

Policy number

Issued to:

By:

PRIVATEEDGE PLUS AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that the policy is amended as follows:

1. Clause 2. **DEFINITIONS** is amended as follows:

(a) Paragraph (b). "Claim," is deleted in its entirety and replaced with the following:

(b) "Claim" means:

- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations);
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief 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) a civil, criminal, administrative or regulatory investigation of an Individual Insured:
 - (i) once such Individual Insured is identified in writing by such investigating authority as a person against whom a proceeding described in subparagraph 2(b)(2) of this definition, may be commenced; or
 - (ii) in the case of an investigation by the Securities and Exchange commission ("SEC") or a similar state or foreign government authority, after:
 - (a) the service of a subpoena upon such Individual Insured; or
 - (b) the Individual Insured is identified in a written "Wells" or other notice from the SEC or a similar state or foreign government authority that describes actual or alleged violations of laws by such Individual Insured; or
- (4) an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") (or similar state, local or foreign agency) which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the Insured. However, in no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement;

The term "Claim" shall include an Employment Practices Claim and a Securities Claim.

(b) Paragraph (c), "Company," is deleted in its entirety and replaced with the following:

(c) "Company" means (i) the Named Entity; (ii) any Subsidiary thereof; and (iii) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.

(c) Paragraph (f), "Employee," is deleted in its entirety and replaced with the following:

(f) "Employee(s)" means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, volunteer, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the Company shall also be an Employee, but only if the Company provides indemnification to such leased individual in the same manner as is provided to the Company's employees. Any other individual who is contracted to perform work for the Company, or who is an independent contractor for the Company shall also be an Employee, but only if the Company provides indemnification to such individual in the same manner as that provided to the Company's employees, pursuant to a written contract.

(d) Paragraph (h) "Employment Practices Violation(s)," is amended as follows:

(i) items (11) and (12) are deleted in their entirety and replaced with the following:

(11) with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights,

(ii) the last paragraph thereof is deleted in its entirety and replaced with the following:

With respect to any individual other than an Employee of the Company or an applicant for employment with the Company, whether individually or as a class or group, Employment Practices Violation shall mean only any actual or alleged discrimination, harassment or violation of an individual's civil rights relating to such discrimination or harassment, whether direct, indirect, intentional or unintentional.

(e) Paragraph (m), "No Liability," is deleted in its entirety.

(f) In paragraph (n), "Outside Entity," subparagraph (n)(1) is deleted in its entirety and replaced with the following:

(1) any not-for-profit organization; or

(g) Paragraph (s), "Subsidiary," is deleted in its entirety and replaced with the following:

(s) "Subsidiary" means:

- (1) any for-profit entity, whose securities are not publicly traded, of which the Named Entity has or had Management Control ("Controlled Entity") on or before the inception date of the Policy Period, either directly or indirectly through one or more other Controlled Entities;
- (2) any for-profit entity, whose securities are not publicly traded, of which the Named Entity acquires Management Control during the Policy Period, either directly or indirectly through one or more other Controlled Entities; and
- (3) any not-for-profit entity under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by a Company.

Notwithstanding the foregoing, coverage as is afforded under this policy with respect to a Claim made against any Subsidiary or any Individual Insureds thereof shall only apply for Wrongful Acts committed or allegedly committed after the effective time that the Named Entity obtained Management Control of such Subsidiary and prior to the time that such Named Entity ceased to have Management Control of such Subsidiary.

(h) In paragraph (t), "Wrongful Act," subparagraph (3) is deleted in its entirety and replaced with the following:

(3) with respect to service on an Outside Entity, any matter claimed against Individual Insured(s) as defined in (i)(2) arising out of such Insured serving as a director, officer, trustee or governor of an Outside Entity in such capacity, but only if such service is at the specific direction and/or request of the Company. Provided, however, in the event of a disagreement between the Company and an Insured as to whether such Individual Insured was acting "at the specific direction and/or request of the Company," it is hereby understood and agreed that this policy shall abide by the determination of the Company on this issue and such determination shall be made by written notice to the Insurer within ninety (90) days after the Claim against such Individual Insured is made. In the event no determination is made within such period, this policy shall apply as if the Company determined that such Individual Insured was not acting at the Company's specific request or direction.

