (80%) of the Maximum Aggregate Limit of Liability stated in Item 2 of the ELL Declarations and shall be part of, not in addition to, such Maximum Aggregate Limit of Liability; or

- (3) brought by any security holder of the **Organization** on behalf of the **Organization** as a derivative action, provided this Exclusion (G)(3) shall not apply to a **Claim** brought without the solicitation, assistance, active participation, or intervention of: (a) the **Organization**; and (b) any **Insured Persons** and **Executives** who are serving or have served in such capacity within the past two (2) years;

(H) Publicly Traded Securities

based upon, arising from or in consequence of (1) any public offering of securities issued by any **Organization**, or (2) the purchase or sale of any publicly traded securities for which the **Organization** is subject to the Securities Act of 1934, provided that this Exclusion (H) shall not apply to **Loss**:

- (a) based upon, arising from or in consequence of an offering, sale or purchase of securities that are not required to be registered under the Securities Act of 1933 or any similar foreign law that regulates the offering, sale or purchase of securities;
- (b) on account of a **Claim** made by any securityholder of an **Organization** for the failure of the **Organization** to undertake or complete the initial public offering or sale of securities of the **Organization**; or
- (c) for any **Wrongful Act** relating to an **Organization's** preparation for any public offering, including any road show presentation to potential investors or other similar presentation, made by the **Organization** and its **Executives** via any medium in connection with such public offering, if such offering does not occur;

(I) Wage and Hour

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Fair Labor Standards Act and the Equal Pay Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices ("Wage and Hour Laws"), provided that this Exclusion (I) shall not apply to **Defense Costs**;

(J) NLRA, WARN, COBRA and OSHA

for any violation of the responsibilities, obligations or duties imposed by the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, provided that this Exclusion (J) shall not apply to **Defense Costs**;



- (K) Employment Practices  
based upon, arising from or in consequence of any employment practice not included in Exclusions (I) and (J) above, including discrimination, harassment, retaliation, breach of employment contract, or wrongful dismissal, discharge or termination; provided that this Exclusion (K) shall not apply to **Loss** for any violation of such employment practice committed by an entity or person, other than an **Employed Lawyer**, to the extent that such employment practice was committed in reliance upon **Professional Services** performed by an **Insured Person**;
- (L) Patent and Trade Secret  
based upon, arising from or in consequence of any infringement of patent, false patent marking, or misappropriation of trade secrets;
- (M) Other Insurance  
for which an **Insured Person** has coverage under any valid and collectible Directors and Officers Liability policy, Employment Practices Liability policy, Errors and Omissions policy, Media Liability policy, Lawyers Professional Liability policy or any similar insurance policy; whether or not the retention or deductible of such policy has been exhausted, and regardless of whether such policy is stated to be primary, contributory, excess, contingent or otherwise. This Exclusion (M) shall not apply to the amount of **Loss** that is in excess of both the amount of any retention or deductible and the limit or remaining limit of liability of such other policy; or
- (N) Notary  
based upon, arising from or in consequence of any **Insured Person** notarizing any signature not made in the presence of such **Insured Person** at that time of such notarization; or
- (O) Conduct  
based upon, arising from or in consequence of:
- (1) any deliberately fraudulent act or omission, or any willful violation of any statute or regulation, by an **Insured Person**, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes such an act or omission or violation; or
  - (2) an **Insured Person** having gained any profit, remuneration or other advantage to which such **Insured Person** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding or action brought by or against the Company) establishes the gaining of such profit, remuneration or advantage,
- provided that no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person**;

## V. REPORTING

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after an **Insured Person** or any person with the responsibility for the management of insurance claims of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
  - (2) the expiration date of the Extended Reporting Period, if applicable,
- provided that if the Company sends written notice to the **Parent Organization**, stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.



- (B) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company, then any **Claim** subsequently arising from such circumstances shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances were first reported to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after an **Insured Person** or any person with the responsibility for the management of insurance claims of an **Organization** becomes aware of such **Claim**.
- (C) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require, and shall include in any notice under Subsections (A) or (B) above of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of the actual or potential claimants, and the manner in which such **Insured** first became aware of the **Claim**, circumstances or alleged **Wrongful Act**.

