

STARR SURPLUS LINES INSURANCE COMPANY

RESOLUTE PORTFOLIOSM

For Private Companies

Directors & Officers Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

- A. The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, except if the **Company** has indemnified the **Insured Person** for such **Loss**.
- B. The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against any **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, if the **Company** has indemnified the **Insured Person** for such **Loss**.
- C. The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against the **Company** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.
- D. The **Insurer** shall reimburse the **Company** for the **Derivative Costs** incurred by the **Company** in response to a **Derivative Demand** first made during the **Policy Period** (or Discovery Period, if applicable) for any **Wrongful Act** of any **Executive**, and reported to the **Insurer** in accordance with the terms of this policy. This Insuring Agreement D. shall apply only if purchased by the **Insured** as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement D. for all **Derivative Costs** arising from all **Derivative Demands**. The Sublimit of Liability for **Derivative Costs** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section. This Insuring Agreement D. shall not provide coverage for any civil proceeding that is based upon or arises from a **Derivative Demand**.

2. DEFINITIONS

- (a) “**Claim**” means any:
 - (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:

- (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 - (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
 - (4) formal civil, criminal, administrative or regulatory investigation of an **Insured Person**, which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying such **Insured Person** as a person against whom a proceeding identified in (2) or (3) above may be commenced;
 - (5) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**; or
 - (6) **Derivative Demand**, solely under Insuring Agreement D. if purchased by the **Insured**.
- (b) **“Derivative Costs”** means the reasonable and necessary fees, costs, charges, or expenses incurred by the **Company**, its board of directors or any committee of its board of directors, solely in response to a **Derivative Demand** and do not include any settlements, judgments or damages, nor any compensation or benefits of any **Insured Persons**, or any overhead expenses of the **Company**. **Derivative Costs** shall be reimbursed by the **Insurer** sixty (60) days after the **Company** provides written notice to the **Insurer** of its final decision not to bring a civil proceeding against an **Executive**.
- (c) **“Derivative Demand”** means a written demand by one or more shareholders of the **Company** upon the **Company’s** board of directors to bring a civil proceeding on behalf of the **Company** against any **Executive** for a **Wrongful Act**.
- (d) **“Employee”** means:
- (1) any person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Company**, other than an **Executive**, but only while that person is acting in the capacity as such;
 - (2) any person leased to the **Company** so long as this person is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** indemnifies such leased person in the same manner as the **Company’s** employees; and
 - (3) any volunteer whose labor and service is engaged and directed by the **Company**, but only while that person is acting in the capacity as such.
- (e) **“Executive”** means any:
- (1) past, present or future duly elected or appointed director, officer, trustee, governor, management committee **Member** or **Member** of the board of managers;
 - (2) past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in item (1) above; or

- (3) past, present or future general counsel and risk manager (or equivalent position) of the **Company**.
- (f) **“Insured”** means the **Company** and any **Insured Person**.
- (g) **“Insured Person(s)”** means any:
 - (1) **Executive**;
 - (2) **Employee**; or
 - (3) **Outside Entity Insured Person**.
- (h) **“Loss”** means:
 - (1) damages, settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive, exemplary or the multiplied portion of any multiple damages awards, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages;
 - (5) **Derivative Costs**, solely under Insuring Agreement D. if purchased by the **Insured**; and
 - (6) **Defense Costs**.

“Loss” does not include:

 - (i) any amounts for which the **Insureds** are not legally liable;
 - (ii) any amounts which are without legal recourse to the **Insureds**;
 - (iii) taxes;
 - (iv) fines and penalties, except as provided for in Definition (h) (4) above;
 - (v) matters which may be deemed uninsurable under applicable law; or
 - (vi) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the **Company**.
- (i) **“Outside Entity”** means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an **Executive** acts as a director, officer, trustee or governor (or the equivalent thereof) at the written request of the **Company**. Any such person shall be referred to herein as an **“Outside Entity Insured Person”**, but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an **Outside Entity**.
- (j) **“Securities Claim”** means a **Claim**, other than an administrative or regulatory proceeding against the **Company** or an investigation of the **Company**, made against any **Insured**:

- (1) alleging a violation of any foreign, federal, state or local regulation, rule or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the **Company**; or
 - (ii) brought by a security holder of the **Company** with respect to such security holder's interest in securities of such **Company**; or
- (2) brought derivatively on behalf of the **Company** by a security holder of such **Company**.

Notwithstanding the foregoing, **Securities Claim** shall include any formal administrative or regulatory proceeding against the **Company**, but only if and only during the time that such proceeding also constitutes a **Securities Claim** commenced and continuously maintained against an **Insured Person**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes uninsurable loss and, subject to all other terms and conditions of this policy, shall deem that portion of such **Loss** as constituting **Loss** under this policy.

- (k) **"Subsidiary"** means any privately-held for-profit entity (except a partnership) of which the **Parent Company**:
- (1) has **Management Control** ("Controlled Entity") before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
 - (2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals less than 25% of the consolidated revenue of the **Parent Company** as of its latest fiscal year; or
 - (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals 25% or more of the consolidated revenue of the **Parent Company** as of its latest fiscal year, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in items (2) and (3) above shall not mean any entity which is a financial institution, including but not limited to a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

"Subsidiary" also means any not-for-profit entity which is under the exclusive control of the **Company**.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the

effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.

(1) “**Wrongful Act(s)**” means:

- (1) with respect to an **Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an **Insured Person** in his or her capacity as such or any matter claimed against an **Insured Person** by reason of such capacity;
- (2) with respect to an **Outside Entity Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by a person in his or her capacity as an **Outside Entity Insured Person** or any matter claimed against such **Outside Entity Insured Person** by reason of such capacity; or
- (3) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**.