(i) Clause 2. **DEFINITIONS** is further amended to include the following definitions at the end of that Clause:

(aa) "Cleanup Costs" means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of Pollutants.

- (bb) "Domestic Partner" means any individual person qualifying as a domestic partner under: (1) the provisions of any applicable federal, state, or local law; or (2) the provisions of any formal program established by the Named Entity or any Subsidiary.
- (cc) "Financial Insolvency" means the: (i) appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent Company; (ii) the filing of a petition under the bankruptcy laws of the United States of America; or (iii), as to both (i) or (ii), any equivalent events outside the United States of America.
- (dd) "Foreign Jurisdiction" means any jurisdiction, other than the United States or any of its territories or possessions.
- (ee) "Indemnifiable Loss" means Loss for which a Company has indemnified or is permitted or required to indemnify an Individual Insured pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of a Company.
- (ff) "Management Control" means: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of: the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.
- (gg) "Non-Indemnifiable Loss" means Loss for which a Company has neither indemnified nor is permitted or required to indemnify an Individual Insured pursuant to law or contract or the charter, bylaws, operating agreement or similar document of a Company.
- (hh) "Pollutants" means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

2. Clause 3. **EXTENSIONS** is deleted in its entirety and replaced with the following:

3. EXTENSIONS

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against the estates, heirs, or legal representatives of deceased Individual Insureds, and the legal representatives of Individual Insureds in the event of incompetency, insolvency or bankruptcy, who were Individual Insureds at the time the Wrongful Act upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or Domestic Partner of an Individual Insured for all Claims arising solely out of his or her status as the spouse or Domestic Partner of an Individual Insured, including a Claim that seeks damages recoverable from marital community property, property jointly held by the Individual Insured and the spouse or Domestic Partner, or property transferred from the Individual Insured to the spouse or Domestic Partner; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Wrongful Act of the spouse or Domestic Partner, but shall apply only to Claims arising out of any actual or alleged Wrongful Acts of an Individual Insured, subject to the policy's terms, conditions and exclusions.

It is further understood and agreed that in the event that the Insurer shall announce either: (1) a new Directors and Officers insurance policy form; or (2) an enhancement of coverage endorsement to this policy form, which is to be made available to all Insureds and for which no additional premium is required, then the Named Entity shall have the right to such new policy or such new coverage enhancement endorsement subject to all underwriting information or particulars as the Insurer may require for such new policy or enhanced coverage.

3. In Clause 4. **EXCLUSIONS**, paragraphs (a), (b), (c), (g), (h), (i), (l) and (n) are deleted in their entirety and replaced with the following:
- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final adjudication establishes the Insured was not legally entitled; provided, however, this exclusion shall not apply to Employment Practices Claim(s);
 - (b) arising out of, based upon or attributable to: (1) 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 amendments thereto or similar provisions of any state statutory law if any final adjudication establishes that such 16(b) violation occurred; or (2) the payment to any Insured(s) of any remuneration without the previous approval of the stockholders of the Company, if any final adjudication establishes such payment was illegal;
 - (c) arising out of, based upon or attributable to the committing of any criminal, fraudulent or dishonest act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred;

[The Wrongful Act of an Insured shall not be imputed to any other Insured for the purpose of determining the applicability of the foregoing exclusions 4(a) through 4(c).]

(g) for any Wrongful Act arising out of an Individual Insured serving in a capacity as a director, officer, trustee or governor of an Outside Entity if such Claim is brought by the Outside Entity or any director, officer, trustee or governor thereof; or which is brought by any security holder of the Outside Entity, whether directly or derivatively, unless such security 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, the Company, or any director, officer, trustee or governor of the Outside Entity or the Company; provided, however, this exclusion shall not apply to:

(1) any Claim brought by a 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 that is covered by this Policy;

(2) in any bankruptcy proceeding by or against an Outside Entity, any Claim brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such Outside Entity;