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#### VI. RETENTION AND PRESUMPTIVE INDEMNIFICATION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is in excess of the applicable Retention set forth in Item 3 of the ELL Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Insuring Clauses within this Coverage Part, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such retentions shall not exceed the largest applicable Retention.
- (D) **Claims** shall be subject to the Retention(s) applicable to the **Policy Year** during which such **Claims** are made or deemed to have been made.
- (E) If an **Organization** fails or refuses, other than for reasons of **Financial Impairment**, to indemnify an **Insured Person** for **Loss** to the fullest extent permitted by statutory or common law, then any payment by the Company of such **Loss** shall be excess of the Insuring Clause (B), Individual Indemnified Liability Coverage, Retention set forth in Item 3 of the ELL Declarations.

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#### VII. DEFENSE AND SETTLEMENT

- (A) The Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) The Company may make any investigation it deems necessary and may, with the consent of the **Insured Persons** against whom a **Claim** is made, make any settlement of any **Claim** it deems appropriate.
- (C) No **Insured** shall settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.
- (D) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the ELL Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the premium shall be deemed fully earned.





- (E) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.
- (F) The Company shall not seek repayment from an **Insured Person** of any **Defense Costs** paid by the Company that are deemed uninsured pursuant to Exclusion IV(O), Conduct, unless the applicable determination standard (whether a final, non-appealable adjudication or other determination standard) set forth in such Exclusion has been met.

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#### VIII. ALLOCATION

- (A) If the **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then such **Insured** and the Company shall allocate such amount between covered **Loss** (including an allocation of **Defense Costs**) and uncovered loss based upon the relative legal exposure of the parties to such matters. The Company shall not be liable under this Policy for the portion of such amount allocated to uncovered loss.
- (B) If such **Insured** and the Company agree on an allocation of **Defense Costs**, then the Company shall pay, on behalf of such **Insured**, **Defense Costs** allocated to covered **Loss**. If such **Insured** and the Company cannot agree on an allocation of **Defense Costs**:
  - (1) no presumption as to allocation of **Loss**, including **Defense Costs**, shall exist in any arbitration, suit or other proceeding;
  - (2) the Company shall pay, on behalf of such **Insured**, **Defense Costs** which the Company believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
  - (3) the Company, if requested by such **Insured**, shall submit the dispute regarding the allocation of **Defense Costs** to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by such **Insured**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

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#### IX. PRIORITY OF PAYMENTS

- (A) In the event of **Loss** arising from a **Claim** for which payment is concurrently due under Insuring Clauses (A), Individual Non-Indemnified Liability Coverage, and (B), Individual Indemnified Liability Coverage, the Company shall:
  - (1) first, pay **Loss** for which coverage is provided under Insuring Clause (A), Individual Non-Indemnified Liability Coverage, then
  - (2) with respect to whatever remaining amount of the Limit of Liability is available after payment under Subsection (A) above, pay such **Loss** for which coverage is provided under Insuring Clause (B), Individual Indemnified Liability Coverage.
- (B) Except as otherwise provided in this Subsection (A) above, the Company may pay covered **Loss** as it becomes due under this Coverage Part without regard to the potential for other future payment obligations under this Coverage Part.



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**X. OTHER INSURANCE**

- (A) If any **Loss** under this Coverage Part is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Coverage Part), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
- (B) Nothing in this Section X shall be construed to limit or impair the operation of Exclusion IV(M), Other Insurance.

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**XI. REPRESENTATIONS AND SEVERABILITY**

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
  - (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
  - (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to any **Insured Person** who knew of such misrepresentations (whether or not such **Insured Person** knew such **Application** contained such misrepresentations) or any **Organization** to the extent it indemnifies any such **Insured Person**.
  - (D) The Company shall not be entitled under any circumstances to rescind this Coverage Part with respect to any **Insured**.
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