3. EXCLUSIONS

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

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration if a final judgment or adjudication establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;
- (b) arising out of, based upon or attributable to any deliberate fraudulent act or any willful violation of law by an **Insured** if a final judgment or adjudication establishes that such act or violation occurred;
- (c) arising out of, based upon or attributable to the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and any amendments thereto or similar provisions of any state statutory law if a final judgment or adjudication establishes that a violation of Section 16(b) occurred;

In determining the applicability of Exclusions (a), (b) and (c), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

- (d) alleging, arising out of, based upon or attributable to any facts or circumstances of which an **Insured Person** had actual knowledge or information of, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, and that he or she reasonably believed may give rise to a **Claim** under this policy;
- (e) based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement, except to the extent that such **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall apply only to any **Claim** under Insuring Agreement C.;

- (f) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (g) alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of any **Insured Person** serving in any capacity other than as an **Executive** or an **Employee** or an **Outside Entity Insured Person**;
- (i) brought by or on behalf of any **Insured**, other than an **Employee**; provided, however, that this exclusion shall not apply to:
 - (i) any **Claim** brought by an **Insured Person** that 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 under the terms of this Coverage Section;
 - (ii) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any **Insured**;
 - (iii) any **Claim** brought by any **Executive** who has not served in such capacity, nor has acted as a consultant to the **Company**, for at least three (3) years prior to the **Claim** being first made;
 - (iv) any **Claim** brought against an **Insured Person** arising out of or based upon any protected activity specified in any “whistleblower” protection pursuant to any foreign, federal, state or local law;
 - (v) any **Claim** brought by any **Executive** of a **Company** formed and operating in a foreign jurisdiction against such **Company** and any **Insured Person** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
 - (vi) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Company** or any assignee of such trustee, examiner, receiver or similar official.
- (j) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**; provided, however, that this exclusion shall not apply to any **Claim** under Insuring Agreement A. or any **Securities Claim**, except for **Loss** constituting **Cleanup Costs**;
- (k) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the

National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law;

- (l) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly any public offering of securities by the **Company** or an **Outside Entity**, or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, that this exclusion shall not apply to:
 - (i) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall be conditioned solely upon the **Company** giving the **Insurer** written notice of any such public offering, including all details thereof, as soon as practicable, but not later than thirty days after the effective date of such offering; or
 - (ii) any public offering of securities, other than an offering described in paragraph (i) above, as well as any purchase or sale of securities subsequent to such public offering. Coverage for such transaction shall be conditioned upon, within thirty days prior to the effective time of such public offering, the **Company**: (a) giving the **Insurer** written notice of such offering, including all details thereof, and any underwriting information required by the **Insurer**; and (b) accepting such terms, conditions and additional premium required by the **Insurer** for such coverage. Coverage provided pursuant to this paragraph is also subject to the **Company** paying such additional premium when due. The **Insurer** shall provide the **Company** with a quote for such coverage if the **Company** gives written notice of the offering as required in this paragraph.
- (m) for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; or which is brought by any securities holder of the **Outside Entity**, whether directly or derivatively, unless such securities holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Outside Entity**, any director, officer, trustee or governor thereof, an **Executive** or the **Company**; provided, however, that this exclusion shall not apply to:
 - (i) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded under the terms of this Coverage Section;
 - (ii) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Outside Entity** or any assignee of such trustee, examiner, receiver or similar official;
 - (iii) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity** who has not served in such capacity, nor acted as a consultant to the **Outside Entity**, for at least three (3) years prior to such **Claim** being first made; or
 - (iv) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity**, formed and operating in a foreign jurisdiction against any **Outside Entity Insured Person** of such **Outside Entity**, provided that such **Claim** is brought and

maintained outside the United States, Canada or any other common law country (including any territories thereof);

- (n) for bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, violation of any right of privacy, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to any **Securities Claim**;
- (o) alleging, arising out of, based upon, or attributable to any actual or alleged: (i) violation of the Foreign Corrupt Practices Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; (ii) payments, commissions, gratuities, benefits or other favors for the direct or indirect benefit of any officials, directors, agents, partners, representatives, principal shareholders, or owners of the **Company** or employees of any customers of the **Company**; or (iii) political contributions;
- (p) alleging, arising out of, based upon, or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim, including but not limited to any wage-hour claim or any third-party discrimination or harassment claim; provided, however, that this exclusion shall not apply to any **Securities Claim**;
- (q) alleging, arising out of, based upon, or attributable to the ownership, management, maintenance, operation and/or control by the **Company** of any captive insurance company or entity, including but not limited to any **Claim** alleging the insolvency or bankruptcy of the **Company** as a result of such ownership, management, maintenance, operation and/or control;
- (r) alleging, arising out of, based upon, or attributable to based upon, arising from, or in consequence of any actual or alleged plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets; provided, however, that this exclusion shall apply only to any **Claim** under Insuring Agreement C.;
- (s) alleging, arising out of, based upon or attributable to the rendering or failure to render any professional service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any **Securities Claim**, but only if such **Securities Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**.

4. ORDER OF PAYMENTS

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

- (1) first, pay **Loss** for which coverage is provided under this Coverage Section for any **Insured Person** under Insuring Agreement A.;
- (2) second, only after payment of **Loss** has been made pursuant to item (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company** under Insuring Agreement B.; and

(3) third, only after payment of **Loss** has been made pursuant to items (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company** under Insuring Agreement C. and D.

5. NON-RESCINDABLE CLAUSE

The **Insurer** irrevocably waives any right it may have to rescind coverage available under Insuring Agreement A. of this Coverage Section, in whole or in part, on any grounds.