(3) any Claim brought by any past director, officer, trustee or governor of an Outside Entity who has not served as a duly elected or appointed director, officer, trustee, governor, General Counsel or Risk Manager (or equivalent position) of or consultant for an Outside Entity for at least four (4) years prior to such Claim being first made against any person;

(4) any Claim brought by a director, officer, trustee or governor of an Outside Entity formed and operating in a Foreign Jurisdiction against any Outside Entity Executive 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); or

(5) any Employment Practices Claim(s);

(h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any Insured under any express contract or agreement; provided, however, this exclusion shall not apply to:

(i) liability which would have attached in the absence of such express contract or agreement;

(ii) Loss constituting Defense Costs; or

(iii) any Claim other than Employment Practices Claim(s) (see Exclusion (q)(3) for contract exclusion applicable to Claims other than Employment Practices Claim(s));

(i) which is brought by or on behalf of the Company or any Individual Insured, other than an Employee of the Company; or which is brought by any security holder of the Company, whether directly or derivatively, unless such security 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, any Insured; provided, however, this exclusion shall not apply to:

(1) any Claim brought by an Individual Insured where such Claim is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a Claim which is covered by this policy;

(2) in any bankruptcy proceeding by or against a Company, any Claim brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such Company;

(3) any Claim brought by any past director, officer, management committee member or member of the Board of Managers of a Company, who has not served as a duly elected or appointed director, officer, management committee member or member of the Board of Managers (or equivalent position) of or consultant to a Company for at least four (4) years prior to such Claim being first made against any person;

(4) any Claim brought by a director, officer, management committee member or member of the Board of Managers of a Company formed and operating in a Foreign Jurisdiction against such Company or a director, officer, management committee member or member of the Board of Managers thereof, provided that such Claim is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof); or

(5) any Employment Practices Claim(s);

(l) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; provided, however, this exclusion shall not apply to Securities Claims;

(n) for: (i) any actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants; provided, however, this exclusion shall not apply to:

(1) Non-Indemnifiable Loss, other than Non-Indemnifiable Loss constituting Cleanup Costs; or

(2) Loss in connection with a Securities Claim, other than Loss constituting Clean-up Costs;

4. In Clause 4. **EXCLUSIONS** paragraph (j) is amended by adding the following to the end thereof:

Furthermore, this exclusion will not apply to:

(3) any Claim for Loss alleging a Wrongful Act(s) which occurred during the Insured's preparations to commence an initial public offering ("IPO") and which occurred at any time prior to 12:01 a.m. on the date the IPO commences ("IPO Effective Time"), including any Claim(s) for Loss alleging a Wrongful Act(s) which occurred during the road show; provided, however, that the coverage otherwise afforded under this subsection (3) shall be deemed to be void ab initio effective the IPO Effective Time; provided further, however, that the foregoing void ab initio shall not apply with respect to a Claim which is first made and reported pursuant to Clause 7(a) of the policy prior to the IPO Effective Time and prior to the inception of a public company D&O policy which is valid and collectible with respect to such Claim.

5. In Clause 4. **EXCLUSIONS**, subparagraph (3) of paragraph (q) is deleted in its entirety and replaced with the following:

(3) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express contract or agreement; provided, however, this exclusion shall not apply to (1) liability which would have attached in the absence of such express contract or agreement; or (2) Employment Practices Claims(s) (see Exclusion (h), above, for contract exclusion applicable to Employment Practices Claim(s));

6. The last paragraph of Clause 6. **RETENTION CLAUSE** is deleted in its entirety and replaced with the following:

It is further understood and agreed that in the event the Company is unable to pay an applicable Retention amount due to Financial Insolvency, then the Insurer shall commence advancing Loss within the Retention; provided, however, that the Insurer shall be entitled to recover the amount of Loss advanced within the Retention from the Company pursuant to Clause 13. SUBROGATION of this policy.

7. In Clause 7. **NOTICE/REPORTING PROVISIONS**, paragraph (a) is deleted in its entirety and replaced with the following:

(a) The Insureds shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of a Claim made against an Insured as soon as practicable after (i) the Company's Risk Manager or General Counsel (or equivalent position) first become aware of the Claim, but in all events no later than:

(1) anytime during the Policy Period or during the Discovery Period (if applicable); or

(2) within ninety (90) days after the end of the Policy Period or the Discovery Period (if applicable).

8. The last paragraph of Clause 8. **DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)** is deleted in its entirety and replaced with the following:

Furthermore, solely with respect to Employment Practices Claims, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed, then, subject to the applicable limit of liability, the Insurer's liability for all Loss on account of such Employment Practices Claim shall not exceed: (1) the amount for which the Insurer could have settled such Employment Practices Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 80% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 20% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Company and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.

9. The last paragraph of Clause 19. **REPRESENTATIONS AND SEVERABILITY** is deleted in its entirety and replaced with the following:

The Insureds agree that in the event that the particulars and statements contained in the application are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the Insurer under the policy, then this policy shall be void *ab initio* as to any Insured who knew as of the inception date of the Policy Period of the facts that were not accurately and completely disclosed in the application (whether or not such Insured knew that such facts were not accurately and completely disclosed in the application). Solely for purposes of determining whether this policy shall be void *ab initio* as to an Insured, such aforesaid knowledge possessed by any Insured shall not be imputed to any other Insured.

10. Clause 13. **SUBROGATION** is deleted in its entirety and replaced with the following:

13. SUBROGATION

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to each Insured's rights of recovery thereof, and each Insured shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the Insured. In no event, however, shall subrogation be had against any Individual Insured under this policy, unless such Individual Insured has been convicted of a criminal act, or been determined by a final adjudication to have committed a dishonest, fraudulent act or willful violation of any statute, rule or law, or determined by a final adjudication to have obtained any profit or advantage to which such Individual Insured was not legally entitled.

In the event that the Insurer shall for any reason pay Indemnifiable Loss on behalf of an Individual Insured, the Insurer's subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the Insurer making any payment of Loss within the Retention, the Insurer shall have a direct contractual right under this policy to recover from the Company, or in the event of the bankruptcy of the Company, from the debtor-in-possession (or equivalent status outside the United States) such Loss which was paid within the Retention. Such direct contractual right of recovery against the Company shall be in addition to and independent of the Insurer's subrogation right pursuant to this Clause 10 and any other rights the Insurer may have under applicable law.

11. The policy is amended to include the following Clause at the end of the policy:

CA-1. ORDER OF PAYMENTS

In the event of Loss arising from any Claim(s) for which payment is due under the provisions of this policy but which Loss, in the aggregate, exceeds the remaining available Limit of Liability of this policy, then this policy shall:

- (a) first pay such Loss for which coverage is provided under Coverage A of the policy, then with respect to whatever remaining amount of the Limit of Liability is available after payment of such Loss,
- (b) then pay such Loss for which coverage is provided by Coverage B of the policy.

In the event of Loss arising from a Claim(s) for which payment is due under the provisions of this policy (including those circumstances described above in this Clause), the Insurer shall at the written request of the Named Entity:

- (a) first pay such Loss for which coverage is provided under Coverage A of the policy, then
- (b) either pay or hold payment for such Loss for which coverage is provided by Coverage B of the policy.

In the event that the Insurer withholds payment under Coverage B of the policy pursuant to the above request, then the Insurer shall at any time in the future, at the request of the Company, release such Loss payment to the Company, or make such Loss payment directly to an individual director or officer in the event of covered Loss under any Claim(s) covered under this policy pursuant to Coverage A of the policy.

Nothing in this Clause shall be construed to increase the Limit of Liability of the Insurer under this policy which such Limit of Liability shall remain the maximum liability of the Insurer under all Claims under all Coverage under this policy combined.

12. In the event that there is an inconsistency between any term or condition of this endorsement and any term or condition of any other endorsement to this policy, whether such endorsement precedes or follows this endorsement in time or sequence ("Other Amendatory Endorsement"), then it is understood and agreed that the Insurer shall apply those terms and conditions of either this endorsement or the Other Amendatory Endorsement which are more favorable to the Insured.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

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